

(1987) 01 BOM CK 0076

In the Bombay High Court

Case No : Writ Petition No. 2358 of 1984

Laxman Dhondu Bhor, since deceased through his heirs
Vithoba Laxman Bhor and others

APPELLANT

Vs

Chentaman Bhimrao Pagare and others

RESPONDENT

Date of Decision : 06-01-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226, 32

Citation : (1987) MhLj 641

Hon'ble Judges : Ashok Agarwal, J

Bench : Single Bench

Advocate : N.S. Shastri, for the Appellant; M.V. Sail for Respondents Nos. 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

Ashok Agarwal, J.—It is indeed unfortunate and depressing to note that a short question as to whether the deceased original Applicant, hereinafter called as "the Petitioner" is a tenant in respect of a small piece of land admeasuring 33 gunthas entitled to purchase the same u/s 32G of the Bombay Tenancy Act, initiated as far back as in the year 1967 is still pending decision upto this date.

2. The land in dispute being Survey No. 258/22A, Gat No. 1794 was purchased by the predecessor of the Respondents some time in 1929. The said land was mortgaged to one Chapji Pagare on the 24th April 1931, who in turn assigned his rights to Ahila Chima Pagare on the 27th of April 1935. On the 17th May 1957 the said mortgage was redeemed by the present Respondents.

3. The proceedings u/s 32G were initiated and the learned Additional Tahsildar, by his Judgment and order dated the 18th January 1968 dropped the said proceedings on the ground that the Respondent No. 1 was then a minor and consequently the Tillers' Day had been postponed. In the said proceedings the Respondent No. 3 landlady had duly appeared and her statement was recorded.

In the said statement she deposed to the death of her husband and about her elder son - the Respondent No. 1 having attained majority and her minor son being still a minor. She expressed her unwillingness to sell the land and deposed that in case she wanted possession, the tenancy of the petitioner will be terminated within the prescribed time after the postponed Tillers" Day. The status of the petitioner as a tenant was never disputed by the Respondent No. 3.

4. On the 10th of August 1968 the Petitioner served his notice to purchase the said suit land. In the meanwhile the Petitioner was forcibly dispossessed and, therefore, he was required to file proceedings for restoration and by order dated the 29th of January 1969 an order of restoration of possession was passed and the Petitioner was duly put in possession of the suit land. The said order makes a reference to the order dated 18th of January 1968 whereunder it was practically a common ground that the Petitioner was the tenant in respect of the suit land. It is undoubtedly true that the aforesaid order for restoration of possession was ex parte, but the Respondents were shown to have been duly served.

5. After the Respondent No. 2 had attained majority suo motu proceedings were once again commenced and the learned Tahasildar, by his Judgment and order dated the 11 th December 1973 fixed the purchase price on the assumption that the Petitioner was the tenant in respect of the suit land. The Respondents challenged the said decision in Appeal, but the same was dismissed. However, the Revision Application of the Respondents was allowed by the Revenue Tribunal and the matter was remanded back to consider the question as to whether the Petitioner was the tenant in respect of the suit land. On remand the Tahasildar, by his Judgment and order dated the 30th September 1977 held that the Petitioner was the tenant and once again fixed the purchase price. The Respondents" Appeal to the Deputy Collector was allowed and the matter was once again remanded back to reconsider whether the Petitioner was a tenant in respect of the suit land. On remand the Tahasildar, by his Judgment and order dated the 22nd November 1982, came to the conclusion that the Petitioner was not the tenant. The Petitioner preferred an Appeal and the Sub-Divisional Officer, by his Judgment and order dated the 7th of March 1983, allowed the Appeal of the Petitioner and held him to be a tenant entitled to purchase the suit land. The Revision Application of the Respondents to the Revenue Tribunal was allowed and it is held that the Petitioner is not the tenant and consequently not entitled to purchase the suit land. Aggrieved by the said decision, the Petitioner has preferred the present Writ Petition. The above checkered history of the present litigation is yet another instance of how much time and expense is spent on a small issue as to whether the Petitioner is a tenant or not.

6. Shri Shastri, the learned Advocate appearing in support of the Petition, contended that in the proceedings initially initiated u/s 32G when the Respondent No. 2 was a minor which proceedings were dropped on account of the minority of the Respondent No. 2, the landlady - Respondent No. 3 had duly appeared and had contested the said proceedings, but the said proceedings were contested on

the common ground that the Petitioner was the tenant in respect of the suit land. The Petitioner had, vide his notice dated the 10th of August 1968, shown his willingness to purchase the suit land. Though duly served, there was no reply and consequently the status of the Petitioner as a tenant was not disputed. When the Petitioner applied for restoration of possession after he had been illegally dispossessed, an order of restoration - of possession was passed. Though the same was ex parte and the Petitioner was put in possession, and yet no proceedings had been adopted by the Respondents to challenge the order of restoration of possession which was passed on the assumption that the Petitioner was a tenant in the suit land. The order of restoration of possession makes a reference to the order dated the 18th of January 1968 wherein it was common ground that the Petitioner was tenant in respect of the suit land. Again when suo motu proceedings were initiated, the Petitioner was once again held to be the tenant and the purchase price was fixed. However, according to Shri Shastri during 1967-68 till the order dated the 11th of December 1973 no grievance was set up by the Respondents on the issue whether the Petitioner was or was not the tenant. According to Shri Shastri, it was for the first time before the Revenue Tribunal that the contention was raised that the Petitioner was not the tenant in respect of the suit land. According to Shri Shastri the Respondents were estopped from raising the said contention and in any event the said issue was barred by principles analogous to res judicata.

7. I find much substance in the aforesaid submissions raised by Shri Shastri. Though it is true that u/s 72 of the Tenancy Act the procedure contemplated under the Mamlatdar's Courts Act, 1906 is made applicable to proceedings before the Mamlatdar or the Tribunal and the said Mamlatdar's Courts Act does not make the entire CPC applicable and hence the provisions of section 11 of the CPC dealing with res judicata cannot be said to be directly applicable. However, in my judgment the provisions analogous to the principle of res Judicata ought to apply to proceedings under the Tenancy Act and the matters cannot be allowed to be agitated and reagitated year in and year out as has been done in the present case.

8. In the case of Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat), , the question before the Supreme Court was whether a decision in a Writ Petition rendered on merits after hearing the parties would operate as res judicata in a subsequent suit and it was held that the provisions of section 11 of the CPC are not exhaustive with respect to the earlier decision operating as res judicata between the same parties on the same matter in controversy in a subsequent Regular Suit and on the general principle of res judicata, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case by a Court competent to decide, it will operate as res judicata in a subsequent regular suit. The nature of the former proceeding is immaterial. There is no good reason to preclude such decisions on matters in controversy in writ proceedings under Article 226 or 32 of the Constitution from operating as res judicata in subsequent regular suits on the

same matters in controversy between the same parties and thus to give limited effect to the principle of the finality of decisions after full contest.

9. On the analogy of the aforesaid decision, I hold that the principles analogous to res judicata must apply to proceedings under the Tenancy Act.

10. Shri Sali, appearing in support of the decision rendered by the lower Revenue Tribunal, vehemently contended that the case of the Petitioner that he was a tenant in respect of the suit land or that he had paid rent was false and dishonest and hence this was not a case where I should exercise my writ jurisdiction in his favour. He pointed out that the land had been mortgaged as far back as in 1931 and was redeemed only on the 17th May 1967. The mutation entry No. 5021 dated the 12th August 1955 shows that the Petitioner was tenant of Ahila Chima Pagare who was then the mortgagee of the suit land. The mutation entry No. 5907 dated the 30th June 1957 recording the fact of redemption did not show the name of the Petitioner as the tenant. The Petitioner had deposed that he was the tenant of the predecessor of the Respondents-landlords but he had not made out a case that he was tenant of the mortgagee. He had also falsely deposed of his having paid rent to the predecessors of the Respondents when not a single receipt was forthcoming. He had claimed to have paid rent to Bhaurao Rakhmaji in about the year 1957 when he was shown to have died as early as in 1950.

11. I am not impressed by any of the aforesaid submissions of Shri Sali. It may be that there are certain discrepancies which may possibly support the case of the Respondent that the Petitioner is not the tenant. However, some finality to the orders, passed by the Courts competent to pass the same, has to be given and the matters cannot be allowed to go on and on indefinitely as has happened in the present case. Even on merits I find that proceedings u/s 32G were commenced as early as in 1967 when the landlady - the Respondent No. 3 had duly appeared and no contention was raised that the Petitioner was not the tenant. Though the Petitioner had served his notice of purchase on the 10th of August 1968, no grievance in regard to the status of the Petitioner being a tenant was raised. Though the Petitioner was restored to possession on the basis of his being the tenant in the year 1969, no grievance was made about his status till the hearing before the Revenue Tribunal in the year 1976. That being the position, I am clearly of the view that the Respondents were estopped from raising the said plea and in any event the decision of the Tenancy Courts that the Petitioner was the tenant would be final and binding on principles analogous to res judicata. Consequently the Petitioner will have to be held to be a tenant in respect of the suit land entitled to purchase the same.

12. Shri Sali, however, contended that the Petitioner's right to purchase has been forfeited and the purchase had become ineffective as far back as on the 20th August 1961 inasmuch as the Respondent No. 2 had attained majority on the 20th August 1959. According to him when a land belongs to a Hindu joint family of the mother and her two minor sons, the right to purchase becomes

ineffective after a period of two years from one of the sons attaining majority. Hence according to Shri Sali the notice of purchase issued by the Petitioner on the 10th August 1968 was belated and the deemed purchase had already become ineffective. Shri Sali, therefore, prayed for a remand for deciding the said question.

13. I am not inclined to accede to the aforesaid prayer on the ground that this submission is being urged for the first time in the present Petition. The order of the Additional Tahasildar dated the 18th January 1968 had clearly held that the sale of the land was postponed till the 20th June 1968 and proceedings u/s 32G should be started after 21st June 1968. No grievance was made by the Respondents in that behalf. Hence the notice of purchase at 10th August 1968 will have to be held to be within time.

14. By the order dated the 11th December 1973 the Tahasildar had fixed the purchase price and before the Revenue Tribunal the only contention that was raised was about the status of the Petitioner and no grievance was made regarding the postponed date or the purchase notice being beyond limitation.

15. In the result, the Petition is allowed. It is held that the Petitioner is the tenant in respect of the suit land entitled to purchase the same. Rule absolute. No order as to costs.