

(1980) 08 BOM CK 0014
In the Bombay High Court
Case No : Second Appeal No. 945 of 1973

Laxman Siddu Pote

APPELLANT

Vs

Shri Govindrao Koregaonkar Dharmadaya Sanstha Managing
Trustee

RESPONDENT

Date of Decision : 07-08-1980

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32
Bombay Tenancy and Agricultural Lands Rules, 1956 — Rule 49
Evidence Act, 1872 — Section 115

Citation : AIR 1981 Bom 33 : (1981) MhLj 338

Hon'ble Judges : Sharad Manohar, J

Bench : Single Bench

Advocate : Bhimrao N. Naik, for the Appellant; P.N. Sarkar, instructed by Malvi Ranchoddas Co., for the Respondent

Judgement

1. This Second Appeal has got to be allowed on a very short point to which the attention of the lower Courts does not seem to have been invited.

2. A short statement of facts would be sufficient to formulate the point. The suit property consists of R. S. No. 211 admeasuring 12-A and 31-G situate at Harali Budruk. Taluka Gadhinglaj, Dist. Kolhapur. Admittedly the property originally belonged to Prabhakarpanth Korgaonkar and the defendant, who is the present appellant before me in this Second Appeal, was the tenant of the land. There is no dispute that the Bombay Tenancy and Agricultural Lands Act, 1948, (hereinafter, "the Tenancy Act") was made applicable to this area on 1-5-1949. It appears that Korgaonkars started an educational institution in this area and the institution was registered under the Societies Registration Act in 1946. This institution was also registered under the Public Trust Act on 30th Oct., 1952.

On 16-7-1951 the Korgaonkars gifted the suit land to the Trust by a registered gift deed executed on that date. There is no dispute that on the date on which the gift-deed was executed by Prabhakarpanth Korgaonkar to the Trust, which was

called Shri Govindrao Korgaonkar Dharmadaya Sanstha, defendant was a tenant on the land. There is further no dispute that the Trust is not an agriculturist within the meaning of that word in the Tenancy Act.

On 1-4-1957 the defendant, who was a tenant on the land, should ordinarily have become the owner of the land. There is no dispute that in the proceedings held u/s 32-G of the Tenancy Act he was declared an owner of the land. He had paid all the installments and a certificate u/s 32-M of the Tenancy Act has been issued to him.

It may be worthwhile stating the chronology of these events On 30-9-1961 an order was, passed by the Agricultural Lands Tribunal fixing the price of the land. This order, was passed by the Tribunal in the said proceedings which were held after notices having been given to the original owner, Koregaorkars: It appears that subsequently the trustees of the Trust initiated proceedings u/s 88-B of the Tenancy Act for the Exemption certificate under the same. "It further appears that in those proceedings the tenant's statement was recorded. He stated that he had no objection to the exemption certificate being given to the Trust. On 31-1-1964 exemption certificate was granted to the Trust. Thereafter, on 19-12-1966 a certificate was issued by the Authorities under the Tenancy Act u/s 32-M of the Act for the tenant having paid the entire amount of purchase price in lump sum.

Section 88-B was added to the Tenancy Act on 1-8-1956. The effect of the said Section 88-B or rather of the inter-relations of the provisions of Sections 63 and 64 on the one hand, and Section 88-B of the Tenancy Act on the other is the crux of the question which falls for my determination in this Second Appeal.

After the price was fixed by the Tribunal, the plaintiff-Trust made an application to the Tenancy Authorities for exemption certificate u/s 88-B of the Tenancy Act. I have also mentioned above that the said Section 88-B came on the statute for the first time on 1-8-1956. Proceedings were held by the Tenancy Authorities in that behalf and in those proceedings, it appears, the defendant tenant made a statement as mentioned above before the Authorities that he had no objection to the exemption certificate being granted to the plaintiff-Trust.

3. Being armed with the said certificate the plaintiff-Trust filed a suit in the Court of the Civil Judge, J. D. Gadhinglaj, for a declaration that the proceedings held by the Agricultural Lands Tribunal u/s 32-G of the Act in connection with the land in question and the order passed thereon by the Tribunal declaring that the defendant-tenant had become owner of the land with effect from 1-4-1957 was an illegal order and/or ultra vires the provisions of the Tenancy Act. It was the contention of the plaintiff-Trust that the suit land had been gifted to the Trust by its original owner Korgaonkars in the year 1951. It was the further contention of the plaintiff-Trust that an exemption certificate was received by the Trust u/s 88-B of the Tenancy Act with the result that the entirety of the provisions of Sections 32 to 32-R of the Tenancy Act by virtue of which the defendant could have been

the owner of the land ceased to apply or rather were prevented from being applied to the suit land.

4. The defendant filed his written statement and denied in the first instant that there was any gift deed at all executed by Korgaonkars in favour of the Trust. The defendant stated that he had no knowledge about the gift-deed. Secondly it was contended that if there was a gift-deed the same was hit by the provisions of Sections 63 and 64 of the Tenancy Act. Having regard to those provisions, it was contended, that the land could not be said to have, been legally transferred, to the plaintiff-Trust at / all and in this view of things it was contended that the suit land was not the property of the Trust at all with the result that the provisions, of Section 88-B of the Tenancy Act did not come into play.

5. The trial Court negatived the contention ""of the defendant that the gift in favour of the Trust was in any way hit by the provisions of Sections 63 and 64. The trial Court held that the provisions of Section 88-B of the Bombay Tenancy Act excluded the operation of the said Sections 63 and 64. In this view of things, the trial Court held that the proceedings held by the Agricultural Lands Tribunal u/ s 32-G of the Tenancy Act had the certificate issued by the Tribunal u/s 32-M of the same were wholly illegal and hence without jurisdiction. The plaintiff's suit was, therefore, decreed by the trial Court.

6. In an appeal filed by the defendant, the Appellate Court was of the view that in the proceedings instituted by the Trust u/s 88-B of the Tenancy Act for the requisite exemption certificate, the defendant tenant had made a statement before the trial Court that he had no objection to the exemption certificate being granted by the Tribunal to the Trust. The Appellate Court, therefore, held that the defendant was estopped from challenging the validity of the exemption certificate. The Appellate Court further held that in view of the existence of a valid certificate u/s 88-B, the provisions of Sections 63 and 64 did not come into play. Taking this view of, things, the Appellate Court dismissed the defendant's appeal. It is against the said decree that the present appeal has been filed by the original defendant.

7. Mr. Naik, learned Advocate for the defendant, has contended before me with great force that chronology of events shows that the Trust could not have had any title to the suit land, on 1-8-1956 when S. 88-B came on the statute book. He contends that in this view of things the Collector could not have had the jurisdiction to issue the exemption certificate which he purported to issue on 31-1-1964. He further says that if the Collector did not have any such jurisdiction, the jurisdiction could not be conferred upon the Collector by any acting on the part of either the plaintiff or the defendant. The certificate issued by the Collector u/s 88-B, therefore, must be ignored because it has no value whatsoever in the eyes of law. He further contends that in this view of things, the plaintiff could have no locus standi to file the suit for challenging the order passed by the Agricultural Lands Tribunal in favour of the defendant-tenant.

8. Mr. Sarkar appearing for the plaintiff-Trust, however, contended in reply that the provisions of Sections 63 and 64 of the Tenancy Act, in the first instance, have to be examined and understood in the light of the provisions of Section 84-A of the Tenancy Act. He says that though under both the Sections 63 and 64 the transfer which was effected by Kargaonkare, by execution of the gift-deed, dated 16-7-1951 was illegal and void initially, the illegality disappeared by virtue of the provisions of Section 84-A of the Tenancy Act. The said Section 84-A provides that if a transferee, such as the plaintiff-Trust, pays a sum of Rs. 100/- as penalty to the Government, the Mamlatdar shall declare that the transfer is not invalid. He also relied on the provisions of Sub-section (3) of Section 84-A which provides that if the transferee does not pay the amount within the prescribed period, the transfer shall be declared by the Mamlatdar to be invalid and thereupon the provisions of Sub-sections (3) to (5) of Section 84-C shall apply. u/s 84-C of the Tenancy Act, what is provided is that upon such transfer being declared invalid the land shall vest in the State Government. Mr. Sarkar ingeniously contends that since no such order has been passed by the Mamlatdar declaring the transfer to be invalid, it must be assumed that the transfer is not invalid. He further contends that from the very fact that transfer has not been declared invalid, it must be assumed or inferred that the requisite amount of Rs. 100/- has been paid by the plaintiff-Trust to the Government, within the prescribed period. Incidentally, it may be noted that the said period is prescribed by Rule 49-A of the Rules framed under the Tenancy Act which provides that the penalty should be paid on or before 31st March, 1965.

9. I am afraid it is not possible to accept Mr. Sarkar's contention. It cannot be held that merely because the Mamlatdar has not passed any order holding either that the gift-deed was valid or invalid, or rather because the plaintiff has not produced any such order before the Court, it must be assumed that an order was passed in favour of the plaintiff validating the transfer. In this connection it may be noted that the entire litigation revolves round the question whether the gift-deed effected by Korgaonkars in favour of the plaintiff-Trust is hit by and rendered void under the provisions of said Ss. 63 and 64. The defendant has been crying from house-tops right from the outset that the order is invalid because it Violated those sections. The reply to this plea given by the plaintiff throughout these proceedings has been that the plaintiff-Trust has obtained the exemption certificate u/s 88-B and that that is why the certificate issued u/s 32-G by the Agricultural Lands Tribunal was invalid. The burden of plaintiff's song is that Sections 63 and 64 of the Tenancy Act cannot apply in view of the exemption certificate. At no time even a faintest attempt has been made by the plaintiff to contend that the consequences incurred by the plaintiff-Trust by virtue of the provisions of Sections 63 and 64 was wiped out by virtue of proceedings taken by the plaintiff u/s 84-A or by virtue of any order passed by the Mamlatdar u/s 84-A (3) of the Act. Nowhere it is contended that the transfer which was initially invalid has been got validated by the plaintiff-Trust. It is, therefore, impossible to accept Mr. Sarkar's contention that a presumption should be raised

that the plaintiff-Trust has paid the amount and has got the gift-deed validated. Whether the gift has been validated or not is a question of fact. That fact has got to be pleaded and proved. That fact cannot be a matter of assumption.

10. Mr. Sarkar nextly contends that since certificate under S. 88-B has been granted to the plaintiff-Trust and that too upon concession in that behalf having been made by the defendant-tenant, that certificate has become final and conclusive having regard to the provisions of Section 88-B (2). The said Section 88-B (2) provides as follows:

"For the purpose of this section, a certificate granted by the Collector, after holding an inquiry, that the conditions in the proviso to Sub-section (1) are satisfied by any trust shall be conclusive evidence in that behalf."

Mr. Sarkar contends that this certificate ousted the jurisdiction of the Court to enquire into the question as to whether the suit property belonged to the Trust or not, and as to whether the transfer was rendered invalid by virtue of the provisions of Sections 63 and 64 or not. I am afraid, Mr. Sarkar is reading too much in the section to be warranted either by the letter or intendment of the said sections. What the said Sub-section says is that for the purpose of Section 88-B alone the certificate could be of any avail. If the certificate is issued it shall be conclusive evidence of the fact that the conditions in proviso to Sub-section (1) are complied with by the Trust. Those conditions in the proviso do not deal in any manner with the question as to whether the property in question belonged to the Trust or not. As a matter of fact, if we have a look at the entire scheme of Section 88-B, we find that the Collector gets jurisdiction to grant exemption certificate in respect of the land in question only in case where the land is either admitted to be belonging to the Trust or is duly proved to be belonging to the Trust. If the Trust claims the ownership of a particular land and if the tenant of the land admits the fact that the Trust is the owner with the knowledge that he was aware of the legal provisions, then alone the Collector can hold that the property in question belonged to the Trust and hence the same is exempt. But the fact that the land in question belonged to the Trust is an indispensable condition precedent for the Collector's jurisdiction to grant the certificate. In fact that is the jurisdictional fact. The jurisdiction of the Collector to issue the exemption certificate u/s 88-B depends entirely upon the existence of that fact and if it is proved in independent proceedings such as a suit that this basic jurisdictional fact itself never existed, any number of certificates granted by the Collector would be of no legal consequence.

11. We have seen in the instant case that on the date of the transfer, 31-10-1950, the defendant-tenant was there on the land. The transferee Trust was not an agriculturist and hence the gift-deed by the landlord Korgaonkars to the Trust was bad in its inception. This means that on the date when Section 88-B came on the statute book, on 1-8-1956, the Trust ceased to have a title of title to the suit property. It had, therefore, no right whatsoever to make an application to the Collector for the exemption certificate and if in spite of that

fact they made an application and the application was granted by the Collector and exemption certificate was issued by the Collector in pursuance of the same, the certificate could be of no legal consequence whatsoever and the tenant would be perfectly within his right to totally ignore the same. To my mind the learned trial Judge has put the cart before the horse when he held that Section 88-B certificate was granted and, therefore, the provisions of Sections 63 and 64 did not apply. He should have seen that Section 88-B certificate could not be granted because the transfer was hit by Sections 63 and 64 of the Act. The matter is as simple as that.

12. Coming to the plea of estoppel resorted to by the learned Extra Assistant Judge, I am afraid that the law of estoppel will be deemed to have been basically misconstrued if the view is taken that a tenant is estopped from challenging the validity of the exemption certificate in the instant case. In the first place, exemption certificate or no exemption certificate, the fact remains that the transfer in favour of the plaintiff-Trust was an invalid transfer creating no title in favour of the plaintiff Trust. The existence of certificate u/s 88-B cannot have the effect of effacing or wiping out the effect of Sections 63 and 64, Merely because tenant made a statement before the tenancy Authorities stating that he had no objection to the exemption certificate being granted conditions necessary for invoking the principle of estoppel cannot be said to have been attracted. A plea of estoppel postulates that upon a particular representation by some person some other person must have acted to his detriment. It is difficult to see what is the representation made by the defendant-tenant to the plaintiff-Trust, and as to how the defendant-tenant has acted upon it to its detriment. Merely because a person makes a wrong statement before some Authority that does not mean that the person is estopped from saying that the statement was an erroneous one. Every ingredient of the principles of estoppel contained in Section 115 of the Evidence Act is conspicuously absent in the instant case. I have perused the pleadings as well as the evidence in the instant case and have also carefully read the judgments of both the Courts below and the impression that I got was that the plea of estoppel is just airily raised by the plaintiff and has been just casually accepted by the learned Judge. The learned Judge has lost sight of the fact that there can be no estoppel against statute and that Sections 63 and 64 of the Tenancy Act are mandatory in their character. Likewise Section 88-B is equally mandatory. Jurisdiction of the Collector cannot be enlarged by any amount of concession being made by the tenant.

13. Moreover in the instant case the tenant has not made a statement that the gift made by Korgaonkars in favour of the Trust was valid one because of any declaration having been granted by the Mamlatdar. All that he has stated is that he has no objection to the certificate being granted to Korgaongars. There is nothing on the record to show that he ever knew the purpose for which his statement was being recorded or that he knew that his own position was in any way being affected by the grant of such exemption certificate. The statement, therefore, is a meaningless statement and of no legal consequence whatsoever.

It is not shown to have been made with the intention of creating the legal consequence desired by the plaintiff, it is not shown to have been made with the knowledge that the legal consequence desired by the plaintiff would ensue. In this view of things, the plea that the tenant was estopped from challenging the correctness or legality of the exemption certificate and the consequent view taken by the learned Extra Assistant Judge accepting the finality of the certificate must be held to be erroneous.

14. An attempt was made by Mr. Sarkar to contend that having regard to the finality attached to the certificate u/s 88-B this Court was not competent to go beyond the certificate. Mr. Naik points out that likewise there was a certificate issued by the Tenancy Authorities u/s 32M of the Act on 19-12-1966 as well. He points out that the Civil Court could not go beyond that certificate either if the contention of Mr. Sarkar was to be accepted. He contends with quite some justification, that the certificate dated 19-12-1966 u/s 32-M is later in time and hence it must prevail and if it prevailed the ownership of the defendant tenant in respect of the land must be deemed to have been conclusively proved. To my mind the contention of Mr. Naik shall have to be accepted, if the reasoning of Mr. Sarkar is founded upon an exceptional logic. However, I feel that the finality attached to both the certificates -- one u/s 32-M and the other u/s 88-B -- is of limited character. The finality does not oust the jurisdiction of the Civil Court to go beyond the certificate and to see whether the certificates have been issued by a Court of competent jurisdiction after verifying whether the conditions precedent to grant the certificates existed or not.

15. In this view of things, it must be held that the decree, passed by the Courts below cannot be sustained. The appeal is, therefore, allowed. The decree passed by the trial Court and confirmed by the Appellate Court is hereby set aside and the suit filed by the plaintiff is hereby dismissed.

16. The defendants shall be entitled to costs of all the three Courts.

17. Appeal allowed.