
(2005) 02 BOM CK 0088
In the Bombay High Court
Case No : Second Appeal No. 6 of 1988

Namdeo Govinda Hiwale	Vs	APPELLANT
Arjun Namdeo Hiwale and Others		RESPONDENT

Date of Decision : 24-02-2005

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 122, 130, 41, 46, 49A
Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) (Amendment) Act, 1982 — Section 8, 8(1)

Citation : (2005) 2 ALLMR 600 : (2005) 4 BomCR 199 : (2005) 3 MhLj 241

Hon'ble Judges : K.J. Rohee, J

Bench : Single Bench

Advocate : S.R. Deshpande, for the Appellant; A.J. Khan, for the Respondent

Final Decision : Allowed

Judgement

K.J. Rohee, J.—Original defendant No. 1 preferred this appeal against the judgment and decree of the District Judge, Buldana in Regular Civil Appeal No. 31/1984 allowing the appeal preferred by the original plaintiffs and decreeing their suit for possession of the suit land by setting aside dismissal of their Regular Civil Suit No. 240/1982 by 2nd Jt. Civil Judge, Junior Division, Buldana.

2. The facts which are relevant for the purposes of the present appeal are that Namdeo Ganpat Hiwale was the owner of 2 acres 2 gunthas (83 R) of land in Survey No. 164/1 Gat No. 210 area 6 acres 33 gunthas. Namdeo Hiwale died on 8-6-1979. Plaintiff No. 7 is his widow; plaintiffs No. 1, 2 and defendant No. 2 are his sons and plaintiffs No. 3 to 6 are his married daughters.

3. Respondents No. 1 to 7 (hereinafter referred to as the plaintiffs) instituted suit for declaration and possession of 1 acre 14 gunthas of land out of 2 acres 2 gunthas land. According to them during the life-time of Namdeo Hiwale he did not effect partition of the land. He, however, had given 1 acre 14 gunthas of land out of the said field to defendant No. 2 for his maintenance. Defendant No. 2 had

no right to transfer the said land. The plaintiffs learnt that on 8-6-1978 defendant No. 2 executed nominal sale deed of 2 acres 2 gunthas (83 R) of land in favour of defendant No. 1 (hereinafter referred to as "the appellant"). In fact defendant No. 2 had no right to sell the said land and the alleged transaction of sale is not binding on the plaintiffs. After the death of Namdeo Hiwale, the plaintiffs have become owners of the said field by inheritance. The appellant does not acquire any right, title and interest in the said field on the basis of nominal sale deed dated 8-6-1978. The appellant is in illegal possession of the said land. The plaintiffs requested him to deliver possession of the land to them but the appellant neglected. Hence on 5-10-1981 the plaintiffs issued notices to the appellant and defendant No. 2 requesting them to deliver possession of the suit land. However, the appellant did not deliver possession of the land to the plaintiff. Hence the plaintiffs instituted suit for possession and for declaration to the effect that the sale deed dated 8-6-1978 is not binding on them.

4. Defendant No. 2 admitted the claim of the plaintiffs by his written statement.

5. The appellant however resisted the suit. According to the appellant there had been partition between Namdeo Ganpat Hiwale and defendant No. 2 because of which defendant No. 2 became owner of the said land and was in possession thereof. Defendant No. 2 had every authority to sell the said land. Accordingly he sold it to the appellant for valuable consideration of Rs. 4000/- with the consent of Namdeo Hiwale. The plaintiffs instituted suit in collusion with defendant No. 2 with intent to extract money from the appellant.

6. After considering the oral and documentary evidence on record, the trial Court held that the suit field was a joint family property; that there was partition between Namdeo Hiwale and defendant No. 2; that Namdeo Hiwale and the plaintiffs had given consent to the transaction of sale by defendant No. 2. The trial Court, therefore, dismissed the suit.

7. The appellate Court, however, held that the plaintiffs and defendant No. 2 became owners of the suit land after the death of Namdeo Hiwale; that alienation of the suit land made by defendant No. 2 in favour of the appellant during the lifetime of Namdeo Hiwale was illegal and void; that the suit field could not have been partitioned without the previous sanction of the Collector u/s 57 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958. The appellate Court, therefore, allowed the appeal and decreed the suit in favour of the plaintiffs. The present appeal is directed against the said judgment.

8. Shri S.R. Deshpande, the learned counsel for the appellant, submitted that the appellate Court did not properly appreciate the documentary evidence on record. He submitted that the record of right of S. No. 164 (Exh.30) shows that the ownership of the said land was transferred to Namdeo Hiwale by order dated 30-5-1979 passed by the Agriculture Lands Tribunal in Revenue Case No. 63/59(13)/65-66. The certified copy of the revenue record (Ex.31) shows that Sukhdeo Namdeo Hiwale (defendant No. 2) became the owner of S. No. 164/1-A,

area 2 acres 2 gunthas on partition between his father and himself during 1977-78. Shri Deshpande submitted that the appellate Court erred in holding that it was not permissible to partition the said land. Shri Deshpande submitted that the appellate Court referred to Section 57 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 and held that the land could not have been partitioned without the previous sanction of the Collector. Since no previous permission of the Collector was obtained, the appellate Court held that the land could not have been partitioned. Shri Deshpande submitted that initially Section 57 was as under :

"57(1) No land purchased by a tenant u/s 41 or 46 or 49A or 57D or 130 or sold to any person u/s 91 or 122 shall be transferred by sale, gift, exchange, mortgage, lease or assignment or partition without the previous sanction of the Collector. (2) Any transfer or partition of land in contravention of Sub-section (1) shall be invalid".

9. Shri Deshpande submitted that Section 57 of the B.T.L. Act was amended by Maharashtra Act No. V of 1982 and by virtue of Section 8(1)(a) of the Amending Act, the words "or partitioned" in Sub-section (1) of Section 57 and by virtue of Section 8(1)(b) the words "or partition" in Sub-section (2) of Section 57 were deleted. Shri Deshpande submitted that the amending Act clearly shows that words "or partitioned" in Section 57(1) and "or partition" in Section 57(2) shall be deemed to have never been there. The said amendment thus is retrospective. Consequently Section 57(1) and (2) of the B.T.L. Act would not affect the partition which took place during 1977-78. The first appellate Court neglected this amendment and came to a wrong conclusion.

10. I find considerable force in the submission made by Shri Deshpande. It may be noticed that it is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. Section 8 of the Amending Act clearly shows that the words "or partitioned" in Section 57(1) and the words "or partition" in Section 57(2) were deleted and shall be deemed always to have been deleted. This clearly means that we have to read Section 57 as if these words were never there. The plain meaning thereof would be that there was no restriction on transfer of land purchased under B.T.L. Act as regards partition thereof. It, therefore, follows that no previous sanction of the Collector for partition was necessary and the absence of such previous sanction would not render the partition invalid.

11. A perusal of the judgment of the first appellate Court shows that the Court was not aware of the Maharashtra Act No. V of 1982 and it proceeded on the assumption that the word "partition" was very much there in Section 57. The first appellate Court, therefore, arrived at a wrong conclusion by holding that it was incumbent on Namdeo Hiwale to obtain permission of the Collector before he could partition the land between himself and his son Sukhdeo. The judgment of the first appellate Court, therefore, cannot be sustained and deserves to be set

aside. Hence the order.

12. The appeal is allowed. The judgment and decree passed by the first appellate Court is set aside and that of the trial Court dismissing suit is restored. In the circumstances of the case, there shall be no order as to costs.