

(2009) 06 BOM CK 0049

In the Bombay High Court

Case No : Second Appeal No. 529 of 1989

Namdeo Dada Badhe, Ramchandra Dada Phopase and
Suryabhan Tatyaba Pinjari

APPELLANT

Vs

Balu Patilbua Khapake and Others

RESPONDENT

Date of Decision : 18-06-2009

Acts Referred:

Bombay Service Inams (Useful to Community) Abolition Act, 1953 — Section 12
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G, 32M
Limitation Act, 1963 — Section 27, 28

Citation : (2009) 06 BOM CK 0049

Hon'ble Judges : P.R. Borkar, J

Bench : Single Bench

Advocate : C.S. Deshmukh, for the Appellant; N.K. Kakade, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Borkar, J.—This Second Appeal is directed against the judgment and decree passed by the learned Joint Civil Judge, Senior Division, Ahmednagar, in Regular Civil Suit No. 185 of 1983 decided on 27.2.1987, thereby directing the Defendants to put the Plaintiff-Respondent No. 1 in possession of the property and for paying Rs. 4,500/= with interest at the rate of 6 per cent per annum from the date of order till realisation of the amount, as mesne profit prior to the institution of the suit, which judgment and decree is further confirmed by learned Additional District Judge, Ahmednagar, by his judgment and order in Regular Civil Appeal No. 350 of 1987 decided on 29.3.1988.

2. Briefly stated, case of Respondent No. 1 plaintiff is that the suit block No. 322 admeasuring 45 acres 8 gunthas situated at village Gondegaon, taluka Shrirampur, District Ahmednagar was belonging to him. It was inam land and under the provisions of the Bombay Services Inam (Useful To Community) Abolition Act, 1953, the land was regranted to him by Tahsildar, Shrirampur as new tenure in the year 1959. Plaintiff had paid occupancy charges and acquired

title to the suit land. Block No. 322 was originally consisting of survey Nos. 115 and 116 but those were consolidated and renumbered as block No. 322.

3. It is further case of Respondent No. 1 plaintiff that the land was Hal Inam land since time of his grand father. The land was initially in the name of his grand father and thereafter in the name of his father and then in his (plaintiff's) name. Plaintiff-Respondent No. 1 was serving in Railways. When he was absent from the village, Defendants encroached upon the suit land and, therefore, he filed suit for possession on title and mesne profit.

4. Present appellants are original Defendants No. 2, 3 and 7. Respondent Nos. 2 to 8 are remaining defendants. It is the case of the Defendants that the suit land was allotted to them u/s 32G of the Bombay Tenancy and Agricultural Lands Act ("Bombay Tenancy Act" for brevity) by the order of Additional Tahsildar and Agricultural Lands Tribunal. The copy of the order is at Exhibit 64. It is held that all villagers () are purchasers of the suit land. Respondent No. 1 has no right over the suit land and so suit be dismissed.

5. By order dated 20.12.1989, this appeal is admitted on grounds 7,8,9,10 and 12 of the Appeal Memo, which are as follows;

(7) It was an error to hold that the lower Court had jurisdiction to try the suit.

(8) It ought to have been held that the order passed by the learned Tahsildar Shrirampur declaring the villagers of Gondegaon as the deemed purchasers-owners of the suit land as early as in the year 1961, vide Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948, and the same has never been challenged by the Plaintiff before the prescribed Tenancy Appellate Authorities, for which reason it has become conclusive and final and could not be set aside by the Civil Courts, nor its validity can be challenged by the Civil Court.

(9) The suit of the Plaintiff is based on title and hence it ought to have been filed within 12 years from the date of the order of Tahsildar declaring the villagers of Gondegaon as the deemed purchasers of the suit land. Hence, it was an error not to have had that Plaintiff's suit is barred by limitation.

(10) The lower Court has erred in holding that the Bombay Tenancy and Agricultural Lands Act, 1948 is not applicable to the suit land although it is specifically provided u/s 12 of the Bombay Services Inam (Useful to Community) Abolition Act 1953, that such lands would be governed by the Relevant Tenancy Act. So also the lower Courts were not competent to decide whether the Tenancy Act is applicable in the instant case or otherwise and also to interpret the relevant statute.

(12) It ought to have been held by the Courts below that the Plaintiff's right to suit property has already been extinguished by virtue of provisions of Section 27 of the Limitation Act (New) and provisions of Section 28 of the old one.

6. It is observed by both the courts that in order to prove his title, Respondent

No. 1 plaintiff has produced various documents on record. At Exh.99, there is record of rights showing that after the death of grand father of Plaintiff on 2.3.1922, name of plaintiff's father was entered as owner of the property. Exh.100 shows that the name of father of the plaintiff was entered in village form No. 7 and he was in possession of the property as a owner. At Exh. 101, there is a copy of 'Kul and wahiwat' Register from 1920 to 1925 and the plaintiff's grand father Kesu was shown as owner of the property and the land was shown to have been given for cultivation on tenancy. Survey No. 115 was given for cultivation on tenancy to Genu Rama Mali and Devram Bhiva. As per Exh.102, which is an extract of Mutation Register (Part II) for the period 1925 to 1930, plaintiff's father was shown owner and Genu Rama Mali was shown as tenant. The land was shown as 'Hal watan land', which was service inam. At Exhs. 57 and 60, there is revenue record for the years 1930 to 1958 and it shows that plaintiff's father was Kabjedar and on his behalf Genu Rama was cultivating the land as tenant till 1942-43 and thereafter from 1943-44 to 1944-45 one Devram Bhiva Mali was cultivating the land as tenant and for year 1945-46, one Ganpat and Raghu Mali were cultivating the land. In 1946-47 Devram Bhiva was cultivating the land as protected tenant and continued to cultivate till 1958-59. At Exh.59, there is 7x 12 extract of block No. 322 for the year 1958-59 and it shows one Bapu Mali, Mahadu Genu Kokase and Bapu Ramrao were cultivating the land.

7. Thus, various documents show that the plaintiff was the owner of the property and that the property initially belonged to grand father and then father of the plaintiff. Relying upon these documents and continuous record right from 1919 to 1958-59, the trial court and the first appellate court held the plaintiff as owner of the property and as such, entitled to possession of the same.

8. On the other hand, the defendants have relied upon Exh.64, which is the order passed by Additional Tahsildar and Agricultural Lands Tribunal, Shrirampur on 28.8.1961. If we have regard to Section 32G of the Bombay Tenancy Act, it authorises the Agricultural Lands Tribunal to declare the tenant in possession/ occupation of the land on tiller's day, as deemed purchaser. So it would have been another thing if the Tahsildar and ALT had declared a tenant who was in occupation of the land as purchaser of the land, in view of provisions of Bombay Tenancy Act. However, the order at Exh.64 clearly shows that it is observed that the ancestors of Respondent No. 1 plaintiff were rendering services of supplying drinking water to a temple of the village. The forefathers of the plaintiff (respondent No. 1 herein) were performing duties towards Goddess of the villager. After abolition of Inam, the land was regranted in the name of present Respondent No. 1 Plaintiff. It is stated that Respondent No. 1 plaintiff was no more residing in the village as he was employed in Central Railways and the villagers have inducted some tenants by name Babu Rabha Mhais and Mahadu Genu Phople and are getting the services to the temple rendered by them. It appears that the statement of the Plaintiff-Respondent No. 1 was recorded. Tahsildar also came to the conclusion that there was an agreement between the villagers and

the landlord (Plaintiff-Respondent1) regarding purchase of land on behalf of villagers for Rs. 1212.62 ps. Out of it, Rs. 212.62 were already paid in the previous year and remaining amount was to be paid within one year in two installments. In view of the said agreement, Tahsildar passed the order u/s 32G of the Bombay Tenancy Act and directed issuance of the certificate of purchase in the name of the villagers () under the provisions of Section 32(M) of the Bombay Tenancy Act. On the face of the order, the same is beyond scope of provisions of the Bombay Tenancy Act. Granting relief of sale and issuing sale certificate in case of Villagers v. Respondent No. 1 in respect of their rights arising out of alleged agreement of sale is something not within jurisdiction of Agricultural Lands Tribunal under Bombay Tenancy Act. Case is not covered by provisions of the Bombay Tenancy Act. The powers used to issue sale certificate are clearly ultra vires and beyond jurisdiction of the Additional Tahsildar and ALT. Such order does not confer any right on the defendants who claim to be included in phrase " " (all villagers). Ordinarily, villagers ought to have obtained a sale deed of the suit land from Respondent No. 1 plaintiff, if they wanted to purchase the land from him. The proper forum was to approach civil court for specific performance of agreement of sale. In the circumstances, the order Exh.64 does not confer any right or title on "all villagers" including the defendants. It is simply nonest. No declaration need be sought in respect of such order by present appellant.

9. The defendants have also taken plea of adverse possession, but if we refer to paragraph 12 of the judgment of the trial court, it is clear that the plea was belated. It was taken by way of amendment of the written statement after evidence was closed by the parties. As a result, there is no evidence regarding hostile or adverse intention (*animus possidendi*) which is required to be proved for establishing adverse possession. In the circumstances, both, the trial court and the first appellate court, have rightly held that the defendants have not proved that they have perfected title to the suit land by adverse possession.

10. In the facts and circumstances of the case, it is clear that the trial court had jurisdiction to try the suit for possession. It has been rightly held that the Tahsildar, by order at Exh.64, could not have conferred the ownership rights on villagers or defendants. His order at Exh.64 was without jurisdiction. Defendants have not perfected their title by adverse possession as necessary evidence to show hostile nature of possession is not brought on record. Mere possession howsoever long, is not enough. It cannot be said that the trial court and the first appellate court erred in holding that the provisions of the Bombay Tenancy Act were not applicable to the facts of the case in hand.

11. Section 12 of the Bombay Service Inams (Useful To Community) Abolition Act, 1953, is as follows;

12. Provisions of Bom. LXVII of 1948 to govern relations of holders and tenants. Nothing in this Act in any way be deemed to affect the application of any of the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, to

any service inam village or service inam land or the mutual rights and obligations of a holder and his tenants, save in so far as the said provisions are not in any way inconsistent with the express provisions of this Act. " Section 12 clearly shows that the provisions of the Bombay Tenancy and Agricultural Lands Act could have been made applicable. But in that case, it must have been proceedings between tenant/s who was occupying the land and the landlord and not between the landlord and all villagers (). The Additional Tahsildar and ALT could not have passed order u/s 32G of Bombay Tenancy Act and declared villagers as statutory purchasers on the basis of the so called agreement of sale. Such agreement of sale could not have been basis for the declaration of ownership u/s 32G of the Bombay Tenancy Act or for issuance of purchase certificate u/s 32M of the Bombay Tenancy Act.

13. In this view of the matter, Second appeal must fail and the same is accordingly dismissed. Parties to bear their own costs.