
(1987) 07 BOM CK 0053

In the Bombay High Court

Case No : Civil Revision Application No. 167 of 1984

Marybai Marshal Pimenta and another	APPELLANT
Vs	
Ramnath Gopal Bhuskute and others	RESPONDENT

Date of Decision : 03-07-1987

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 85A
Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (1987) MhLj 628

Hon'ble Judges : P.B. Sawant, J;G.H. Guttal, J

Bench : Division Bench

Advocate : C.R. Dalvi, for the Appellant; G.B. Karandikar for Respondents 1 to 7, for the Respondent

Final Decision : Allowed

Judgement

P.B. Sawant, J.—This is a Reference made by a learned Single Judge. The short question that arises in the case is : Has the Civil Court jurisdiction to protect the possession of a party to the suit when he claims to be in possession in his capacity as the tenant either while making the reference or pending the reference u/s 85-A of the Bombay Tenancy & Agricultural Lands Act, 1948 (hereinafter referred to as "the Act").

2. In the present case, the plaintiffs claim to be the tenants of an agricultural land situate at Dhovali, Taluka Vasai, District Thane. It is also claimed by them that they were entitled to be declared as statutory purchasers of the suit land under the provisions of the Act. However, for some reasons the proceedings for fixation of the price of the land which were once commenced were subsequently dropped. They claim to be in possession of the land since many years prior to the suit and have approached the Court since the defendant-landlords are trying to interfere with the possession. It also appears that the proceedings u/s 145 of the Criminal Procedure Code had preceded the suit and an order of attachment of the land was also passed by the Taluka Magistrate in the said proceedings. The

defendants had claimed that possession of the land was taken over by the Magistrate from the plaintiffs under the said order of attachment, which claim is however contested by the plaintiffs.

3. The trial Court as well as the Appeal Court have come to the conclusion that the plaintiffs have proved their possession. However, an interim injunction claimed by the plaintiffs against the defendants to protect the possession was refused by them solely on the ground that in view of the provisions of section 85-A of the Act the issue as to whether the plaintiffs were tenants of the suit land could not be decided by the Civil Court and had to be referred to the Tenancy Authorities for their decision.

4. Against the order of refusal of injunction by the Courts below, the present Civil Revision Application is preferred to this Court. The learned Single Judge before whom the application came referred the issue to this Court in view of the view taken by another, learned Single Judge which is reported in 1982 Mh.L.J. 777 (Shravan vs. Arun) where it is held that since the Civil Court had no jurisdiction to decide the issue of tenancy it has also no jurisdiction to protect the possession of the alleged tenant by way of an interim injunction.

5. As has been urged by Mr. Dalvi appearing for the plaintiffs-petitioners, this view is contrary to the decision of earlier as well as later judgments of this Court. It has been held in the following decisions that notwithstanding that the Civil Court has no jurisdiction to decide the issue of tenancy, the possession of the party, if prima facie proved, can be protected by an interlocutory order. Those cases are :

- (1) Sujanabai vs. Motiram, 1980 Mah.L.J. 578;
- (2) Maruti Sambha vs. Parshuram, 1983 Mah. LJ. 958;
- (3) Baliram Maruti vs. Dadu Govind, 1985 Mah. LJ. 311; and
- (4) Laxmi Sonu vs. Sawanta Bapu, 1985 Mah. LJ. 314.

The learned Single Judge who has taken the contrary view has relied on the decision of another learned Single Judge of this Court reported in Pandurang Appa Patil vs. Ananda Dhau Ulpe, 1977 T.L.R. 29. We have examined the said decision and find that the facts in that case have no relevance to the issue which was involved before the learned Judge and which is also involved in the present case. In that case, the question was whether the trial Court was justified in refusing to make a reference of the issue of tenancy to the Tenancy Court. The trial Court had refused to make the reference on the ground that the relief claimed in the suit was for injunction simpliciter. This Court came to the conclusion that the relief was both for declaration that the plaintiff was in possession of the suit property in his capacity as a tenant and also for injunction. In this view of the matter, this court held that it was incumbent upon the trial Court to refer the issue to the Tenancy Court, if the Court came to the conclusion that prima facie the plaintiff had proved his possession. It was also held that the

plaintiffs" alleged claim of tenancy was also relevant for the purpose of considering whether or not the plaintiffs were entitled to injunction as prayed for by them. It may also be mentioned here that it does not appear that in that case the issue whether pending the hearing and final disposal of the suit, the plaintiff could be granted as interim relief of injunction protecting his possession was in issue. We, therefore, fail to see what relevance that case had to the issue which fell for consideration before the learned Single Judge who took the contrary view.

6. It is well settled that at the time of considering whether an injunction should or should not be granted in favour of a party to protect his possession, all that the Court has to do under Order XXXIX Rule 1 is to find out whether the party has prima facie established his possession in some capacity or the other. As is apparent from the facts of the present case, the plaintiffs had claimed that they were in possession of the suit land as tenants for many years prior to the suit. In fact, proceedings for fixation of the price of the land were started on one occasion, although they were dropped thereafter for some reason or the other. It was also not disputed that in fact proceedings u/s 145 of the Code of Criminal Procedure were adopted and in those proceedings the Taluka Magistrate had attached the suit land. According to the defendants themselves, the possession of the land was taken from the plaintiffs in those proceedings, though this was denied by the plaintiffs. Whatever that be, the contention of the defendants itself shows that prior to the attachment of the land in those proceedings, it was the plaintiffs who were in possession of the suit proper appellant is that its liability goes up to Rs. 75,000/- only in all the four cases, but the Tribunal has awarded the compensations disputed before the Civil Court is the capacity in which they are so in possession. Both the Courts below have further come to the conclusion that the plaintiffs were in possession but as stated earlier, have denied the relief to the plaintiffs on the only ground that the Civil Court had no jurisdiction to decide the issue of the tenancy.

7. Since we are of the view that the Civil Court has jurisdiction to grant an injunction to protect the possession of a party, if it comes to the conclusion that the party is in possession of the land, the reference will have to be answered accordingly. The decision of the learned Single Judge reported in the case of *Shravan vs. Arun*, 1982 Mh.LJ. 777, is hereby overruled and it is held that the Civil Court has jurisdiction to grant an injunction to protect possession of the alleged tenant notwithstanding the fact that it has no jurisdiction to decide the issue of tenancy in view of the provisions of section 85-A of the Act.

8. The Revision Application is accordingly allowed and the rule is made absolute with costs.