

(2015) 04 BOM CK 0029
In the Bombay High Court
Case No : Second Appeal No. 611 of 1992

Krishna Bhau Mahadik and Others

APPELLANT

Vs

Bhanudas Nana Mahadik

RESPONDENT

Date of Decision : 17-04-2015

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 10-A, 32G, 32M, 40, 64
Civil Procedure Code, 1908 (CPC) — Section 100
Hindu Adoptions and Maintenance Act, 1956 — Section 14(1), 18, 19, 21, 22
Hindu Succession Act, 1956 — Section 14, 14(1)
Transfer of Property Act, 1882 — Section 6(a)

Citation : (2015) 04 BOM CK 0029

Hon'ble Judges : R.G. Ketkar, J

Bench : Single Bench

Advocate : R.A. Thorat, Senior Advocate and Pratibha Shelke, for the Appellant;
Anjali N. Helekar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

R.G. Ketkar, J.—Heard Mr. R.A. Thorat, learned senior counsel for the appellants and Ms. Anjali Helekar, learned counsel for the respondent at length.

2. By this Appeal under section 100 of the Code of Civil Procedure, 1908 (for short, "C.P.C."), the original plaintiffs have challenged the Judgment and decree dated 1.8.1992 passed by the learned Addl. District Judge, Sangli in Regular Civil Appeal No. 144 of 1987. By that order, the learned District Judge allowed Appeal preferred by the original defendant Bhanudas Nana Mahadik and quashed and set aside the Judgment and decree dated 3.3.1987 passed by the learned Civil Judge, Jr. Dn., Vita in Regular Civil Suit No. 97 of 1980 and dismissed the suit instituted by the appellants. Parties shall, hereinafter, be referred to as per their status in the trial court. The relevant and material facts that are necessary for disposal of the Appeal, briefly stated, are as follows.

3. The plaintiff instituted suit for possession of an area admeasuring 1 Hectar

and 62 Ares from southern side of Gat No. 3158-B situate at village Nevani, in Khanapur Tahasil, District Sangli (for short, "suit land"). The suit land was earlier bearing Revision Survey No. 422/8. The suit land was held by one Dnyanu Laxman Mahadik as a Mirashi. After the death of Dnyanu's wife, he had kept one mistress, by name, Tanubai. On 6.2.1942 Dnyanu executed a Deed of Settlement (Hayat Patra). He gave the land admeasuring 4 Acres 1 Guntha out of Revision Survey No. 422 to Tanubai only for her maintenance during her life time. The said deed provided that Tanubai was not to alienate the suit land by any means whatsoever or to create a charge thereon. On the basis of the Settlement Deed, name of Tanubai was entered in the record. Tanubai cultivated the suit land. In Falani measurement in the year 1968, the suit land admeasuring 4 Acres and 1 Guntha was given R.S. No. 422/8 vide mutation entry No. 7505. Dnyanu died leaving behind his only daughter Sitabai as his legal representative. It is the case of the plaintiffs that they had purchased R.S. No. 420 and 1/3rd portion from R.S. No. 422/8 from Sitabai including the suit land on 18.9.1959. The plaintiff came out with the case that on the basis of Hayat Patra, actual physical possession of the suit land was to be taken after the death of Tanubai.

4. It is the case of the plaintiff that on 3.9.1970, Tanubai executed bogus Sale Deed in favour of the defendant. The defendant did not derive any right, title and interest on the basis of the said Sale Deed. The entry in the revenue record in favour of the defendant was bogus and illegal. On 9.5.1972 the plaintiffs issued notice to the defendant and since there was no compliance, they instituted suit for possession on the basis of title.

5. The defendant resisted suit, inter alia, contending that the suit land was Inam land of Shrinivas Damodar Deshmukh and it was with Dnyanu Mahadik as a tenant. Dnyanu Mahadik transferred his tenancy rights to Tanubai by the Deed of Settlement. It was contended that the plaintiffs cannot claim any right with respect to the suit land. It was also contended that Shrinivas Deshmukh accepted Tanubai as a tenant and Tanubai got tenancy rights in her own rights. She became owner under the provisions of the Bombay Tenancy and Agricultural Lands Act. The suit land was Inam land of Class V, i.e. "Paragana Watan". The said Inam was abolished by the Bombay Paragana and Kulkarni Vatan Abolition Act, 1950 and all rights therein of individuals came to an end. Dnyanu Mahadik or his heir had no subsisting rights in the suit land. By virtue of Section 14 of the Hindu Succession Act, Tanubai became full owner of the suit land, and, therefore, rights under the Settlement Deed dated 6.2.1942, if any, do not survive. Tanubai was given certificate of ownership under section 32M of the Bombay Tenancy and Agricultural Lands Act, 1948. She had, thereafter, sold the suit land to the defendant. Apart from that, the defendant also claimed that on the basis of will executed by Tanubai on 6.9.1979 in favour of the defendant, he became full owner of the suit land.

6. On the basis of the pleadings of the parties, trial Court framed the necessary issues at Exhibit-5. Parties led evidence. After considering the evidence on record,

the learned trial Judge decreed the suit and directed the defendant to deliver possession of the suit land to the plaintiffs. Aggrieved by that decision, the defendant preferred Appeal. It was allowed by the learned District Judge. It is against this decision, the original plaintiffs instituted Second Appeal in this Court. On 11.11.1992, Second Appeal was admitted as ground No. 1 raises substantial question of law. Ground No. (1)(a) to (g) reads as under :

"(a) Whether before coming into operation of the Hindu Succession Act, a mistress had a pre-existing right of maintenance from her paramour which is capable of becoming a full right under Section 14 of the Hindu Succession Act?

(b) Whether after coming into force of the Hindu Succession Act, the right given to Tanubai of maintenance under Settlement Deed dated 6th February 1942 would entitle her to become full owner of the suit property under Section 14 of the said Act?

(c) Whether the Lower Appellate Court was correct in holding that Sitabai could not transfer any right in the suit property in favour of the plaintiffs during the life time of Tanubai since such a right could not be transferred under Section 6(a) of the Transfer of Properties Act.?

(d) Whether a right of a reversioner to become entitled to a property on the demise of a limited owner is a right which is vested and, therefore, capable of being transferred and is not hit by Section 6(a) of the Transfer of Property Act?

(e) Whether in view of Section 8 of the Watan Abolition Act, 1950 read with Section 10-A of the Bombay Tenancy and Agricultural Lands Act, 1948, the lower Appellate Court was justified in holding that Tanubai had become deemed purchaser of the suit land on 1st April, 1957 and that the Settlement Deed dated 6th February 1942 could be construed as transferee Mirashi rights Dnyanu to Tanubai?

(f) Whether in view of the decision in Regular Civil Suit No. 221 of 1947 instituted by Sitabai to which Tanubai was also party, the Defendant or their predecessors Tanubai could deny the right, title and interest of Sitabai to succeed to the estate of Dnyanu including the suit property?

(g) Whether the Lower Appellate Court totally misconstrued the meaning, terms and effect of the Settlement Deed dated 6th February 1942 (Exhibit-29) in favour of Tanubai by Dnyanu?"

7. In support of this Appeal Mr. Thorat submitted that admittedly Tanubai was mistress of Dnyanu Mahadik. She had no pre-existing right of maintenance from her paramour which is capable of becoming a full right under section 14 of the Hindu Succession Act, 1956. He further submitted that Section 14 is not applicable in the facts and circumstances of the present case as it is not applicable to the tenanted properties. He submitted that Section 14 is not applicable as Tanubai did not become deemed purchaser under section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 as Dnyanu Mahadik died in

1942. He further submitted that in any case under section 40 of the Bombay Tenancy and Agricultural Lands Act, 1948, Sitabai being daughter of Dnyanu had become tenant. He submitted that the learned District Judge committed serious error in allowing the Appeal.

8. On the other hand, Ms Helekar submitted that whether Mistress had a pre-existing right from her paramour which is capable of becoming a full right under section 14, is no longer *res integra* and is covered by the Constitution Bench decision of the Apex Court in the case of *Amireddi Rajagopala Rao and Others Vs. Amireddi Sitharamamma and Others*, AIR 1965 SC 1970 : (1965) 3 SCR 122 . She further submitted that after abolition of Inam, landlord had accepted Tanubai as a tenant and had privately sold the suit land to her. Even certificate under section 32M of B.T.A.L. Act was issued in her favour. She submitted that basically Tanubai cannot claim tenancy. She submitted that admittedly Dnyanu died in 1942. At that time, the parties were governed by the Bombay Tenancy Act, 1939. The plaintiffs have not brought any material on record to substantiate that Dnyanu was not a protected tenant. That apart, under section 9(1) of that Act, if a protected tenant dies, the landlord shall continue the tenancy on the same terms and conditions on which such protected tenant was holding it at the time of his death to such one of his heirs who, within four months of the death of such tenant, gives notice in writing to the landlord that he is willing to hold the land on such terms and conditions. In the present case, the plaintiffs have not brought any material on record to show that Sitabai complied section 9(1) of the Tenancy Act. She further submitted that under section 9(3) of the Bombay Tenancy Act, 1939, the lineal male descendants of a protected tenant or his adopted son or, in the absence of any lineal male descendant or an adopted son, his widow shall be deemed to be his heirs for the purposes of Section 9. In the present case, wife of Dnyanu had already died. Sitabai does not satisfy the requirements of Section 9(3). That apart, Sitabai was also not in possession of the suit land so as to claim tenancy. In support of her submissions, she relied upon the following decisions:

"(1) *Pandurang Sakharam Patil v. Santabai*, Special Civil Application No. 3456 of 1957 decided on 20.2.1958 (Coram: Dixit and Gokhale, JJ.);

(2) *Gajanan Govind Gavankar v. Bhimabai Lakhu*, Spl. Civil Application No. 2351 of 1969 decided on 28.4.1973 (Coram: Hajarnavis, J.) to contend that only sons inherit tenancy.

(3) *Dahya Lal and Others Vs. Rasul Mohammed Abdul Rahim*, AIR 1964 SC 1320 : (1963) 3 SCR 1 , to contend that Sitabai cannot claim tenancy unless she is actually physically cultivating the suit land;

(4) *Sau. Saraswatibai Trimbak Gaikwad Vs. Damodhar D. Motiwale and Others*, AIR 2002 SC 1568 : (2002) 3 JT 356 : (2002) 3 SCALE 92 : (2002) 4 SCC 481 : (2002) 2 SCR 755 : (2002) 1 UJ 597 : (2002) AIRSCW 1464 : (2002) 2 Supreme 610 , to contend that Certificate under section 32M is conclusive evidence of

ownership."

9. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. Mr. Thorat submitted that Tanubai was mistress of Dnyanu Mahadik. She had no preexisting right of maintenance from her paramour which is capable of become a full right under section 14 of the Hindu Succession Act, 1956. It is not possible to accept this submission in view of the Constitution Bench decision of the Apex Court in the case of Amireddy Raja Gopala Rao (supra). In paragraph 7, the Apex Court reproduced Section 4 of the Hindu Adoption and Maintenance Act, 1956. After quoting Sections 4 and 22 of the Hindu Adoption and Maintenance Act, 1956, the Apex Court observed in paragraph 7 as under.

"... Sub-section (1) of s. 22 imposes upon the heirs of a deceased Hindu the liability to maintain the dependants of the deceased defined in s. 21 out of the estate inherited by them from the deceased, but this liability is subject to the provisions of sub-s. (2), under which only a dependant who has not obtained by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of the Act is entitled, subject to the provisions of the Act, to maintenance. Specific provision is thus made in s. 22 with regard to maintenance of the dependants defined in s. 21 out of the estate of the deceased Hindu, and in view of s. 4, the Hindu law in force immediately before the commencement of the Act ceases to have effect after the commencement of the Act with respect to matters for which provision is so made. In terms, Sections 21 and 22 are prospective. Where the Act is intended to be retrospective, it expressly says so. Thus, s. 18 provides for maintenance of a Hindu wife, whether married before or after the commencement of the Act, by her husband, s. 19 provides for the maintenance of a Hindu wife, whether married before or after the commencement of the Act, by her father-in-law, after the death of her husband, and s. 25 provides for alteration of the amount of maintenance whether fixed by a decree of Court or by agreement either before or after the commencement of the Act. Now, before the Act came into force, rights of maintenance out of the estate of a Hindu dying before the commencement of the Act were acquired, and the corresponding liability to pay the maintenance was incurred under the Hindu law in force at the time of his death. It is a well-recognised rule that a statute should be interpreted, if possible, so as to respect vested rights. See Craies on Statute Law, 6th Edn. (1963), p. 397. We think that Sections 21 and 22 read with s. 4 do not destroy or affect any right of maintenance out of the estate of a deceased Hindu vested on his death before the commencement of the Act under the Hindu law in force at the time of his death."

It was further observed in paragraph 8 as under:--

"On the death of Lingayya, the first respondent as his concubine and the second, third and fourth respondents as her illegitimate sons had a vested right of maintenance during their lives out of the estate of Lingayya. This right and the

corresponding liability of the appellants to pay maintenance are not affected by Sections 21 and 22 of the Act. The continuing claim of the respondents during their lifetime springs (out of the original right vested in them on the death of Lingayya and is not founded on any right arising after the commencement of the Act."

In view of the above decision, I do not find any merit in the submission of Mr. Thorat.

10. Mr. Thorat further submitted that Section 14(1) of the Hindu Succession Act, 1956 is not applicable as the suit land is a tenanted property. Section 14(1) is applicable only in respect of properties which are of ownership. As noted earlier, the landlord had accepted Tanubai as a tenant and had privately sold the land under section 64 of the Bombay Tenancy and Agricultural Lands Act, 1948 and even certificate under section 32M was issued in favour of Tanubai. Thus, Tanubai became full owner of the suit land. Sitabai had never challenged the sale or 32M certificate issued in favour of Tanubai. Perusal of Hayat Patra shows that Tanubai was put in possession of the suit land as a limited owner. Dnyanu died in the year 1942. After coming into force of the Hindu Succession Act, 1956, by virtue of Section 14(1) thereof, Tanubai became absolute owner of the suit land. On 28.12.1976 the landlord had sold the suit land in favour of Tanubai. In view thereof, in my opinion, Section 14(1) of the Hindu Succession act, 1956 will even otherwise be applicable after coming into force of the Hindu Succession Act, 1956 and Tanubai became absolute owner.

11. Lastly, Mr. Thorat submitted that in any case Sitabai was joint tenant in the suit land. It is not possible to accept this submission. The plaintiffs have not brought any material on record to substantiate that Dnyanu was not a protected tenant. They have also not brought on record any material to show that Sitabai complied section 9(1) of the Bombay Tenancy Act, 1939. Under section 9(3) thereof, the lineal male descendants of a protected tenant or his adopted son or in the absence of any lineal male descendant or an adopted son, his widow shall be deemed to be his heirs for the purposes of Section 9. In the present case, wife of Dnyanu had already died. Sitabai does not satisfy requirements of Section 9(3). That apart, Sitabai was also not in possession of the suit land so as to claim tenancy. Ms Helekar relied upon the Division Bench decision of this Court in the case of Pandurang Sakharam Patil (supra) to contend that daughters cannot be tenants. She also relied upon the decision of this Court in the case of Gajanan Govind Gavankar (supra) to contend that only sons inherit tenancy. Ms Helekar further relied upon the decision of the Apex Court in the case of Dahya Lal (supra) to contend that since Sitabai was not in actual physical possession and she was not personally cultivating the suit land, she cannot claim tenancy. She also relied upon the decision of the Apex Court in the case of Saraswatibai Trimbak Gaikwad (supra) to contend that certificate of ownership granted to tenant-purchaser is conclusive proof of purchase so long as the certificate has not been set aside, decree for possession in respect of suit land cannot be

executed against Tanubai. I find merit in the submission of Ms Helekar. The decisions relied upon by her clearly support her contentions.

12. In the light of the aforesaid discussion, the substantial questions of law formulated by this Court at the time of admission of Appeal are answered accordingly. No other contention was advanced. I do not find any merit in Second Appeal. Hence, Appeal fails and the same is dismissed.