

(1973) 07 BOM CK 0020

In the Bombay High Court

Case No : Civil Rev. Application No. 263 of 1971

N. Venkatrao and Another

APPELLANT

Vs

Kishatanna

RESPONDENT

Date of Decision : 05-07-1973

Acts Referred:

Citation : AIR 1974 Bom 258 : (1974) 76 BOMLR 186 : (1974) MhLj 400

Hon'ble Judges : Kania, J

Bench : Single Bench

Advocate : D.M. Parulekar, for B.S. Deshmukh, for the Appellant; D.Y. Lovekar, for the Respondent

Judgement

1. This is a revisional application u/s 115 of C.P. C., 1908. The respondent filed a suit against the petitioners herein in the Court of the Civil Judge, Senior Division, Nanded, being Regular Civil Suit No. 88 of 1963 for specific performance of a contract of sale in respect of the suit land with a direction to petitioner No. 1 to obtain permission from the Deputy Collector for transfer of the suit land. The case of the respondent was that petitioner No. 1 was the owner of the suit land and petitioner No. 2 claimed to be his adopted son. The respondent was a protected tenant on the said land. Initially, an agreement of sale was entered into in favour of the respondent on 9th June 1958. Petitioner No. 1 backed out this agreement and started resumption proceedings under the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as the Hyderabad Tenancy Act.) Ultimately a fresh agreement of sale in writing was entered into on 26th March 1959 where by petitioner No. 1 agreed to sell the suit land to the respondent for Rs. 4,8000. The petitioner No. 1 failed to carry out this agreement and hence the respondent filed the suit.

2. Petitioners Nos. 1 and 2 raised several defences in their written statements. It was inter alia contended by them that the Court of the learned Civil Judge had no jurisdiction to try the suit. Issue Nos. 4 and 5 framed by the learned Civil Judge were directed to be treated as preliminary issues. These issues were as follows:

"4. Whether the suit for possession is maintainable in view of Section 32 and 44 of the Hyderabad Tenancy Act as the possession is already given by the revenue authorities to the defendant No. 1.

5. Whether the plaintiff can be asked to obtain a sale certificate u/s 47 of the Hyderabad Tenancy Act. When the original contract was about obtaining sale certificate u/s 28 of the Hyderabad Tenancy Act."

Curiously enough, although the preliminary issues raised were as set out above, the judgment of the learned Civil Judge is concerned mainly with the question as to whether the Court had jurisdiction to entertain the suit. By his judgment and order dated 16th October 1964 the learned Civil Judge held that he had no jurisdiction to entertain the suit, in view of the provisions of Section 99 of the Hyderabad Tenancy Act, and he directed the plaint to be returned to the respondent for presentation to the proper Court..

3. Being aggrieved by the decision of the learned Civil Judge, the respondent filed an appeal being Miscellaneous Civil Appeal No. 34 of 1964, which was disposed of by the learned Assistant Judge by his judgment and order dated 9th November 1970 allowed the appeal diction to entertain the suit and decide it according to law. He, therefore, remanded the suit to the trial Court. It is Judge decision of the learned Assistant Judge which is challenged before me in this revisional application.

4. I may make it quite clear that although the two issues tried by the learned Civil Judge as preliminary issues were as set out earlier, the entire dispute in the Courts below as well as before me is on the question as to whether the Civil Court has jurisdiction to entertain the suit filed by the respondent.

5. It is common ground that the respondent was a protected tenant in respect of the suit land. It has also not been disputed before me that the question of jurisdiction as a preliminary issue must, in the present case, be decided on the basis of the averments in the plaint.

6. The first contention of Mr. Parulekar, who appeared for the petitioners, was that in view of the provisions of Section 38-A of the Hyderabad Tenancy act, it was only the Agricultural Lands Tribunal or the Tenancy Court, which could entertain the suit filed by the respondent. The relevant portion of Section 38-A of the Hyderabad Tenancy act reads as follows:

"If in respect of a land held by a protected tenant or, as the case may be ordinary tenant the landholder consents to sell his interest in the land to the protected tenant or, as the case may be, ordinary tenant and the reasonable price payable therefore by the protected tenant or, as the case may be, ordinary tenant is agreed to between them, the provisions of sub-section (7) of Section 38 shall not apply to such sale, and either the landholder or the protected tenant or, as the case may be, ordinary tenant or, as the case may be, ordinary tenant or both jointly, may apply to the Tribunal and thereupon all the provisions of sub-

sections (4) (5) (6), (6A), (8) and (9) of that section shall apply mutinies to such application".

The first proviso to Section 38-A provides that the reasonable price so agreed to by the parties themselves shall be deemed to be the reasonable price determined by the Tribunal for the purposes of the said sub-section. The second proviso provides that if the landholder does not sell the whole of the land held by him but retains some land with him, the extent of the land remaining with him shall not be less than the area of a basic holding. The last proviso to the said section limits the right of the protected tenant to the extent of three family holdings. It will be useful to consider briefly the provisions of Section 38 of the Hyderabad Tenancy act. That section inter alia deals with the rights of a protected tenant to purchase the land held by him as a protected tenant. Sub-section (1) of Section 38 confers that right. Sub-section (7) of Section 38 lays down that the right of a protected tenant under the section to purchase from the landholder the land held by him as a protected tenant shall be subject to certain conditions and sets out those conditions. The rest of the sub-sections prescribe the procedure for the effective carrying out of the right conferred u/s 38 (1) including the procedure for fixing of prices, determining of installments, manner of payment and for certain other contingencies with which I am not concerned in the present case.

7. It was submitted by Mr. Parulekar that in a case where a landholder agrees to sell the land held by a protected tenant to the protected tenant, the only authority which can enforce the contract is the Tribunal and the only manner in which this can be done is as provided in Section 38-A of the Act. I am unable to accept this contention, Section 38-A deals with the procedure when the landholder consents to sell his interest in the land to the protected tenant and the reasonable price payable is agreed to between them. In my view, the provisions of Section 38-A can come into play only in a case where at the time when the application is made to the Tribunal there is no dispute regarding the consent of the landholder to sell his interest in the land and the other condition in the Section are fulfilled. On a plain reading of this section it appears to me that it was never intended to give jurisdiction to the Tribunal to determine whether there was an agreement or consent by the landholder to sell his land where this fact was disputed by the land-holder. In my view, what the section provides is that where there is such consent at the time when an application is made and a reasonable price is agreed to between a landholder and the protected tenant, a right is given to either of them or both of them to apply to the Tribunal or both of them to apply to the Tribunal and obtain the benefit of the procedure prescribed u/s 38 of the said Act. For example, once there is such a consent and a reasonable price is agreed to, the tribunal can inter alia, determine the amount of encumbrances lawfully subsisting, on the land as provided in Section 38 (4), and provide in Section 38 (4), and provided for the manner in which the price is to be deposited or determine the installments as provided in Section 38 (5) of the Act. In such a case by reason of the provisions of Section 38-F (2) read with Section 38-E (2), the Tribunal can also issue a

certificate declaring the protected tenant to be the owner of the land in question thereby obviating the necessity of registering the document. There is, however, in my view, nothing in these provisions to enable the Tribunal to entertain an application for specific performance of an agreement to sell the land to a protected tenant where the existence of the agreement itself is in dispute and where the landholder does not consent at that time to sell him interest in the land. The provisions of Section 99-A of the Act. Which bar the jurisdiction of the Civil court to settle, decide or deal with any question which is by or under the Hyderabad Tenancy Act required to be settled, decided or dealt with by the Tahsildar, Tribunal or Collector or the Commissioner or the Government, do not come into play at all.

8. It was next urged by Mr. Parulekar that looking to the scheme of the Hyderabad Tenancy Act, it was clear that the jurisdiction of the Civil Court to the jurisdiction of the Civil Court to entertain and try a suit for specific performance such as the one in question before me was taken away. It is common ground that there is no express provision ousting the jurisdiction of the Civil Court. The question, therefore, which has to be considered is whether the scheme of this Act is such that the jurisdiction of the Civil Court is ousted by necessary implication. In support of his contention, Mr. Parulekar took me through some of the provisions of the Hyderabad Tenancy Act, to which I briefly propose to refer. Section 47 (1) of the Hyderabad Tenancy Act provides for certain restrictions on permanent alienations of leases of any agricultural land or interest therein to non-agriculturists. There is a proviso to this sub-section which permits the Collector or any officer authorized by the State Government in this behalf to grant permission for such permanent alienation, lease or mortgage in such circumstances and subject to such conditions as may be prescribed. In the first place, in the present case, the respondent, who is the purchaser, is a protected tenant and it cannot be said that he is a non-agriculturist. Hence the bar of this section would not come into play. Moreover, in the present case, the question before me is not whether the agreement is valid or not, but whether the Court is competent to entertain a suit for specific performance of the agreement. Section 50-C provides the limits within which reasonable price for land sold or purchased under the provisions of the Hyderabad Tenancy Act has to be fixed. In my view, this section has no relevance in the dispute before me. This section deals only with cases where lands are sold or purchased under the provisions of the Act, which is not the case in the transaction before me. In any event, the provisions of this section are of no assistance in considering the question of jurisdiction. There appears to be nothing in the scheme of the Act which by necessary implication ousts the jurisdiction of the Civil Court to entertain a suit for specific performance of an agreement of sale of land by a landholder in favour of his protected tenant and in respect of the land held by that protected tenant as such.

9. It was then urged by Mr. Parulekar that a question might arise as in whether certain provisions of the Hyderabad Tenancy Act would have to be complied with before a decree for specific performance could be passed in the present suit.

That however, is not the question before me. As I have already observed, the only question with which I am conceded is regarding the jurisdiction of the Civil Court. In my view, there is nothing in the Hyderabad Tenancy Act, which ousts the jurisdiction of the Civil Court to entertain the suit in question before me.

10. It was lastly urged by Mr. Parulekar that the said agreement was against the public policy. That again is not a relevant consideration before me. It will be for the learned Civil Judge to decide that question. The only question before me, as I have already stated, is regarding the jurisdiction of the Civil Court.

11. In the result, the application fails and the rule is discharged with costs.

12. Revision dismissed.