
(1994) 10 BOM CK 0012
In the Bombay High Court
Case No : Second Appeal No. 394 of 1984

Laxminarayan Deo

APPELLANT

Vs

Narayan Fula Marathe and Another

RESPONDENT

Date of Decision : 11-10-1994

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 29, 88B
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 1, Order 6 Rule 2, Order 6 Rule 3
Transfer of Property Act, 1882 — Section 105

Citation : (1995) 1 BomCR 539 : (1995) 97 BOMLR 197

Hon'ble Judges : S.D. Pandit, J

Bench : Single Bench

Advocate : C.R. Dalvi, for R.V. Desai, for the Appellant; R.B. Raghuwanshi, for the Respondent

Final Decision : Allowed

Judgement

S.D. Pandit, J.—Original plaintiff in Regular Civil Suit No. 327 of 1980 on the file of the learned Civil Judge, Junior Division, Dhule, has presented the present second appeal.

2. The appellant-plaintiff brought the said Regular Civil Suit No. 327 of 1980 to get the possession of the suit property and arrears of rent from the respondents-defendants. The suit property is an agricultural land situated within the Municipal limits of Dhule. The said land was leased out by the appellant-plaintiff in favour of the respondents-defendants by registered lease deed dated 31st August, 1971 for a period of ten years. The appellant-plaintiff terminated the tenancy of the respondents-defendants by issuing notice on 23rd July, 1979. The claim of the appellant-plaintiff was denied by reply dated 27th July, 1979 and, therefore, the plaintiff filed the suit in the Court of the Civil Judge, Junior Division, Dhule, to get a decree of possession, arrears of rent and future mesne profits.

2. The respondents-tenants, contested the claim of the plaintiff by filing the written statement at Exhibit 11. They contended that as they are the tenants of

the land in question, the Civil Court had no jurisdiction to entertain the said suit and the plaintiff's suit was not tenable in law and, therefore, the same should be dismissed with costs.

3. In view of the rival contentions, the trial Court settled the issues at Exhibit 13 and recorded the evidence for both the sides. The learned trial Court found that the plaintiff-trust had obtained an exemption certificate u/s 88-B of the Bombay Tenancy and Agricultural Lands Act (for short, "BT & AL Act") and, therefore, the tenants were not entitled to get the protection and that the Civil Court had jurisdiction to entertain the said suit and, therefore, the trial Court decreed the plaintiff's suit in toto.

4. Being aggrieved by the said decision of the trial Court, the tenants preferred Civil Appeal No. 159 of 1982 in the District Court of Dhule and the said appeal was heard by the learned Extra Assistant Judge, Dhule. The learned first Appellate Judge came to the conclusion that the suit of the plaintiff was not tenable as the plaintiff had not specifically pleaded in his plaint that the plaintiff had obtained a certificate of exemption u/s 88-B of the Bombay Tenancy and Agricultural Lands Act and, therefore, the learned Judge held that though the evidence was led regarding the obtaining of the certificate u/s 88-B and though the certificate of exemption u/s 88-B was produced in the trial Court, that cannot be looked into. Hence, the tenants' possession was protected u/s 29 of the Bombay Tenancy and Agricultural Lands Act and, therefore, the learned Judge allowed the appeal and dismissed the suit of the plaintiff.

5. There is no dispute about the fact that the respondents are tenants of the land in question. It was also not disputed before the first appellate Court that the finding of the trial Court that the tenancy of the respondents was properly terminated was correct. It was also not urged before the first appellate Court that the notice dated 23rd July, 1979 issued by the plaintiff was illegal or improper. Therefore, in the circumstances, the finding recorded by the trial Court has remained unchallenged on those points.

6. The learned Extra Assistant Judge i.e. the first appellate Court has taken into consideration the contention raised on behalf of the tenants that the plaintiff has not specifically pleaded that he had obtained a certificate u/s 88-B of the Bombay Tenancy and Agricultural Lands Act and according to the learned first appellate Court non-pleading of this fact was fatal to the suit. It is an admitted fact that before filing the present suit, the plaintiff had issued notice dated 23rd July, 1979, copy whereof is at Exhibit 20. In the said notice (Exh. 20), the plaintiff-trust had specifically contended that the property in question is owned by the plaintiff-trust and the plaintiff had obtained the necessary exemption certificate u/s 88-B. The said notice of the plaintiff is replied by the defendants through their advocate and reply is at Exh. 21.

7. There is no dispute or challenge to the plaintiff's claim regarding they having obtained the exemption certificate u/s 88-B of the BT and AL Act. It must be

mentioned here that the plaintiff-trust had come before the Court that the defendants are their tenants and that the plaintiff-trust had terminated their tenancy by issuing the notice and also by efflux of time and that the plaintiff-trust is entitled to claim and get possession from the tenants. It is the contention of the tenants that the plaintiff is not entitled to get possession of the property because they are the tenants of the lands in question and their possession is protected under the provisions of the Bombay Tenancy and Agricultural Lands Act. Now, when such a contention is raised by the tenants, it is open for the landlord to show that the tenants are not entitled to raise such a contention and their contention is not tenable in law, because the plaintiff-trust is holding a certificate u/s 88-B. Here what the plaintiff-trust is trying to show by producing the certificate u/s 88-B is that what the defendants-tenants are contending is not tenable in law because of the plaintiff-trust holding a certificate u/s 88-B. It must be remembered that the plaintiff's claim for possession is not based on their holding a certificate u/s 88-B but that the plaintiff is making use of the said certificate u/s 88-B to show that the defendants-tenants' possession could not be protected because the plaintiff-trust is holding a certificate u/s 88-B. It must be remembered here that the plaintiff had not only informed the tenants about their holding the certificate u/s 88-B in their notice dated 23rd July, 1979 at Exh. 20 but had also produced the said certificate before entering the witness-box and the said certificate was admitted in evidence without any objection raised on behalf of the tenants. Therefore, in the circumstances it could not be said that by production of such evidence before entering the witness-box, the defendants were taken by a surprise. The learned first appellate Court has taken into consideration the fact of non-pleading regarding holding of the certificate u/s 88-B by the plaintiff and has erred in holding that non-pleading is fatal to the present suit. The learned first appellate Court has not taken into consideration that the plaintiff's case was not based on holding the certificate u/s 88-B but that the plaintiff had produced the said certificate issued u/s 88-B in order to show that the contention raised by defendants-tenants was not tenable as the plaintiff was holding a certificate u/s 88-B. Therefore, the first appellate Court was wrong in holding that the non-pleading regarding holding of the certificate u/s 88-B by the plaintiff was fatal to the suit and that resulted into miscarriage of justice and, therefore, that finding of the first appellate Court cannot be upheld and deserves to be set aside.

8. It must be mentioned here that the trial Court had taken into consideration the certificate u/s 88-B. The trial Court had also taken into consideration the claim of protection of possession under the provisions of the Bombay Tenancy and Agricultural Lands Act raised by the tenants-defendants and had negated the same. The first appellate Court has not found fault with any other finding of the trial Court except that the non-pleading regarding holding of the certificate u/s 88-B by the plaintiff in their plaint was fatal to the suit. But, as stated earlier, though it is an admitted fact that the plaintiff had not specifically pleaded about their certificate u/s 88-B, it could not be said that non-pleading of the said fact

was fatal to the suit. A plaintiff is expected to plead such facts on which his suit claim is based. He is to plead the material facts to sustain his claim. He cannot be expected to plead the facts on the strength of which he could meet the defence or falsify the claim of the defendants. It must also be remembered that pleadings in Mofussil Courts are loosely drafted and as such a liberal construction has always to be given to such pleadings.

9. Therefore, in the circumstances, I hold that the tenant's appeal will have to be upheld and the judgment and decree of the trial Court would have to be restored by setting aside the judgment and order of the first appellate Court.

10. In the result, the present Second Appeal is allowed. The judgment and decree passed by the learned Extra Assistant Judge, Dhule, in Civil Appeal No. 159 of 1982 is set aside and the judgment and decree passed by the trial Court in Regular Civil Suit No. 327 of 1980 is restored. But in view of the facts and circumstances of this case, I direct both the parties to bear their respective costs throughout.