

(1950) 10 BOM CK 0004

In the Bombay High Court

Case No : Civil Revision Application No. 890 of 1949 (with C.R.A. No"s. 21 and 67 of 1950)

Laxman Gopal

APPELLANT

Vs

Vishnu Raghoba

RESPONDENT

Date of Decision : 04-10-1950

Acts Referred:

Bombay Tenancy Act, 1939 — Section 2A

Citation : AIR 1951 Bom 355 : (1951) 53 BOMLR 315 : (1951) ILR (Bom) 538

Hon'ble Judges : Gajendragadkar, J

Bench : Single Bench

Advocate : G.N. Vaidya, in No. 890/49, M.A. Rane, in No. 21/50 and K.B. Sukthankar, in No. 67/50, for the Appellant; V.S. Desai and D.R. Manerikar, for the Respondent

Judgement

Gajendragadkar, J.—These three revnl. applns. raise an interesting question as to whether the mulgenis are tenants within the meaning of Bombay Act XXIX [29] of 1939. The petnrs. in all the three cases before me are mulgenis. Three suits had been filed against them by their respective landlords claiming rent from them on the basis of an agreement between them. The mul-genis resisted the claim on the ground that the rent under the agreement could not be recovered having regard to the provisions of Section 15 (2), Bombay Tenancy Act. That naturally raised the question as to whether the mulgenis were tenants within the meaning of Section 2A of the said Act. The learned Judge who tried the three suits came to the conclusion that they are not tenants within the meaning of the said section & as such are not entitled to the protection of Section 15. He has, therefore, decreed the pltf's." claims. In their present revn. applns. before me the mulgenis have contended that the learned Judge was wrong in holding that they were not tenants & in coming to that conclusion he has not properly appreciated the real nature & incidents of the mulgeni tenure. This tenure prevails on an extensive scale in the Dist. of Kanara & so the question raised in the present proceedings is of considerable importance so far as that district is concerned.

2. This question has been considered by this Ct. on several occasions in the past & the case for the petnrs. is that their contention is fully borne out by the decisions of this Ct. Before referring to these decisions, however, it may be convenient to discuss the literal meanings of some of the relevant terms as they are found in Wilson's Glossary. "Mulagar" or "Mulgar" means owner or original proprietor; he is sometimes described as Mulavargdar. "Gaini" or "Geni" means rent paid to the landlord or proprietor. "Mulgeni" means permanent tenants. This word is used in contradistinction to temporary tenants who are called "Chali-Genis."

3. The question as to the nature of the mulgeni tenure was considered incidentally in the well-known case of Vyakunta Bapuji v. Government of Bombay 12 Bom.C. R.I. This case is some-times described as the Kanara case. In 1875 a question arose before the Dist. Ct. in Karwar as to whether Govt. could enhance the land revenue payable in respect of land held by the mulavargdar. This Ct. thought that the question was of such general importance that it directed the case to be transferred from the Dist. Ct. of Karwar to itself & tried the issues arising between the pltf. & the Govt. of Bombay. Westropp C. J. & West J., heard the suit & the judgment was delivered by the learned C. J. in which he exhaustively considered the rights of the mulavargdars in respect of the lands held by them & the rights of the Govt. to enhance the land revenue in respect of such lands. In dealing with the rights of the mulavargdars it was inevitable that the learned Judges should have incidentally considered the rights of the mulgenis also. A distinction was drawn between gaini-varg & mulgeni. "The gaini-varg is held directly from the State," observed Westropp C. J., "whereas the mul-gaini tenure is said to be a permanent tenancy under the rayut or mulavargdar at a fixed & invariable rent." The question as to the mulgeni's rights, however, directly arose for decision eight years later in Vyankatraya v. Shivrambhat 7 Bom. 256. In this case the pltf. who had obtained a decree against a mulgeni, wanted to attach the mulgeni's rights in the land in execution of his decree. The mulavargdar or the proprietor objected to the attachment & sale of the said rights on the ground that there was a clause in the lease passed in favour of the mulgeni which expressly prohibited the mulgeni from alienating his rights by mtg., sale or lease & which further stipulated that he was "not to let it be sold, or attached & sold in satisfaction of judgment debts;" & that if he did, the landlord might take away the land & give it to others for cultivation. In the suit from which the appeal arose the D. H. had claimed a declaration that the mulgeni's rights were liable to be attached & sold in execution of his decree against the proprietor who was the deft. Both the Cts. below had held that the clause in the lease on which the proprietor relied was invalid. But this view was reversed by Sargent C. J. & Melvill J. In dealing with the nature of the mulgeni tenure & the rights of the mulgenis under this tenure Sargent C. J. referred to the historical material then available to the Ct. The first document in point of time was the report of Sir Thomas Munro made in 1800. In this report, Munro had described how the land in Kanara was parcelled out amongst a prodigious number of

proprietors who paid a fixed rent to the Govt. & that these proprietors had under them an infinite number of lesser proprietors holding their lands of them with all the same proprietary rights as those under which they held their own of Govt. It would thus appear that Munro was disposed to treat the mulgenis not so much as tenants, as sub-proprietors or occupants of the land. The second document to which the learned Chief Justice referred was a minute made by the Revenue Board on 6-1-1818. This minute showed that the exclusive rights to the hereditary possession & usufruct of the soil is in Kanara termed varga, & it had been vested in the military tribe of the Nayrs, who were at one time the exclusive mulis or landlords of that Province. The Nayrs had under them a number of inferior rayats called genis or tenants who fell in two distinct classes--the mulgenis, or permanent tenants & the chali-genis, or temporary tenants. "The mulgenis, or permanent tenants of Kanara," according to this minute

"were a class of people unknown to Malabar, who, on condition of the payment of a specified invariable rent to the muli, or landlord, & his successors, obtained from him a perpetual grant of a certain portion of land to be held by them & their heirs for ever." "This right," the minute added, "could not be sold by the mulgeni or his heirs, but it might be mortgaged by them, & so long as the stipulated rent continued to be duly paid, he & his descendants inherited this land like any other part of their hereditary property."

The mulgenis in turn got their lands cultivated by means of hired labourers or slaves or they sometimes sub-rented them to the chali-genis or temporary tenants. Thus this minute would show that by 1818 at any rate the mulgenis had ceased to be sub-proprietors as such & were treated as no better than permanent tenants. The third document to which the learned Chief Justice referred was "Chamier's Land Assessment & Tenures of Kanara," published at Mangalore in 1853. By this time it was found that in granting land upon mulgeni tenure many conditions were often imposed which were never found in ancient deeds--such, for example, as that the right shall not be alienable. Having regard to this material this Ct. held that "the Mulgenis were only tenants, although tenants in perpetuity, holding under their superior landlords, the Mulgars, & that"

"although originally Mulgeni tenants were not restricted by the terms of their leases from alienation, the practice had grown up of leasing the land in perpetuity at a fixed rent coupled with such & other restrictions."

Having regard to this nature of the Mulgeni tenure, Sargent C. J. & Melvill J. held that the clause prohibiting the alienation of the mulgeni's rights was not invalid & could be availed of by the vargdar or the proprietor. It would thus be clear that the mulgenis were not treated by this Ct. as sub-proprietors in this case. If they had been treated as sub-proprietors of the lands in their possession, the clause prohibiting alienation of their rights would clearly have been held to be invalid.

4. In 1903, Jenkins C. J. & Aston J. had occasion to consider the question of the mulgeni's rights in a somewhat different form. In *Narayan v. Ramachandra* 27

Bom. 373 : 5 Bom. L. R. 241, mulgeni's rights had been created by the manager of the temple Shri Ramchandra Devasthan. The successor of the said manager wanted to eject the mulgenis on the ground that his predecessor was not entitled to create such rights since the creation of the said rights amounted to an alienation of the property. This claim was rejected by this Ct. because this Ct. took the view that the suit was barred by limitation either under Article 144 or under Article 134. Dealing with the application of Article 134 Jenkins C. J. referred to the rights of the mulgenis as those of a lessee, & he held, following the observations of Lord Romilly in *Attorney General v. Payne* (1859) 27 Bea 168 : 122 R. R. 357, that as soon as the lease was granted the lessee held adversely to the rights of the charity to the extent of the alienation contained in the lease. In other words, the rights of the mulgenis were treated as the rights of a lessee. Subsequent to these decisions whenever disputes between mulgenis & the mulavargadars came to this Ct. the mulgenis have always been described as permanent tenants (vide *Narayan v. Nayappa* 12 Bom. L. R. 831 : 34 Bom. 506 & *Ganapati v. Nagabhatta* 22 Bom. L. R. 118 : A. I. R. 1920 Bom. 332).

5. As I have already mentioned this tenure prevails in South Kanara & its incidents have on some occasions been considered also by the Madras H. C. In *Unhamma Devi v. Vaikunta Hegde* 17 Mad. 218 : 3 M. L. J. 287, the question which the Madras H. C. had to consider was whether the setting up of a mulgeni right by a tenant amounts to a disclaimer of title of the landlord which would disentitle him to a notice to quit in determination of the tenure. It would be noticed that if the right of a mulgeni amounts to that of a proprietor, the setting up of such a right may conceivably amount to a disclaimer of the proprietor's title. But the Madras H. C. took the view that (p. 219):

"When a Mulgeni right is set up, the landlord's title is, in fact, not denied; on the other hand, the relation of landlord & tenant is admitted, what is denied being the particular kind of tenancy under which the tenant holds possession."

In other words, the Madras H. C. took the view that though by setting up the mulgeni tenancy the tenant was claiming a higher right, it was a higher right as a tenant that was claimed & such a claim cannot amount to a disclaimer of the landlord's title. To the same effect are the observations of Benson J. in *Vidyapurna Thirtha-swami v. Uggannu* 34 Mad. 231 : 7 I. C. 321. It would thus be clear that even in Madras the mulgenis are treated as no better than permanent tenants. But whatever may be the position in Madras, there can be no doubt that this Ct. has consistently taken the view since 1875 that the mulgenis are not proprietors, but are permanent tenants.

6. Now, u/s 2A of Act XXIX [29] of 1939, with which we are directly concerned in the present revn. applns. a tenant is defined as a person lawfully cultivating any land belonging to another person, if such land is not cultivated personally by the owner & if such a person is not a member of the owner's family, or a servant on wages payable in cash or kind but not in crop share or a hired labourer cultivating the land under the personal supervision of the owner or any member

of the owner's family. The learned Judge has held that the mulgenis do not fall within this definition because they are sub-proprietors. According to the learned Judge,

"The tenancy under the Tenancy Act is a legal fiction whereas the Mulgent tenancy is a virtual transfer of all the proprietary rights of the owner in consideration for immediate payment of money or for premia to be paid from year to year."

As I have already pointed out, this view is clearly inconsistent with the decisions of this Ct. & is not supported by any historical material dealing with the development of this tenure in Kanara. The learned Judge was also impressed with the plea made by the landlords before him that the mulgeni tenants do not need the protection of the Tenancy Act because they have much larger rights than the ordinary tenants. This is clearly an erroneous way of approaching the case. If the mulgeni tenants satisfy the requirements of Section 2A, Tenancy Act, they must be held to be tenants within the meaning of the Tenancy Act & as such they must be given the benefit of the provisions of this Act. The learned Judge was clearly in error in allowing considerations of policy to weigh with him in deciding the question as to the status of the mulgeni tenants in these proceedings. Considerations of policy are a matter for the Legislature to take into account. It is the function of the Cts. to administer the law as it stands. Besides, it may also be pointed out that it is not quite correct to say that the mulgeni tenants do not need the protection of the Act. The present cases themselves afford an illustration where they need the protection of the Act. It appears that the rent which the mulgeni tenants in these cases have agreed to pay to their landlords is excessive having regard to the provisions of Section 12 of the Act. In any case, that is the contention which the mulgeni tenants have raised. If that contention succeeds, the mulgeni tenants would clearly have obtained a benefit under this Act. But whether they get the benefit of the provisions of Section 12 or not, it seems to me clear that the trial Ct. misconstrued the provisions of Section 2A in excluding them from the class of tenants contemplated by the Tenancy Act. That being my view, I must set aside the decrees passed by the trial Ct. in all the three cases & make the rules absolute with costs. 7. The result, therefore, would be that in C. R. A. Nos. 67 of 1950 & 890 of 1949 the Suits will have to be sent back to the trial Ct. for disposal in accordance with law. In C. R. A. No. 21 of 1950 the decree passed by the trial Ct. would be set aside & the pltf's. suit dismissed with costs throughout. In this case the pltf. had already recovered the rent permissible u/s 12, Tenancy Act by filing an Assistance Suit. In the present suit he was claiming the balance due under the agreement. To this balance he is clearly not entitled in view of my finding that the deftd. is a tenant under the Tenancy Act. It is, therefore, unnecessary to send this case back.