

(1955) 03 GUJ CK 0001

In the Gujarat High Court

Case No : Civil Appeals No's. 10, 11 and 12 of 1954

Mangalsinhji Shivsindhji

APPELLANT

Vs

Veja Jetha and Others

RESPONDENT

Date of Decision : 16-03-1955

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 84
Constitution of India, 1950 — Article 226
Land Reforms Act, 1951 — Section 13, 18
Transfer of Property Act, 1882 — Section 114

Citation : (1955) 03 GUJ CK 0001

Hon'ble Judges : Shah, C.J.; Chitambar, J

Bench : Division Bench

Advocate : V.G. Bathi, in No. 10 of 1954 In No. 11 of 1954, V.G. Hathi, proxy N.M. Jadeja, in No. 12 of 1954, V.G. Hathi, proxy N.U. Jadeja, for the Appellant; M.U. Shah, for Respondent Nos. 1 and 2 and A.R. Baxi, General for Respondent No. 3 M.U. Shah, for Respondent Nos. 1, 2 and 3 A.R. Baxi, General for Respondent No. 4 M.U. Shah, for Respondent No. 1 and 2 and A.R. Baxi, General for Respondent Nos. 3, 12 of 1954, for the Respondent

Final Decision : Dismissed

Judgement

Shah, C.J.—These are three appeals from an order of Baxi, J. in three writ petitions filed by the Appellant Mangalsinhji Shivsindhji for quashing the order of the Saurashtra Revenue Tribunal in proceedings instituted by the Appellant under the Saurashtra Land Reforms Act, 1951, against his tenants the present Respondents. The three petitions were disposed of by Baxi J. by a common order and. we also propose to pass a common order governing all the three appeals.

2. The Appellant applied to the Mamlatdar of the Morvi Taluka for terminating the tenancy of the Respondents and for ejectment on the ground of non-payment of rent, u/s 13 of the Act. The Mamlatdar called upon the tenants to pay the arrears of rent within 15 days, but the tenants failed to comply with the order.

The Mamlatdar later passed orders that as instructions have been issued to the

Circle Inspector and the Talati to recover the arrears of rent, no orders need be made for terminating: the tenancy of the Respondents and that the cases may be filed.

The Appellant went in appeal to the Deputy Collector, who held that the tenants in two of the cases had offered to pay the rent but the Girasdar had refused to accept it and that in the third matter the tenants viz., Vela Jetha and Govind Jetha had failed to pay the arrears of rent, and on this ground he dismissed the Girasdar's appeals in the first two cases and allowed the appeal against the said Vela Jetha and Govind Jetha, who are the Respondents in Appeal No. 10/54 before us.

Incidentally, all the tenants paid the "arrears of rent during the pendency of the appeals before the Deputy Collector. Both sides applied in revision to the Revenue Tribunal and the Tribunal held that since the tenants had paid the arrears of rent for Sumvat car 200 and had also paid the rent for Samvat year 2000, there was no reason to interfere with the lower Court's order, and in this view the Tribunal dismissed the revision applications filed by the Appellant Girasdar and allowed the revision filed by the tenants Vela Jetha and Govind Jetha:

The Appellant then filed petitions for a writ of certiorari and other appropriate writs under Article 226 of the Constitution, and Baxi, J. took the view that Section 13, Land Reforms Act was silent as to what the Mamlatdar was to do when the tenant failed to comply with the Mamlatdar's order calling upon him to pay the arrears of rent within 15 days, and though presumably the Mamlatdar was to pass an order of ejectment, such an order was not mandatory and the tenant was entitled to claim relief against forfeiture and the Court should: in a fit case grant relief on equitable grounds.

According to the learned Judge, jurisdiction to grant relief was conferred on the Mamlatdar by Section 13 of the Act and there was nothing in the said section to take it away; also Section 18 of the Act saved the rights or privileges of a tenant under any, or law for the time being in force and the, Mamlatdar was unbound to a relief notwithstanding, forfeiture under the general law by virtue of Section 18.

If the Mamlatdar had the jurisdiction, to grant relief, then the Revenue Tribunal too had the same Jurisdiction and since the Tribunal in this case had exercised that jurisdiction, for reasons which it deemed to be sufficient, the High Court would not Interfere under Article 223 of the Constitution. Accordingly, Baxi, J. dismissed all the three petitions. (2) Now Section 13, Land Reforms Act, says so far as is here relevant, that no tenancy shall be terminated except in accordance with the four grounds stated in Clause (1) of Section 12, the first of these being non-payment of rent.

Section 13 provides for relief against the termination of tenancy for non-payment and says that when any tenancy is terminated for non-payment of rent and the Girasdar files a proceeding before the Mamlatdar to eject the tenant, the

Mamlatdar is to call upon the tenant to pay the arrears together with the cost of the proceeding within 15 days and if the tenant complies with the order, the Mamlatdar shall, in lieu of making an order for ejectment, pass an order directing that the tenancy had not been terminated, and thereupon the tenant shall hold the land as if the tenancy had not been terminated.

In my opinion, Section 12 only prescribes the circumstances under which a tenancy can become terminated, and one of these is the default in payment of rent. When that situation arises "the Girasdar becomes entitled to recover possession and he files a proceeding before the Mamlatdar to eject the tenant.

When such a proceeding is filed Section 13 requires the Mamlatdar to call upon the tenant to pay up within 15 days and if the tenant does so pay) the Mamlatdar is bound to pass an order that the tenancy had not been terminated, with the result that the tenancy continues as before and the tenant is not evicted. The institution of a proceeding is provided for by Section 13 and not by Section 12 which merely prescribes the conditions on which) the tenancy may be terminated.

Section 46(e) of the Act, to which reference has been made by the learned Judge no doubt naves that one of the functions of the Mamlatdar is to determine whether a tenancy shall be terminated u/s 12, but the words "terminated u/s 12", in Section 46(e) simply mean that it may be terminated on the grounds stated in Section 12 and not that the termination is to take place under the J said Section.

The proceeding is, in our opinion a composite proceeding and we do not agree that two proceedings are contemplated, one u/s 12 and the other u/s 13. In the proceeding that the Girasdar files he claims that the tenancy has become terminated and the tenant should be evicted; but Section 13 empowers the Mamlatdar to require the tenant to pay the arrears within 15 days, and If such payment is made, the Mamlatdar will not pass an order determining the tenancy and two say that the tenancy had not been terminated with the result that the Girasdar will not be permitted to eject the tenant.

But if such payment is not made the Mamlatdar has no option and it is incumbent upon him to make an order of ejectment. That is the plain implication of the words "in lieu of millruns an order of ejectment in Section 13 and any other construction would make the specific provision of Section 13 nugatory.

In our opinion, therefore, the Mamlatdar is bound to make an order of ejectment and he cannot, refuse to make it (see Waryam Singh and Another Vs. Amarnath and Another, . The ulllrmt order whether it be one of not terminating the tenancy or of terminating it and awarding delivery of possession to the Girasdar is to be pawed to the end of the enquiry provided for in Chapter 6 of the Rules, and under Rule 92 the order is to be recorded in Form XVII, which incidentally, provides also for termination of the tenancy and ejectment.

3. But a further question remains whether the original Section 13 is capable of being construed so as to give the same power of condonation of termination of tenancy by giving notice of payment within 15 days of rent and costs to the appellate Court i.e. the Collector under the Act. The ordinary rule is that an appeal lies in continuation of the suit.

In - "Vrajlal Amritlal v. Jyotindrasinhji lit 1933 Sau 77 (B), we construed the word "proceedings" in Gharkhedl Ordinance as including an appeal and referred to - "Ratanchand Shrichand v. Hanmantrav Shivbakas 6 Bom HCR 166 (C) wherein it was remarked by Couch C. J.:

a suit is a judicial proceeding and the word "proceedings" must be taken to include all the proceedings in the suit from the date of its institution/to its final disposal and therefore to include proceedings in appeal.

The Chmtos Joshi v. Krishnaji Narayan 3 Bom Mi (D), West J observed:

The legal pursuit of a remedy suit appeal second appeal are really but steps in a series of proceedings connected by an intrinsic unity. These remarks were followed with approval in - "Ghulam Rasul v. Babu Sayaji" 32 Bom 337 (E). In "Pandarinath Kikalal v. Thakoredas Shankar-dus AIR 1929 Bom 262 (P), Patkar, J. observed:

A suit and all appeals made therein are to be regarded as one legal proceeding. Ho Hi Section 13 as also Wee. fiau 4U refer to "proceedings" before the Mamlatdar. If an appeal is in continuation of the proceedings started before the Mamlatdar there is no reason why the power given to the Mamlatdar to condonement of tenancy should not be exercised by the appellate authority as well.

The powers of the appellate authority inter alia are to make any legal or just order in accordance with the provisions of this Act. (See B. 63). Supposing in a case there is a bona fide dispute whether the tenancy has terminated or not u/s 12 which is the subject-matter of the proceedings before the Mamlatdar.

The Mamlatdar decides that the tenancy has terminated and therefore he gives option to the tenant for condonation of the tenancy; but the tenant wishes to agitate the same question of termination of tenancy before the appellate authority which he has the right to do. Why should the tenant be deprived of the same right of getting an option for condonation of the termination of the tenancy when the appellate authority finally decides the matter.

The Legislature probably intended such power of condonation to be exercised by the appellate authority as is made clear by the first clause to the amended Section 13A. In any case, it is a moot point whether the appellate authority even under the law previous to "the amendment could or could not exercise this power vested in the Mamlatdar.

The amendment has come into force shortly after the proceedings in the present case were started. It is not in dispute that if the amendment applied, since; the

tenants had paid up the arrears while the appeal was pending, there would be a condonation of termination of tenancy.

4. Now the powers of issuing writs under Article 223 are discretionary and as observed by the "Supreme Court in - Veerappa Pillai Vs. Raman and Raman Ltd. and Others, , such writs [as are referred to in Article 226, are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or excess it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error or excess has resulted in manifest injustice. It is not a mere error of law which entitles the High Court to interfere by writs under Article 22ii but such errors of law must have resulted in manifest injustice. In the present case, it cannot be said for a moment that there has been any manifest injustice by reason of the Mamlatdar, or the higher tribunal not having passed the order of termination of tenancy and the consequent order of ejectment as the Legislature has made manifest its intention underlying Section 13 by enacting Section 13A which contemplates a relief against termination of tenancy when the matter is pending in appeal or even in revision.

The amount of rent has been admittedly paid up and we, therefore, do not think, in the interest of justice, to interfere with the orders of the Revenue Tribunal in an application for writ under Article 226.

5. Before concluding we may refer to two other points argued before us. Mr. Shah for the Respondents has urged that the Court has the power to "relieve against forfeiture and that although Section 114, Transfer of Property Act does not apply, the lease here being an agricultural lease, the principle thereof would apply and the Court can grant relief.

No doubt Section 114 does not apply to leases but there are decisions in which it has been held that where a lease does not come within the purview of the Transfer of Property Act, the Court has the power which it was second even previous to that Act, to relieve against forfeiture for non-payment of rent on such conditions as may appear equitable on the facts of each particular case (See - Ramakrishna Martoba Rao Kasbekar Vs. I. P. Fernandez and Others, ; - Appayya Shetty Vs. B.P.M. Mahammad Beari and Others, and - AIR 1944 229 (Nagpur) .

However the question raised is not germane to the present case because here there is no forfeiture of a lease on the ground of non-payment of rent. A forfeiture on that ground will occur u/s 111(g), Transfer of Property Act, which requires the lease to contain an express condition providing that on breach of the condition the lessor has a right of re-entry.

It is where forfeiture takes place in this manner that Section 114 becomes relevant and the Court in that event has the jurisdiction to relieve against forfeiture. Therefore, though the Court may have the jurisdiction to relieve against forfeiture of agricultural leases, the essential requirement is that the

agricultural lease is determined by forfeiture as contemplated by Section 111(g) of the Act.

6. We need not consider the question whether Section 114 not applying in terms the Court has the power to relieve against forfeiture, because this is not: a case of forfeiture at all, but is a casts of determination of a tenancy for non-payment of rent which is not the same thing as a forfeiture u/s 111(g) of the Act.

Mr. Ilathi for the Appellant has referred us to Jagannath Narayan Vs. Vasant Ramkrishna and Others, . That was a case under tire Bombay Tenancy and Agricultural Lands Act of 19411. In an earlier case, -- Mallikarjun Bhavanappa Vs. Satyanarayan Laxminarayan and Others, it was held that there was no provision in the Tenancy Act making it incumbent upon, the landlord to give notice to his tenant when default had been committed in payment of rent.

Mr. Chitale who appeared for the opponents in Jaganaath"s case (K)" tried to distinguish the said decision by having recourse to Section 30, Act, which is equivalent lo Section 18, Saurashtra Land Reforms Act; and Mr. Chitale urged that though the Tenancy Act may not have provided for a notice in the event of a tenant being it arrears of rent, the tenant had a right to receive a notice u/s 84, Bombay Land Revenue Code, and this right had not been taken away or abridged by reason of Section 30, Tenancy Act.

Their Lordships pointed out that this would be true provided the tenant was an annual tenant within the meaning of Section 84 of the Code, and they held that the tenant fin Jagannath"s case) (K) was a protected tenant under the Tenancy Act and not an annual tenant as contemplated by Section 84 mid therefore he was not entitled to n, notice and there was no right conferred upon him, which had been safeguarded by reason of Section 30 of the Act.

Mr. Chitale also urged relying upon Section 3, Tenancy Act that the provisions of Section 111(g), Transfer of Property Act would apply. The reply "o (bit) contention was that it was not a case of ", forfeiture on the ground of non-payment and there was therefore no scope for applying Section 111(g); it was a case falling under the Tenancy Act and the landlord relied upon the express profusions of the said Act enacting that the tenancy shall be terminated for non-payment of rent. That was u/s 14, Tenancy Act, which is equivalent to Section 12, Land Reforms Act.

There is no section corresponding to Section 3 in the Land Reforms Act and therefore the ground on which Mr. Chitale sought to invoke Section 111(g) is not in existence here; but at the same time the distinction pointed out by the learned Chief Justice in that case, viz., that the case was one of the termination of tenancy under the Tenancy Act and not of a forfeiture of a tenancy is significant and has to be kept in mind in the present case too.

Moreover, the Question of relief against forfeiture did not at all arise in that case because no such relief was claimed by the tenant. As it is, referring to Section

25, Bombay Tenancy Act, which is equivalent to Section 13 of our Act, it was stated by the learned Chief Justice, in reply to Mr. Chitale's contention, that it was really a case of forfeiture that Section 25 provides not for relief against forfeiture but for relief against the termination of tenancy for non-payment of rent and that the said Section had nothing to do with the Question of giving notice.

Section 13, Saurashtra Land Reforms Act too Provides for relief against the termination of tenancy for non-payment of rent and not for relief against forfeiture, and the question arising in these appeals could not therefore be considered on the score of granting relief against forfeiture.

7. With regard to Section 18, Land Reforms Act, on which reliance is placed for the Respondents, it no doubt says that nothing contained in the Act will limit or abridge the rights or privileges of a tenant under any usage or law for the time being in force. Section 3 says that the provisions of the Land Reforms Act and of the rules and the order made there under shall have effect, not, with anything inconsistent therewith" contained in any other law for the time being in force or any usage etc But by virtue of the opening words "save as otherwise expressly provided in this Act", the Section is not to have effect where there is otherwise an express provision in the Act. Section 18 is such an express provision and it says that nothing contained in the Act is to limit or abridge the rights or privileges of the tenant under any usage or law for the time being in force.

Therefore such rights, provided there are any, will be available to the tenant notwithstanding Section 3 of the Act, and the question will be whether there is any usage or law giving rise to rights or privileges to tenants.

No such usage or law has been relied upon or proved in the present case and it is not enough to say that Section 18 saves the rights or privileges of the tenant under the general law. Therefore Section 18 is of no assistance to the Respondents.

8. For the above said reasons, therefore, the appeals fail and are dismissed, but in the circumstances we make no order as to costs.