
(2011) 09 BOM CK 0049

In the Bombay High Court

Case No : Writ Petition No. 5236 of 1989

Laxman Maruti Kolathe

APPELLANT

Vs

Baburao Mhasku Shendkar and Others

RESPONDENT

Date of Decision : 28-09-2011

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 25A, 32F, 32F(1), 32F(1)(A), 32G
Constitution of India, 1950 — Article 227
Hindu Succession Act, 1956 — Section 14, 14(1), 14(2)

Citation : (2012) 2 ALLMR 873 : (2012) 3 BomCR 855 : (2012) 1 MhLj 388

Hon'ble Judges : Ranjit More, J

Bench : Single Bench

Advocate : R.S. Kate, for the Appellant; Snehal Ratnakar instructed by Suhashini Mutalik, for the Respondent

Final Decision : Allowed

Judgement

Ranjit More, J.—The writ petition arises out of the Reference u/s 85A of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Bombay Tenancy Act, 1948" for the sake of brevity and convenience). Respondent Nos. 1 to 3 filed Regular Civil Suit No. 282 of 1977, in the Court of Civil Judge, Junior Division, Baramati, for declaration and possession of Gat No. 1723, admeasuring about 68 Ares, situate at village Karanje, taluka Baramati, district Pune, corresponding to old Survey No. 247/5 and 247/6 admeasuring about 32 Ares and 35 Ares respectively (hereinafter referred to as "the suit land"). The petitioner contested the suit, wherein he contended that the suit land was given to one Gajabai alias Gajrabai, widow of Genu Shendkar, in lieu of maintenance and she was the absolute owner of the suit land. The petitioner contended that in the year 1953-54 said Gajrabai orally leased out the suit land to him on 1/3rd crop share basis and since then he is continuously cultivating the suit land as a tenant. Thereafter, mutation entry was recorded in the year 1957 under which the petitioner is shown as the tenant of the suit land. It was also

contended that on 29-11-1965 the suit land was mortgaged in his favour by Smt. Gajabai for the period of five years. However, tenancy rights of the petitioner were not affected at all. He submitted that he is entitled to purchase the suit land u/s 32G of the Tenancy Act since he has complied with the provisions of section 32-F(1)(a) of the said Act. In view of the pleadings of the respective parties, the learned C.J., J.D. framed necessary issues and the material issues are as under :

4(a) Whether the defendant was a tenant in suit land prior to 29-11-1965?

4(b) Whether defendant has right to purchase the suit land as per section 32F of the Bombay Tenancy and Agricultural Lands Act?

4(c) If, (4(b) is answered in the affirmative, what are its implications and consequences on suit sale deed dated 29-11-1965?

2. Since the above issues are required to be decided by the Tenancy Authority exclusively, the learned Civil Judge referred the above issues the Tahsildar, Baramati for finding as per the provisions of section 85 of the Tenancy Act.

3. The Additional Tahsildar and ALT Baramati, who decided this Reference No. 85A/Karanje/45/83 by his order dated 30-7-1985 answered issue No. 4 (a) and 4(b) in the negative. So far as issue No. 4 (c) is concerned, it was held that Gajrabai had limited rights over the suit land and, therefore, mortgage deed dated 29-11-1965 is void. This order was challenged by the petitioner by way of an appeal and subsequently revision before the Sub-Divisional Officer, Baramati and MRT Pune, respectively. However, appeal and revision, came to be dismissed and the order of the Tahsildar came to be confirmed. Thereafter, the petitioner has approached this Court by way of aforesaid petition.

4. Mr. Kate, learned counsel for the petitioner, submitted that the suit land was given to Gajabai in lieu of maintenance for life. However, her limited rights were enlarged by virtue of the provisions of section 14 (1) of the Hindu Succession Act, 1956. He submitted that there is enough evidence on record and in fact, finding is recorded by the Revenue Authorities that the petitioner is cultivating the suit land since 1953. He relied upon Mutation Entry No. 5147 which is effected prior to tiller's day under which name of the petitioner is recorded as the tenant. He submitted that the petitioner has complied with provisions of section 32F of the Act. Therefore, he is entitled to purchase the suit land. He submitted that the Competent Authorities negated petitioner's claim of tenancy only on the ground that Gajabai had limited interest in the suit property. He lastly submitted that findings of the Revenue Authorities below are perverse and they are required to be quashed and set aside by allowing the petition.

5. Ms. Ratnakar learned counsel for respondent Nos. 1 to 3 contested the writ petition. She supported the impugned order. She submitted that suit land was given to Gajrabai under settlement deed for her life time only and thereafter the suit land was to be reverted back to the respondent's father. Gajrabai in her life

time could not have inducted the petitioner as a tenant. She submitted that Gajrabai also could not have executed mortgage deed of 1965 in favour of the petitioner. She submits that the Tenancy Authorities have approached the matter from correct point of view and, therefore, no interference is called for in the impugned order in exercise of writ jurisdiction under Article 227 of the Constitution of India.

6. Having considered the rival submissions of the respective counsels and having gone through the record and proceedings and the compilation of the writ petition, along with Annexures to the writ petition, I find merit in the petition. There is no dispute as far as the following facts are concerned. Gajrabai was the widow of Genu Shendkar. The said Genu Shendkar was a real brother of respondent No. 1, 2 and 3's father. After demise of Genu Shendkar, Gajabai filed Regular Civil Suit No. 176 of 1920 for maintenance. That suit was decreed in her favour. Thereafter, settlement deed was executed on 11-9-1922 by the father of respondent No. 1 and respondent Nos. 2 and 3 in favour of Gajrabai whereby the suit land was given to Gajrabai in lieu of maintenance and she was cultivating the same. Her name was entered into the record of right of the suit land by virtue of Mutation Entry No. 413.

7. The petitioner claims that the suit land was given to him on lease basis and he was giving 1/3rd crop share to said Gajrabai. Her name was entered into the record of the suit land as the tenant by virtue of Mutation Entry No. 5147 effected on 1-3-1957 in the year 1956-57. This mutation entry is certified on 22-7-1957.

8. On 29-11-1965 Gajrabai executed mortgage deed in favour of the petitioner. This mortgage deed was for a period of five years. There is recital in the mortgage deed to the effect that the petitioner is cultivating the suit land since ten years. Thus, the petitioner's possession as the tenant in the suit land is supported by documentary evidence, namely Mutation Entry No. 5147 and the mortgage deed dated 29-11-1965. The fact that the petitioner is in possession of the suit land is also not at all disputed inasmuch as the respondents have filed suit for declaration and possession. The learned counsel for the respondent also does not dispute this position. In fact, tenancy authorities below have accepted the above evidence and finding is recorded that the petitioner is cultivating the suit land since prior to the tiller's day. However, it was held that the petitioner is not a tenant and this finding is recorded on the premise that Gajabai had life interest in the suit property and, therefore, she could not have inducted the petitioner as the tenant in the suit property. Neither she could not have executed mortgage deed in the year 1965.

9. In order to decide whether said Gajrabai was competent to induct the petitioner as the tenant in the suit property, we have to consider the provisions of section 14 of the Hindu Succession Act, 1956. As stated above, the fact that Gajrabai was the widow of the respondent Nos. 1 to 3's father's brother, is not disputed. Maintenance decree was also passed and thereafter settlement deed

was executed by respondent Nos. 1 to 3's father in favour of the said Gajrabai. Thus, Gajrabai had pre-existing right of maintenance in the coparcenary property belonging to the father of respondent No. 1 and father of respondent Nos. 2 and 3. Therefore, after coming into the operation of the Hindu Succession Act, 1956 by virtue of the provisions of section 14 (1) Gajrabai became the absolute owner of the suit land. This view is supported by a decision of a Division Benches of the Apex Court in the cases of Raghubar Singh & others vs. Gulab Singh & others, 1991(1) Bom.C.R. 119 and Beni Bai (Smt) vs. Raghubir Prasad, (1993) 3 SCC 234. In the above cases, the Division Bench of the Apex Court followed a decision of three Judge Bench of the Apex Court in the case of Vaddeboyina Tulasamma vs. Vaddeboyina Sesha Reddi, AIR 1977 SC 1944.

10. The Apex Court in the case of Vaddeboyina Tulsamma (cited supra) exhaustively considered the provisions of section 14(1) and 14(2) of the Hindu Succession Act and case law on this point and summarized legal position in paragraph No. 70 of the judgment which reads thus :

We would now like to summarise the legal conclusions which we have reached after an exhaustive considerations of the authorities mentioned above on the question of law involved in this appeal as to the interpretation of section 14(1) and (2) of the Act of 1956. These conclusions may be stated thus :

(1) the Hindu female's right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognized and enjoined by pure Shastric Hindu Law and has been strongly stressed even by the earlier Hindu jurists starting from Yajnavalkya to Manu. Such a right may not be a right to property but it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained therefrom. If a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. At any rate, even without a charge the claim for maintenance is doubtless a pre-existing right so that any transfer declaring of recognizing such a right does not confer any new title but merely endorses or confirms the pre-existing rights.

(2) Section 14 (1) and the Explanation thereto have been couched in the widest possible terms and must be liberally construed in favour of the females so as to advance the object of the 1956 Act and promote the socio-economic ends sought to be achieved by this long needed legislation.

(3) Sub-section (2) of section 14 is in the nature of a proviso and has a field of its own without interfering with the operation of section 14 (1) materially. The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by section 14 (1) or in a way so as to become totally inconsistent with the main provision.

(4) Sub-section (2) of section 14 applies to instruments, decrees, awards, gifts

etc. which create independent and new titles in favour of the females of the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognise preexisting rights. In such cases a restricted estate in favour of a female is legally permissible and section 14 (1) will not operate in this sphere. Where, however, an instrument merely declares or recognises a preexisting right, such as a claim to maintenance or partition or share to which the female is entitled, the sub-section has absolutely no application and the female's limited interest would automatically be enlarged into an absolute one by force of section 14 (1) and the restrictions placed, if any, under the document would have to be ignored. Thus where a property is allotted or transferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of sub-section (2) and would be governed by section 14 (1) despite any restrictions placed on the powers of the transferee.

(5) The use of express terms like "property acquired by a female Hindu at a partition", or in lieu of maintenance" "or arrears of maintenance" etc. in the Explanation to section 14 (1) clearly makes subsection (2) inapplicable to these categories which have been expressly excepted from the operation of sub-section (2).

(6) The words "possessed by" used by the Legislature in section 14 (1) are of the widest possible amplitude and include the state of owning a property even though the owner is not in actual or physical possession of the same. Thus, where a widow gets a share in the property under a preliminary decree before or at the time when the 1956 Act had been passed but had not been given actual possession under a final decree, the property would be deemed to be possessed by her and by force of section 14 (1) she would get absolute interest in the property. It is equally well settled that the possession of the widow, however, must be under some vestige of a claim, right or title, because the section does not contemplate the possession of any rank trespasser without any right or title.

(7) That the words "restricted estate" used in section 14 (2) are wider than limited interest as indicated in section 14 (1) and they include not only limited interest, but also any other kind of limitation that may be placed on the transferee

11. The perusal of the above conclusions of the Supreme Court, it is clear that Hindu female's right to maintenance is not an empty formality. From the perusal of the Apex Court judgment it is clear that sub-section (2) of section 14 applies to the instrument, decrees, award, gifts, etc. which create an independent new title in favour of the females for the first time and has no application where the instrument concerns merely seek to confirm, endorse, declare or recognize pre-existing right. Where, however, an instrument merely declares or recognize pre-existing right such as claim to maintenance or partition or share to which the female is entitled, sub-section (2) of section 14 has absolutely no application and female's interest would automatically be enlarged into absolute one by force of section 14(1) and the restrictions placed, if any, under the document would have

to be ignored.

12. Applying the principle enunciated above to the fact of present case, I find that the suit property was allotted to deceased Gajrabai in lieu of her maintenance and in recognition of her right of maintenance which was preexisting right, (ii) said Gajrabai had life interest in the suit property in view of the terms of the above settlement deed, (iii) despite above, Gajrabai continued to be in possession of suit property till 1956 when the Hindu Succession Act, 1956 came into force, and (iv) Gajrabai inducted the petitioner, in the suit land as a tenant, in the year 1956 after she had acquired absolute interest in the suit property by virtue of provisions of section 14 (1) of the said Act.

13. Once it is concluded that Gajrabai became an absolute owner of the suit land by virtue of provisions of section 14 (1) of the Hindu Succession Act, 1956, then the petitioner's induction at her instance in the suit land as a tenant cannot be questioned. Gajrabai being owner of the suit land was entitled to induct the petitioner as a tenant in the suit land. I have already observed that there is enough evidence on record regarding the petitioner's cultivation in the suit land in the capacity of the tenant. In fact, the finding of fact is also recorded by the revenue authorities to that effect. In the above circumstances, it will have to be concluded that the petitioner was cultivating the suit land on tiller's day as the tenant and, therefore, by deeming provision, he became owner of the suit land u/s 32 of the Act.

14. So far as effect of mortgage of a conditional sale deed executed by Gajrabai in favour of the petitioner on 29-11-1965 is concerned, same will not affect petitioner's right of tenancy in the suit land. The petitioner's tenancy rights in this regard are protected u/s 25A of the Tenancy Act, 1948. Under the said provision, during the mortgage period, tenancy of such land remains in abeyance and after the expiry of the mortgage period, it shall be lawful to the tenant to continue to hold land on the terms and conditions on which he held it before the mortgage was created. In these circumstances, the execution of mortgage deed will not affect the petitioner's tenancy right in the suit land.

15. This takes me to consider the vital issues, namely, the petitioners have the right to purchase the suit land as per the provisions of section 32(F). Gajrabai expired on 11-1-1977. This fact is not disputed by either of parties. On 19-9-1978 the petitioner gave notice to the respondents who claim to be the legal heirs of deceased Gajrabai and the Tribunal u/s 32 (F) of the Tenancy Act. I have perused the contents of the notice which is produced at Exh. 1D. This notice is received by respondents as well as the Tribunal. The acknowledgments are on record at Exh. 1. Thus, the petitioner has complied with the provisions of section 32 (F) (1 A) and, therefore, he is entitled to purchase the suit land. In the facts and circumstances of the case, the order passed by the Revenue Authorities cannot be sustained and liable to be quashed and set aside. Writ petition is allowed in terms of prayer clause (c) and (e). Rule made absolute accordingly with no order as to costs. Tenancy Authority to take appropriate

steps.