

(1968) 10 BOM CK 0015

In the Bombay High Court

Case No : Spl. Civil Application No. 763 of 1967

Madhao Narayan

APPELLANT

Vs

Ragho Niloo and others

RESPONDENT

Date of Decision : 08-10-1968

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1969) MhLj 344

Hon'ble Judges : N.L. Abhyankar, J

Bench : Single Bench

Advocate : N.S. Munshi, for the Appellant; G.G. Modak for Respondent No. 2 and Respondents Nos. 1, 3 and 4 were not represented, for the Respondent

Final Decision : Allowed

Judgement

N.L. Abhyankar, J.—The petitioner in this application under Article 227 of the Constitution is Madhao Narayan Sarmukkadam, who is the tenure-holder of field survey No. 15/2, area 12 acres, 1 guntha, situate at village Muchi, tahsil Wani, district Yectmal. The landholder filed an application on 15-10-1963 for possession of survey No. 15 /2 on the ground that the respondent No. 1 Ragho who was a tenant of this field had sublet it to respondent No. 2 Karnu. The petitioner gave a notice on 16-8-1962 charging Ragho that he was not cultivating the field though he was his tenant and that he had sublet the field to another person. A second notice was also given on 18-4-1963 charging Ragho with the same default. This was followed by an application dated 15-3-1963 to which both Ragho and Karnu were impleaded as parties. This application is registered in the Court of the Naib-Tahsildar as Revenue Case No. 2/59 (10-B) of 1963-64. In these proceedings, both Ragho and Karnu filed a joint statement and their joint defence was that that field and survey NOS. 18 and 20 belonged to one Radhabai, and they were obtained by the petitioner as a result of partition and therefore the petitioner had no right. Their further case on merits was that Ragho never cultivated survey No. 15/2 and that it has been let out to Karnu by the mother of the petitioner since

1952-53. Thus, the second respondent Karnu claimed to be a direct tenant of the field and admitted to be in cultivating possession in his own right and not under Ragho.

2. The Tenancy Naib-Tahsildar, on a consideration of all the material on record, held that Ragho was the tenant of survey No. 15/2 and that he had sublet it to Karnu. Inasmuch as subletting was proved, the Naib-Tahsildar ordered that the petitioner was entitled to possession of the entire area.

3. This order was challenged in appeal both by Karnu and Ragho. The appellate authority took a contrary view, reversed the order of the Naib-Tahsildar and rejected the application of the petitioner for possession.

4. Against this order, the petitioner Madhao filed a revision application. This was registered as Application No. 1350/Tenancy of 1965. It appears the revision application was posted for hearing parties on 13-6-1966 before the Tribunal. The petitioner has alleged in paragraph 10 of the petition that his counsel filed an application for adjourning the hearing of this revision application to a further date as he had to leave Nagpur unexpectedly for appearance before an enquiry at Baetar. It is alleged that the Assistant Registrar of the Tribunal was contacted and appraised of his predicament and it was at the behest of the Assistant Registrar that the counsel gave an application for adjournment. It appears that the counsel made a single application in respect of his cases fixed for that date before the Tribunal, and no separate application was filed in Revision Application No. 1350/Tenancy of 1965. But the fact that an application was made is obvious from the order-sheet of that date in the proceeding before the Tribunal. That order-sheet is as follows: -

Applicant and his counsel are absent. Non-applicants are also absent. The applicant's counsel has applied for an adjournment of the revision on the ground that he is engaged elsewhere away from Nagpur for a month and a half. If so, the applicant's counsel should have made some other arrangement for his representation in this revision application. I decline to adjourn the revision. Record perused. Order passed.

The respondents have merely denied knowledge of these averments because the respondents were also absent and possibly could have no personal knowledge of the events.

5. The learned Member of the Tribunal not only proceeded with the matter in the absence of both the parties but has decided it on merits rejecting the application of the petitioner.

6. It is urged in support of the petition that the procedure followed by the Tribunal has ended in the failure of justice and the Tribunal should not have proceeded to decide the application on merits and the proper order that could be passed would have been an order of dismissal of the application for want of appearance, or for want of due prosecution, if at all it was necessary to take up

the case without adjourning it.

7. On behalf of the respondents, the order is supported to be well within the jurisdiction of the Revenue Tribunal relying on the provisions of rule 19 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region), Bombay Revenue Tribunal Procedure Rules, 1959, framed by the State Government in exercise of the powers conferred by sub section (2) of section 111 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958. Rule 19 is as follows:-

19. Procedure in case of non-appearance of parties:-

(1) If on the date fixed for hearing or any other subsequent day to which the hearing may be adjourned, the applicant does not appear either in person or through his agent or lawyer when the application is called for hearing, the Tribunal may dismiss the application or may decide it on merits after hearing the respondents or his agent or lawyer, if present.

(2) If on the date fixed for hearing or on any other subsequent day to which the hearing may be adjourned, the opponent does not appear in person or through his agent or lawyer when the application is called for hearing, the Tribunal may decide the same on merits, after hearing the applicant or his agent or lawyer,

(3) If there be doubt as to whether a party has been served with notice issued under rule 18, the Tribunal may decide the application without issuing a fresh notice:-

(a) if the said party be the applicant, or one of the applicants, and the Tribunal is of the opinion that the application should be wholly allowed, or,

(b) if the said party be opponent, or one of the opponents, and if the Tribunal is of the opinion that the application should be wholly dismissed or rejected.

8. It is apparent that rule 19 does give the Tribunal a discretion either to dismiss an application if the applicant or his counsel is absent when the application is called for hearing or to decide it on merits after hearing the opposite side if present. In this case, neither the applicant nor the non-applicant was present. Ordinarily therefore, unless there is a compelling reason for the Tribunal to proceed with the disposal of the revision application on merits, the proper order would be an order for dismissal in the absence of parties. Passing of an order on merits without hearing the parties acts to the grave prejudice of the party in default, inasmuch as so far as the scheme of the Act is concerned, that being the final forum where a dispute could be taken, the party suffers an adverse order without having an opportunity of being heard. It is against the principles of natural justice and the proper course in such cases would be an order of dismissal of the application for default of appearance. The Tribunal must indicate clearly and satisfactorily why its discretionary power to decide the application on merits has been exercised rather than the dismissal of application for default. There is no such indication in the present order. Ordinarily, one would have expected the request for adjournment being granted as prima facie the reason

disclosed in the application was entitled to consideration. Where a litigant entrusts his brief to counsel, exigencies of work do necessitate adjustment subject to orders of the Court. It does not appear that there was any indication given to the counsel when he made an application for adjournment to the Assistant Registrar that adjournment would not be possible. If the counsel left the matter there, the party cannot be penalized by having his case disposed of on merits without hearing the party. What is even more significant in this case is that the opposite party was also absent. The notice was ordered to be issued to the opposite party on 9-3-1966 and process fee seems to have been paid for issuing of this process. It is not clear from the record whether the opponents were served at all. Under these circumstances, it is urged that the applicant has been unduly prejudiced and suffered an adverse order without the benefit of a hearing being given to him. In my opinion, this contention is well-founded. Substantial issues were involved in the case" and the applicant had gone up in revision against a reversing order and the least the applicant should have been held entitled to was a hearing before the disposal of his revision application on merits.

9. Under the circumstances, it must be held that the order of the Tribunal cannot be sustained. It is accordingly set aside and the matter is remanded to the Tribunal for a fresh decision according to law after giving a proper opportunity to both the sides to be heard. The petition is allowed but in the circumstances there will be no order as to costs.