

(1966) 01 BOM CK 0003

In the Bombay High Court

Case No : Special Civil Application No. 862 of 1964

Madhav Vithoba Wani

APPELLANT

Vs

Dhondudas Bhaudas Bairagi and Another

RESPONDENT

Date of Decision : 17-01-1966

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 33B(5), 88C, 88D

Citation : AIR 1967 Bom 250 : (1966) 68 BOMLR 526 : (1966) MhLj 827

Hon'ble Judges : Tarkunde, J;Gokhale, J

Bench : Division Bench

Advocate : T.N. Walawalkar, for R.G. Samant, for the Appellant; N.S. Shastri, for the Respondent

Judgement

Tarkunde, J.

(1) This special civil application has been filed under Art. 227 of the Constitution. It was referred by a Single Judge to a Division Bench. The facts involved are very simple. The first respondent is the landlord and the petitioner is the tenant of an agricultural land admeasuring 6 acres and 19 gunthas situate in a village in East Khandesh. The first respondent obtained a certificate under sub-section (4) of S. 88-C of the Bombay Tenancy and Agricultural Lands Act, 1948 exempting the land from the operation of Ss. 32 to 32-R of the said Act. Thus the petitioner is an "excluded tenant" and the first respondent a "certificated landlord" as defined by S 33-A of the Act. After obtaining a certificate under S. 88-C the first respondent applied for possession of the land under S. 33-B. It is common ground that on the date when this application was filed the first respondent had no land under personal cultivation and the only land which the petitioner had under his personal cultivation was the land in dispute. The tenancy Aval Karkun who heard the first respondent's application for possession, dismissed it on the ground that the first respondent did not require the land bona fide for cultivating it personally. The first respondent went in appeal to the Special Deputy Collector of Jalgaon, and the Special Deputy Collector allowed the appeal, held that the

first respondent required the land bone fide for personal cultivation and made an order under sub-section (5) (b) of S. 33-B that possession of half the leased land should be given to the first respondent. Both the parties went in revision to the Maharashtra Revenue Tribunal from the decision of the Special Deputy Collector. An application was made on behalf of the first respondent before the Maharashtra Revenue Tribunal for the admission of some additional evidence. The additional evidence consisted of a sale deed, which was executed in favour of the petitioner (the excluded tenant) after the decision of the tenancy Aval Karkun and before the decision of the Special Deputy Collector, as a result of which the petitioner obtained an agricultural land admeasuring 5 acres and 20 gunthas for his personal cultivation. The additional evidence was allowed by the Maharashtra Revenue Tribunal. In its final order in disposing of the revision applications the Maharashtra Revenue Tribunal held that the additional piece of land obtained by the petitioner for personal cultivation during the pendency of this litigation should be taken into consideration in determining the extent of the leased land to which the first respondent was entitled under the terms of sub-section (5) (b) of S. 33-B. It is now well established that in deciding the extent of the leased land of which a landlord can be awarded possession under S. 33-B of the Bombay Tenancy and Agricultural Lands Act, 1948, the area of all the other lands, if any, personally cultivated by the landlord and the area of all the other lands, if any, held by the tenant for personal cultivation should be taken into consideration and the landlord should be awarded possession of so much area of the land leased as would result in each of them holding thereafter, so far as possible, equal areas of lands for personal cultivation, (Vide *Rambhau Ganpat Sutar v. Bhau Tatyaba Patole*, 66 Bom LR 1). In taking into consideration the land purchased by the petitioner during the course of the litigation, the Revenue Tribunal held "the Court can ordinarily take notice of the event which have occurred during the pendency of the action and which are likely to have a bearing on the final order to be made". The Tribunal further observed "The Court can even take into consideration the events that have happened since the institution of the suit and mould its decree according to the circumstances at the time of the final decree". Acting on this principle the Tribunal modified the order of the Special Deputy Collector in favour of the first respondent and directed that the first respondent should get possession of an area of 5 acres and 39 gunthas of the leased land, which, as mentioned earlier, admeasures 6 acres and 19 gunthas. This decision of the Maharashtra Revenue Tribunal is challenged by the petitioner in this special civil application.

2. It seems to us obvious that the principle that a Court can mould its decree according to the circumstances prevailing at the time of the decree can apply only in those cases where the rights of the parties to a litigation have suffered an alteration during the course of the litigation as a result of intervening circumstances. The principle can have no application where the intervening circumstances do not effect any alteration in the rights of the parties as they existed at the commencement of the litigation. The real question, therefore, is

whether in deciding the area of the leased land to which a certificated landlord is entitled under sub-section (5) (b) of S. 33-B the legislature intended that the Court should be guided by the circumstances prevailing at the time of the certificated landlord's application for possession or by the circumstances prevailing at the time of the final order.

3. There can, in our view, be no doubt that the area of the land to the possession of which a certificated landlord is entitled must depend on the circumstances prevailing at the time of the filing of his application for possession, and not on subsequent events. In the first place, the right of the certificated landlord to apply for possession under S. 33-B is not a recurring right. Sub-sections (3) and (4) of S. 33-B provide that except in the case of a minor, a widow or a person subject to any physical or mental disability, a certificated landlord must apply for possession before the 1st day of April, 1962 or within three months of his receiving the certificate under S. 88-C, whichever date is later. Even where a certificated landlord is a minor, widow or a person subject to any physical or mental disability the legislature has provided in sub-section (4) a final date after which he cannot file an application for possession. Since the right of a certificated landlord to apply for possession is not a recurring right, and since the right cannot be exercised after a certain date, it would normally follow that the area of the leased land to which he is entitled cannot depend on circumstances which occurred after that date. This view is greatly reinforced by the terms of sub-sections (1) and (5) of S. 33-B. These provisions show that the termination of the tenancy of an excluded tenant takes place on the date when the certificated landlord files his application for possession of the leased land, and that the termination of the tenancy is operative in respect of such area of the leased land as is specified in sub-section (5) (b). Sub-section (1) of S. 33-B provides that a certificated landlord may "after giving notice and making an application for possession as provided in sub-section (3) terminate the tenancy of an excluded tenant, if the landlord bona fide requires such land for cultivating it personally.". It is thus clear that where a certified landlord requires the leased land bona fide for personal cultivation the termination of the tenancy takes place after giving notice and making an application for possession. Since the notice contemplated by this provision must be given prior to the making of the application for possession, it follows that the termination of the tenancy takes place on the date when the certificated landlord applies for possession of the leased land. Now sub-section (5) (b) of S. 33-B is in the following terms;

"(5) The right of a certificated landlord to terminate a tenancy under this section shall be subject to the following conditions, that is to say:

(b) The landlord shall be entitled to terminate a tenancy and take possession of the land leased but to the extent only of so much thereof as would result in both the landlord and the tenant holding thereafter in the total an equal area for personal cultivation"

It is thus clear that the terms of Clause (b) of sub-section (5) operate as a

condition on the termination of the tenancy by a certificated landlord. Where a certificated landlord purports to terminate the tenancy of an excluded tenant under sub-section (1) of S. 33-B, the termination is operative with regard to such area of the leased land as is specified in Cl (b) of sub-section (5) of S. 33-B. This means that the tenancy Court, when dealing with an application of a certificated landlord for possession of the leased land has to decide the extent to which the tenancy came to an end as a result of the action taken by the certificated landlord in giving notice and making an application for possession. It follows that the extent to which the tenancy was lawfully terminated by the certificated landlord must be decided in the light of the circumstances which prevailed at the time of the termination, that is to say at the time when the certificated landlord applied for possession of the land.

4. In an attempt to persuade us to hold otherwise Mr. Shastri for the first respondent drew out attention to Clause (iv) of sub-section (1) of Section 88-D of the Act. That provision lays down that, in the case of lands referred to in S. 88-C, the State Government may direct that the lands shall cease to be exempted from the provisions of the Act, if the annual income of the landlord has exceeded Rs. 1,500 or if the total holding of the landlord exceeds as economic holding. This provision, Mr. Shastri argued, shows that the legislature did not intend that the rights of certificated landlords and excluded tenants in respect of the leased lands should be determined once for all in the light of the circumstances prevailing at the time when a certificated landlord applies for possession under S. 33-B. In our view, this argument of Mr. Shastri is far-fetched. An order made by the State Government under Clause (iv) of sub-s (1) of S. 88-D may nullify the effect of a certificated granted under S. 88-C. That provision, however, has no bearing on the scope and effect of sub-sections (1) and (5) (b) of S. 33-B.

5. The Maharashtra Revenue Tribunal, in holding that it could mould its order according to the circumstances prevailing at the time of the final order, placed reliance on the decisions of this Court in *Hanmant Ramchandra v. Secretary of State* 32 Bom LR 155 and *Rustomji v. Purshotamdas*. ILR (1901) 25 Bom 606. In *Rustomji v. Purshotamdas*. ILR (1901) 25 Bom 606. In 32 Bom LR 155 two plaintiffs, who were sisters, had filed a suit for a declaration that they were the nearer heirs of the deceased holder of a watan and were entitled to the watan properties. Plaintiff No. 1 died during the course of the litigation. After referring to the death of plaintiff No. 1, Justice Patkar observed:

"Though ordinarily a decree in a suit should accord with the rights of the parties at the date of its institution, it is incumbent on the Court to take notice of events that have happened since the institution of the suit and mould its decree according to circumstances at the time of the final decree."

The Court accordingly granted the declaration in favour of plaintiff No. 2 alone. In ILR (1901) 25 Bom 606, plaintiffs, who were father and son and were partners in a firm had filed a money suit against another firm of which the son was also one of the partners. Out of the plaintiffs the father died during the pendency of the

appeal in the High Court. After the father's death the son was the only plaintiff, and he was also one of the defendants, being a partner of the defendant firm. The Court held under the circumstances that the only decree which could be passed in favour of the son was a declaration that he was entitled to credit for the decretal amount in the accounts of the defendant firm. In passing such a decree Jenkins, C. J. observed that it was open to the Court to vary a decree under appeal "not only for error, but also on grounds which have come into existence since it was passed." It will be noticed that in both these cases the Court moulded decrees in appeal in order to give effect to the rights of the parties as they existed at the time of the appellate decrees. The principle involved was thus explained by Mookerjee, J., *Nuri Mian v. Ambica Singh* 44 Cal 47 : AIR 1917 Cal 716 :

"Now, it may be conceded that ordinarily the decree in a suit should accord with the rights of the parties as they stand at the date of its institution. But this principle is not of universal application, and in a long series of decisions.the doctrine has been recognised that there are cases where it is incumbent upon a Court of Justice to take notice of events which has happened since the institution of the suit and to mould its decree according to the circumstances as they stand at the time the decree is made. This principle will be applied where it is shown that the original relief claimed has, by reason of subsequent change of circumstances, become inappropriate, or that it is necessary to base the decision of the Court on the altered circumstances in order to shorten litigation or to do complete justice between the parties."

It is clear from these cases that the doctrine which enables the Court to mould its decree according to the circumstances as they stand at the time of the decree was intended to reduce the rigour of the ordinary rule that a decree should accord with the rights of the parties as they stood at the institution of a suit. The doctrine, however, cannot be utilised for granting to a party a right which he does not possess under the ordinary law. It follows that, in the present case, the question as to the area to which the first respondent was entitled could not have been decided, as the Maharashtra Revenue Tribunal has purported to do, by relying on the principle that the court can mould its decree according to the circumstances as they stand at the time of the decree. If on a correct interpretation of Clause (b) of sub-section (5) of S. 33-B the first respondent was entitled to a larger area on account of the purchase of another land by the petitioner during the course of the litigation, the Maharashtra Revenue Tribunal would have been justified in molding its order in accordance with the altered rights of the parties. As held by us above, Clause (b) of sub-section (5) of S. 33-B does not bear that interpretation.

6. In support of this argument Mr. Shastri for the 1st respondent placed reliance on a ruling of a Division Bench in Special Civil Appln. No. 3482 of 1958 decided on 14th July 1959 (Bom). In that case a landlord had applied for possession of a land for personal cultivation from his tenant under S. 34 of the Bombay Tenancy

and Agricultural Lands Act, 1948, prior to the deletion of that section by Bombay Act No., XIII of 1956. The question which arose in that case was whether the income which the landlord would obtain by personal cultivation of the leased land would be the main source of his income for his maintenance and the Court held that the date to be taken into consideration for determining that question was the date on which the Mamlatdar made an order on the landlord's application for possession and not the date on which the application for possession was filed by the landlord. The judgment of the Division Bench shows that this decision resulted from the peculiar wording of Clause (c) of sub-section (2) of S. 34 as it then stood. That clause had provided that a landlord was not entitled to terminate the tenancy of a protected tenant on the ground that he required the land for personal cultivation "unless the income by the cultivation of such land "will be" the main source of the income of the landlord for his maintenance." (underline supplied (*italics ours*)). Relying on the above wording of the clause the learned judges observed:

"The question for consideration is what is the material date for determining whether the landlord requires the income from the land, of which he seeks possession for his maintenance. This date must be the date on which the additional income is likely to become available to the landlord. It cannot, therefore, be earlier than the date on which the Mamlatdar makes an order for possession of the land in favour of the landlord."

The learned Judges then went on to deal with the instance of a Government servant belonging to an agricultural family, who is on the verge of retirement, and observed that such a person would be entitled to terminate the tenancy of his tenant even before he actually retires from service on the ground that the income by the cultivation of the leased land "will be" the main source of his maintenance. It will be noticed that the wording of Clause (b) of sub-section (5) of S. 33-B of the Act is materially different from the wording quoted above of Clause (c) of sub-section (2) of S. 34 prior to the deletion of that section.

7. Mr. Shastri also relied on the decision of a Division Bench in special civil appln. No. 551 of 1960 decided on 19th July 1960 (Bom). A reference to that decision has been made by the Maharashtra Revenue Tribunal as well . In that case a landlord had applied to the Mamladar for possession of the land leased by him on the ground that he required it bona fide for personal cultivation. It appears, though the judgment does not say so, that the application was filed under S. 31 of the Act after the Act was amended by Bombay Act No. XIII of 1956. The Mamlatdar came to the conclusion that the landlord required the land bona fide for personal cultivation and that the income from the land would be the principal source of his maintenance. In holding that the income from the land would be the main source of the landlord's maintenance, the Mamlatdar ignored the income which the landlord was receiving from his service on the ground that his service was precarious. The tenant went in appeal to the Prant Officer and during the pendency of the appeal the landlord actually lost the service which he had at

the time when he applied for possession of the land. Nevertheless the Prant Officer set aside the finding of the Mamlatdar that the landlord's service was precarious and held on that basis that the income from the land would not be the principle source of the landlord's maintenance. The Prant Officer's decision was upheld by the Bombay Revenue Tribunal . In disapproving the decision of the Prant Officer this Court observed:

"The fact that the petitioner's employment was of an uncertain nature is also shown by the fact that shortly after the Mamlatdar had made his order and when the appeal was pending before the Prant Officer, the petitioner had lost his employment. On the date when the Prant Officer made his order the petitioner had therefore on other source of income. In these circumstances the Prant Officer should not have interfered with the order made by the Mamlatdar. A Court should ordinarily take notice of event, which have occurred during the pendency of the action and which are likely to have a bearing on the final order to be made."

It will be noticed that these observations were made by the Division Bench in pointing out that there was no justification whatever for the Prant Officer setting aside the finding of the Mamlatdar that the landlord's service was of a precarious nature and that the income derived by him from that service cannot be taken into consideration in deciding whether the income of the land in dispute would be the main source of his maintenance. The subsequent event, the loss of the landlord's employment, was not relied upon in the above case for passing a different order than he order passed by the tribunal of first instance. The above observations, therefore, do not lend any support to the decision of the Maharashtra Revenue Tribunal in the present case.

8. We are accordingly of the view that the Maharashtra Revenue Tribunal were wrong in setting aside the order of the Special Deputy Collector of Jalgaon and in granting to the first respondent more than half the area of the leased land. The rule is, therefore, made absolute, the decision of the Maharashtra Revenue Tribunal is set aside and that of the Special Deputy Collector restored. In the circumstances of the case there will be no order as to costs.

(9) Petition allowed.