

(2015) 08 BOM CK 0224

In the Bombay High Court

Case No : Civil Revision Application No. 20 of 2014

Narayan and Others

APPELLANT

Vs

Vishwambhar and Others

RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : (2015) 08 BOM CK 0224

Hon'ble Judges : T.V. Nalawade, J

Bench : Single Bench

Advocate : N.B. Khandare, for the Appellant; G.K. Naik-Thigle, Advocates for the Respondent

Final Decision : Allowed

Judgement

T.V. Nalawade, J—The revision is filed to challenge the order made on Exhibit 1 in Regular Civil Suit No. 35 of 2012 which is pending in the Court of the Civil Judge, Senior Division, Beed. The suit is filed by present respondent Nos. 1 to 4 for relief of declaration of the ownership in respect of agricultural land. By filing written statement, present petitioners, defendants raised point of jurisdiction of the Civil Court. Preliminary issue was framed on the point of jurisdiction and this issue is decided against the defendants. Both the sides are heard.

2. The suit is filed in respect of agricultural land bearing Gat No. 115 admeasuring 11H 58 R and situated in village Samnapur, Tahsil and District Beed. Previous number of this property as Survey Nos. 51 and 52 and during consolidation proceeding aforesaid number was given to these lands.

3. It is the case of the plaintiffs that defendant No. 1 was in possession of the land as tenant on Batai contract and then he became protected tenant under the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as "the Act") (paragraph 3 of the plaint). It is the case of the plaintiffs that under the provisions of the Act, declaration of ownership was given in favour of the

tenant in the past but that decision was challenged and ultimately it was held that the tenant was entitled to declaration only in respect of 6 Gunthas portion out of Survey No. 51. It is contended that the defendants continued to cultivate the land but there was such decision against them in the past.

4. It is the case of the respondents, plaintiffs that they had filed proceeding for eviction of the tenant but the proceeding was dismissed and the tenant continued the possession. Some reference is made with regard to other litigations filed in respect of mango trees in the plaint.

5. Some allegations are made in the plaint by the plaintiffs that defendant No. 1 who is serving in Police Department as Constable, had joined hands with officers of revenue like Deputy Collector Beed (defendant No. 5) and another Class III employee (defendant No. 6), Naib Tahsildar (defendant No. 7) and Talathi (defendant No. 8) and they created some false record. It is contended that in order to grab the suit property some false record was created and the government officers were bribed by defendant Nos. 1 to 3. It is contended that some false entries in revenue record were made behind the back of the plaintiffs even when aforesaid decision was given against the defendants-tenants and then another declaration was given under section 38-E of the Act in favour of the tenant. It is contended that declaration of ownership given in favour of the tenant under this provision cannot sustain in law as the point was already decided finally. Some other record is created to show that there is cause of action for other reliefs also. In the suit relief is claimed of declaration that the plaintiffs are the owners of the suit property. Relief is claimed that the order made by the Tenancy Court in favour of the tenant under section 38-E of the Act and the certificate issued in accordance with the order are illegal, null and void. Relief of possession is also claimed by the plaintiffs and compensation is claimed.

6. Defendant Nos. 1, 3 & 6 filed written statement. They contended that defendant No. 1 was entitled to ownership of more than 6 Gunthas. They contended that in the past also the area of ownership was increased. They contended that no mischief is done by them and the procedure was followed for giving declaration under section 38-E of the Act.

7. It is contended that the Civil Court has no jurisdiction to give the reliefs claimed by the plaintiffs and all the reliefs fall under the provisions of the Act. It is contended that the decision given under section 38-E was challenged by the plaintiffs under the Act and so civil court cannot entertain the suit.

8. The civil court has held that the suit does not involve question about relationship between the parties and the reliefs claimed by the plaintiffs can be granted by civil court and such reliefs cannot be granted by revenue Court.

9. In this proceeding copy of review petition filed by the plaintiffs is shown to this Court and this review was filed against the decision of revision filed by the plaintiffs against the aforesaid declaration made under the Act. It appears that the revision was dismissed by holding that it was not maintainable. In any case

there is separate scheme framed under the Act to challenge the decision of the Tenancy Court. Submissions was made by the learned counsel for the plaintiffs that the Deputy Collector was the appellate authority but some false record was created by saying that he was deciding the appeal and declaration is given in favour of the tenant and so the authority who had given the declaration has no jurisdiction and this point can be decided by the civil court. This submission is not acceptable. Even that decision can be challenged under the Act.

10. Learned counsel for the petitioners placed reliance on the case reported as *Sau. Saraswatibai Trimbak Gaikwad Vs. Damodhar D. Motiwale and Others*, AIR 2002 SC 1568 : (2002) 3 JT 356 : (2002) 3 SCALE 92 : (2002) 4 SCC 481 : (2002) 2 SCR 755 : (2002) 1 UJ 597 : (2002) AIRSCW 1464 : (2002) 2 Supreme 610 . There was proceeding under the Bombay Tenancy and Agricultural Lands Act, 1948 and there was civil suit. The owner had gone to the civil Court by contending that the person in possession was trespasser when there was tenancy proceeding pending between the parties to the suit. The relevant provisions of the Bombay Tenancy Act were considered and there is similar provision like section 85 in the Bombay Tenancy Act like the provision available in the present Act. The Apex Court has held that so long as certificate of ownership was standing in the name of the tenant, decree against him of such nature was not possible. The Apex Court has observed that it was necessary for the original landlord to get set aside the certificate of sale by filing appropriate proceeding like revision with the authorities created under the Tenancy Act. In another case reported as *Gundaji Satwaji Shinde Vs. Ramchandra Bhikaji Joshi*, AIR 1979 SC 653 : (1979) 2 SCC 495 : (1979) 2 SCR 586 some provisions of the Bombay Tenancy Act and the provision of section 9 of the Civil Procedure Code 1908 were discussed. It is laid down by the Apex Court that when any point which needs to be decided under the Tenancy Act is involved the said point needs to be referred to Tenancy Court by civil Court and on the basis of finding given by the Tenancy Court, the suit needs to be decided. There cannot be dispute over this proposition.

11. On the other hand learned counsel for the plaintiffs placed reliance on a case reported as *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, AIR 1969 SC 78 : (1968) 3 SCR 662 : (1968) 22 STC 416 . This case was decided on different point though the Apex Court has given guidelines to ascertain as to whether the civil Court has jurisdiction. The Apex Court has discussed the object behind the relevant provision of the Civil Procedure Code which is to the effect that exclusion of the jurisdiction of the civil courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is observed that the object is also to see that civil court will have jurisdiction if the provisions of the Act have not been complied with, or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure. There cannot be any dispute over the propositions made. However, there needs to be such case.

12. The provision of section 99 of the Act runs as under:--

"99 (1). Bar of jurisdiction.-- Save as provided in this Act no Civil court shall have jurisdiction to settle, decide or deal with any question including a question whether a person is or was at any time in the past a tenant or protected tenant and whether any such tenant or protected tenant is or should be made to be the full owner of the lands which is by or under this act required to be settled, decided or dealt with by the Tahsildar, Tribunal or Collector or by the Commissioner or Government.

(2). No order of the Tahsildar, Tribunal or Collector or of the Commissioner or Government made under this Act, shall be questioned in any Civil or Criminal Court."

13. In view of the aforesaid provision of the Act this Court has no hesitation to hold that the dispute of aforesaid nature needs to be decided only by the Tenancy Court and not by civil Court. Declaration also cannot be given in favour of the landlord when there is ownership certificate issued in favour of the tenant. Other reliefs are consequential in nature. In view of this circumstance, this Court has no hesitation to observe that the civil court has no jurisdiction. The issue of jurisdiction raised in the aforesaid suit is answered against the plaintiffs.

14. In the result, the civil revision application is allowed. The order made by the trial Court on Exhibit 1 on the point of jurisdiction is hereby set aside. The suit itself is dismissed as the civil court has no jurisdiction. No order as to cost.

15. After making the aforesaid order, learned counsel for the original plaintiffs submitted that the suit was filed due to apprehension that the defendants were alienating the property belonging to the plaintiffs on the basis of ownership certificate issued under the Act. The trial Court had given interim relief preventing the defendants from alienating the property. The counsel requests for continuation of that relief as he wants to challenge the decision of this Court. So the relief granted by the trial Court is continued for 90 days from today.