
(1982) 07 BOM CK 0032
In the Bombay High Court
Case No : Second Appeal No. 458 of 1978

Laxminarayan Ramdayal Gutani	Vs	APPELLANT
State of Maharashtra		RESPONDENT

Date of Decision : 09-07-1982

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 41
Specific Relief Act, 1963 — Section 34

Citation : AIR 1983 Bom 232

Hon'ble Judges : Deshpande, J

Bench : Single Bench

Advocate : S.C. Bora, for the Appellant; A.B. Naik, Govt. Pleader, for the Respondent

Judgement

1. This is plaintiff's second appeal against the judgment and decree of the Joint Judge Aurangabad, who, in turn, reversed the judgment and decree passed by the learned Civil Judge, Senior Division, Aurangabad, and it arises out of the following facts.
2. The dispute relates to Survey No. 79 admeasuring 27 acres 39 gunthas situated at Pandharpur in Gangapur Taluka of Aurangabad district. Admittedly, it is the ancestral property of the plaintiff. The plaintiff alleged that there was a partition in his family, including his father, and that the suit land fell to his share in this partition. At Ex. 35 there is a decree dated 15-4-1956, supporting plaintiff's case about such partition and about falling of this land to the share of the plaintiff. It is true that it is a consent decree and it was usual in this part of this State to have such a consent decree.
3. While considering the ceiling case of plaintiff's father the learned Deputy Collector (Ceiling) Gangapur included the suit land in the holding of plaintiff's father and declared plaintiff's father to be the surplus holder. This case about partition in 1956 was put forth before the learned Deputy Collector, but the learned Deputy Collector rejected that theory and proceeded to pass the order

that plaintiff's father was a surplus holder.

4. The plaintiff felt aggrieved by this order and he, therefore, filed this suit contending that no opportunity was given to him by the Ceiling Authority to put forth his case and he contended further that he was not a party to the ceiling proceedings and that notice of the ceiling proceedings was never given to him at any point of time. He, therefore, filed the suit for a declaration of his title in respect of the suit land and for a declaration that the suit land should be exempted from declaration of the surplus land of his father.

5. The State Government is the defendant in this case and the State Government resisted the plaintiff's claim. It denied the partition in the year 1956 as alleged by the plaintiff. It contended that the land was rightly declared as surplus land of plaintiff's father. It contended that the Civil Suit was not maintainable and the jurisdiction of the Civil Court to try the suit was barred under S. 41 of the Maharashtra Agricultural lands (Ceiling on Holdings) Act, 1961 (hereinafter referred to as "Ceiling Act").

6. Issues were framed and after considering the evidence on record the learned trial Judge held that the plaintiff proved that he was the owner of the suit land on the date of the declaration about surplus holding and he was in possession of the same. He held further that the Civil Court had jurisdiction to try the suit. he held that the partition was a genuine partition and was acted upon and that it was not a bogus partition. he held that the suit was maintainable and consequently he passed the decree for declaration in favour of the plaintiff along with costs of the suit.

7. Feeling aggrieved. the State Government preferred an appeal in the District Court, Aurangabad, and the appeal was heard by the learned Joint Judge. Aurangabad. The learned Joint judge. held that the suit was not maintainable and for this purpose he relied upon Section 41 of the Ceiling Act. In respect of the exclusive ownership of the plaintiff, he held that in view of his earlier finding, this issue does not survive. but in order to render finality to the present suit, in the alternative, he gave a finding that the plaintiff had proved the fact of partition and had also proved that he was the owner of the suit land by virtue of that partition and was in possession of the same. Consistent with his view on maintainability of the suit. he allowed the appeal. set aside the judgment and decree of the trial Court and dismissed the suit. He directed the plaintiff to pay the costs of the State Government in both the Courts. Feeling aggrieved by this decision. the plaintiff has preferred this second appeal

8. Now, in the second appeal before me, issue about exclusive ownership of the plaintiff is not reopened. There is a decree for partition at Ex. 35 and the learned Joint Judge has rightly held that there was a partition in the year 1956. The learned Joint Judge has further pointed out that though late in the year 1959, entries about this partition were made in the revenue record and Ex. 36 showed that the plaintiff was the owner and possessor of the suit land. This question is

not reagitated before me.

9. The only question is about jurisdiction of the Civil Court and in order to oust the jurisdiction of the Civil Court, reliance is placed by Shri Naik appearing on behalf of the State Government on Section 41 of the Ceiling Act. Section 41 runs as follows:--

"No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Commissioner. Collector. Tribunal, the Officer authorised under S. 27, the Maharashtra Revenue Tribunal or the State Government. "

Now, the jurisdiction of the Civil Court is sought to be ousted on the strength of this section, I administration clearly of the opinion that this section does not come into play in this case. it is an admitted fact that the present plaintiff was not a party to the ceiling proceeding. It is further an admitted fact that the notice of this ceiling proceeding was not served upon the plaintiff at any time. At any rate, at least from the year 1959 there was an entry in the revenue record that the plaintiff was the owner and possessor of the suit land. In such a case it was incumbent upon the State Government or the Ceiling Authority to issue notice to the plaintiff so far as the suit land was concerned. Shri S. C. Bora appearing on behalf of the appellant urged that the plaintiff not being the party to the ceiling proceeding any order passed by the Ceiling Authority behind his back and without joining him as a party was without jurisdiction. and was not at all binding upon the plaintiff. This principle of law is never challenged by Shri Naik appearing on behalf of the State.

10. Shri Naik tried to support the decision of the lower Appellate Court on the ground that plaintiff's father included this land in his return filed under the Ceiling Act. Let us assume for a moment that plaintiff's father included this land in his return. the real question is how this act of plaintiff's father is binding upon his separated son. As already stated, both the Courts below have clearly held that the plaintiff has proved the fact of partition and has proved that he was and is the exclusive owner of the suit land. The partition was in the year 1956. Return must have been filed by plaintiff's father some time after 1962. when the Ceiling Act came into force. Hence, inclusion by plaintiff's father of this land in his return is not at all binding upon the plaintiff and the plaintiff is not bound by the decision the Ceiling Authority. The fundamental rule of natural justice is that no order can be passed against a person behind his back and without giving him an opportunity to be heard. Now, in the instant case, the order is passed against the plaintiff's interest behind his back and without giving him any opportunity in this respect and hence these orders passed by the Ceiling Authority are void ab initio and they are not binding upon the plaintiff. In this view of the matter. the civil suit is clearly maintainable and this proposition of law is never challenged. I, therefore, respectfully differ from the view of the learned Joint Judge and I hold that the civil suit is clearly maintainable and bar of S. 41 of the Ceiling Act is not attracted.

11. I have already held that the plaintiff has proved his exclusive title and son the second appeal deserves to be allowed and it is accordingly allowed. The judgment and decree passed by the learned Joint Judge on 13th July 1978 are hereby set aside and the judgment and decree of the trial Court passed on 20th February, 1976 are restored. subject to the modification that the parties shall bear their costs throughout.

12. Appeal allowed.