
(1976) 09 BOM CK 0019
In the Bombay High Court
Case No : Spl C.A. No. 1565 of 1970

Nilavabai Sida Khajure

APPELLANT

Vs

Chanamalappa Bassappa Khajure and others

RESPONDENT

Date of Decision : 20-09-1976

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1977) MhLj 443

Hon'ble Judges : G.N. Vaidya, J

Bench : Single Bench

Advocate : J. R. Lalit, for the Appellant; D. S. Deskmukh and Bhimrao N. Naik for opponent No. 1 and R.G. Bhadekor, For opponent No. 2, for the Respondent

Final Decision : Allowed

Judgement

G.N. Vaidya, J.—The petitioner in the above Special Civil Application, owns two agricultural lands, bearing Survey Nos. 135A and 136B, situate at village Naldurg, taluka Tuljapur, admeasuring 7 acres 14 gunthas and 7 acres 39 gunthas respectively. Respondent No. 1 is the brother of the plaintiff's deceased husband. The original respondent No. 2, who died during the pendency of the above Special Civil Application, and original respondent No. 3, were nephews of the respondent No. 1, being the sons of another brother of the deceased husband of the petitioner.

2. Respondents Nos. 1 and 3 taking advantage of the helpless condition of the petitioner, as a widow, were cultivating the lands and were not giving any income to the petitioner, as agreed to by them. The petitioner, therefore, filed a suit being Civil Suit No. 97 of 1966, in the Court of the Civil Judge, Junior Division, Tuljapur, for possession of the suit lands. The respondents resisted the suit contending inter alia, that they were the tenants. The issue was, therefore, referred to the Naib Tahsildar (Revenue), Tuljapur, u/s 99A (1) of the Hyderabad Tenancy and Agricultural Lands Act, 1950.

3. The Naib Tahsildar of Tuljapur, by his judgment and order dated January 30, 1968, considered the evidence led by the parties and the contentions raised by them u/s 5 of the Hyderabad Tenancy and Agricultural Lands Act, 1950, and held that the respondents were not tenants and could never claim any rights as tenants under sections 34 and 37 of the Hyderabad Tenancy and Agricultural Lands Act, inasmuch as they were the members of the petitioner's family, observing as follows:

The provisions of the Tenancy Act, clause (a) of section 5 clearly lay down that under any circumstances a member of the Family cannot be deemed as a tenant. In this case the plaintiff has executed a Batai Patra long back in favour of the defendants have been shown as tenants. But irrespective of the above fact the Tenancy Act does not confer any tenancy rights on the defendants, who are family members of the plaintiff. Any action which is prima facie against the mandatory provisions of the Act cannot be superseded and overruled by any omission. When the provision of the Act does not permit a family member to become a tenant, the other corollary argument etc. will have no value in the eyes of law. As pointed out by the learned Advocate for the defendants the provisions of sections 34 and 37 of the Hyderabad Tenancy and Agricultural Lands Act do not apply in this case for the reasons that they have not been declared as P. T. S. at any time only because no tenancy right could be conferred on them as per law.

4. The finding of the Naib Tahsildar was set aside by the Deputy Collector, Land Reforms, Osmanabad, in an appeal filed by the respondents, on the ground that the relationship between the petitioner and the respondents was irrelevant, as there was separation between (he respondents and the petitioner for over 30 years; and that respondents must be considered as tenants as the word "family" denotes a jointness in share and profit and also jointness in residence; and as per the definition of the word "family" given in the Chamber's 20th Century Dictionary, it means a joint family where the interest of all the family members are one and common; and as per section 2, clause (11) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, the word "family" includes, a Hindu undivided family.

5. The decision of the Deputy Collector was confirmed by the Revenue Tribunal in a revision application filed by the petitioner. The Revenue Tribunal agreed with the view of the Deputy Collector, that because of the separation and partition between the petitioner's husband and respondent No. 1 and the father of respondents Nos. 2 and 3, the respondents were not the members of a "family" within the meaning of section 5 (a) of the Hyderabad Tenancy and Agricultural Lands Act, 1950, though the Revenue Tribunal did not import into the Tenancy Act the provisions of the Ceiling Act, as was done by the Deputy Collector. The Revenue Tribunal also relied on a notice, dated May 3, 1966, given by the petitioner to respondent No. 1, Chanamaiappa, in which she had admitted that the respondent No. 1 was cultivating the land as her tenant and that she was terminating his tenancy as he had not paid the rent of the land since 1963.

6. The decisions of the Deputy Collector and the Revenue Tribunal are challenged in the above Special Civil Application, under Article 227 of the Constitution of India, by the petitioner, on the ground that they erred in law in interpreting the provisions contained in section 5 (a) of the Hyderabad Tenancy and Agricultural Lands Act, 1950, inasmuch as they excluded from "members of the family" the category of the separated members of the landholder's family.

7. The relevant provisions of the Hyderabad Tenancy and Agricultural Lands Act, 1950, in this connection must be noticed. First, there is section 2 (I) (g), which defines the words ""To cultivate personally"" as follows:

"To cultivate personally" means to cultivate on one's own account- (i) by one's own labour, or (ii) by the labour of any member of one's family, or (iii) by servants on wages payable in cash or kind, but not in crop share or by hired labour under one's personal supervision, or the personal supervision of any member of one's family.

Explanation:-In the case of an in divided Hindu family, land shall be deemed to be cultivated personally, if it is cultivated by any member of such family.

8. The word "family" itself is not defined in the Act, but section 5 (a) is as under:

5. A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the land-holder and if such person is not- (a) a member of the land-holder's family.

9. Rest of the section is not material.

10. It is, therefore, clear that the Deputy Collector and the Revenue Tribunal were wrong in assuming that merely because the respondents were separated members of the family that they were not the members of the family and/or that merely because a notice was given on the assumption that they would become tenants under the provisions of section 5 of the Act, under the Batai agreement which only means to divide the share of the petitioner and all other members of the family, where they shared the crop that they became tenants.

11. If they are members of the family, by whose labour the land is cultivated, then it is cultivated personally, within the meaning of section 2 (1) (g) (ii) of the Act. It is unfortunate that all the Tenancy Authorities have ignored these definitions. This is further fortified by clause (a) to section 5, where it is specifically declared that the person lawfully cultivating the land must not be a member of the family of the landholder holding the land.

12. The word "family" having not been defined in the Act itself, we must take into consideration the general meaning of the word "family" used in the context of the cultivation of the land, because the word "family" is used in different laws some times in a narrow sense and sometimes in a very broad sense. In S.N. Sundalaimuthu Chettiar Vs. Palaniyandavan, with regard to the Madras Cultivating Tenants' Protection Act (1955), sections 2 (a), 2 (ee), it was held

that an heir to be entitled to protection of the Act must contribute physical labour in cultivating by himself or by member of his family.

13. The Supreme Court observed at page 470 as follows :

Before the heirs can be given the benefit of this definition it is necessary for them to establish that someone is contributing his physical labour in the cultivation of the land and that that someone is a member of their family. Mr. S C. Agarwal, appearing for the respondent, said that a son-in-law can be regarded as a member of the family because the word "family" is not to be construed in a narrow sense or meaning only a member of a Hindu joint family. He is quite right there because the Act applies to all tenants irrespective of the personal laws which govern them. In Webster's New World Dictionary one of the meanings of the family is "a group of people related by blood or marriage, relatives." A person can, therefore, be properly regarded as being the member of his wife's family and not merely of his father's family.

14. The Concise Oxford Dictionary gives as many as 5 meanings of the word "family": (1) Members of a household, (2) all descendants of common ancestor, house, lineage, race, group of peoples from common stock, (3) Brotherhood of persons or nations united by political or religious ties(4) Group of objects distinguished by common features, (5) Group of allied general sub-division of ORDER." We are not concerned with the 3rd, 4th and 5th meaning, but we have to choose between the first and 2nd; and I have no doubt that the Legislature meant 2nd meaning by the word "family" in section 5 (a) and section 2 (1) (g) of the Hyderabad Tenancy and Agricultural Lands Act, 1950. The section would mean the word family" as stated in. 2nd meaning by the dictionary as all descendants of common ancestors. It will be seen that, as stated above, in the observations of the Supreme Court, a son-in-law was regarded as being the member of his wife's family.

15. Chamber's 20th Century Dictionary, referred to by the Deputy Collector, and the Oxford English Dictionary give several meanings of the word "family" as "body of persons living in one household, including parents, children, servants etc., all descendants of common ancestor, house, lineage."

16. Webster's Third International Dictionary, 1971, also gives the following among other meanings of the word "family": (1) "group of a persons of common ancestry and (2) group of individual living in one room". The Random House Dictionary of the English Language, includes among other meanings of the word "family": "any group of persons closely related by blood as parents, children, uncles, aunts and cousins; all these persons considered as descendants of a common progenitor."

17. Having regard to the different meanings given by the standard dictionaries, we have to consider the scheme of the Act and the intention of the Legislature in using the word "family" in section 2 (1) (g) and section 5 (a) of the Hederabad Tenancy and Agricultural Lands Act, 1950. The intention is manifested in the

interest of the Legislature to exclude the members of the landholder's family like the children, cousin and other descendants of common ancestor, from claiming the statutory rights of the tenant under the Tenancy Act.

18. The mere fact, therefore, that the relations like the respondents, in the present case, who are related very closely to the petitioner, share the crop, or have entered into a written agreement for sharing the crop, cannot be considered as members of the family, or sufficient to end their blood relations as provided in section 5 (a) of the Act. They can never be described as tenants. In the present case, there are no lease deeds. The Batai Patrak cannot by itself be considered as a lease deed, having regard to the blood relations and family relations between the petitioner and the respondents. Family relations do not come to an end for general purposes of blood relations by partition or separation which only severs the legal status as a joint family.

19. The Revenue Tribunal has relied on the notice dated May 3, 1966, sent by the petitioner, which no doubt describes the original defendants Nos. 1 and 2, Chanamalappa and Basavanappa respectively as tenants. Her admission of the tenancy is also clear, as she had terminated the tenancy of the said respondents Nos. 1 and 2. However, the notice appears to have been given as a matter of abundant caution. The notice bears only a thumb impression of the petitioner. She is not likely to know what is meant by "family" and what is meant by "tenant" under the Hyderabad Tenancy and Agricultural Lands Act, 1950; particularly when the Deputy Collector and the Revenue Tribunal have committed such errors of law as stated above. Somebody on instructions gave a notice to the defendants as tenants. They however, cannot become tenants merely because of the notice demanding her share of the income of the lands.

20. The view taken by me is supported by a Division Bench decision of this Court in an unreported judgment in Special Civil Application No. 943 of 1960, decided by Chainani C.J. and Tambe J. on January 17, 1961. In that case also, the lands in dispute originally belonged to the husband of the landholder, who was a tenant there. According to her, the petitioner, in that case, was the brother of the wife. The petitioner in his statement before the Mamlatdar in that case stated that he was the first cousin of the opponent wife. After the death of her husband, the opponent gave the lands for cultivation to the petitioner. His name was, however, not shown as a tenant in the revenue records.

21. Several years later, the petitioner made an application to the Mamlatdar for obtaining a declaration that he was a tenant of the lands. The application was rejected by the Mamlatdar on the ground that the petitioner was cultivating the lands as a member of the family of the opponent and that he could not, therefore, be regarded as a tenant. This order was set aside in appeal by the Deputy Collector, who came to the conclusion that the petitioner could not be regarded as a member of a family of the opponent. The opponent applied in revision to the Bombay Revenue Tribunal.

22. The Revenue Tribunal was of the opinion that as the petitioner was the cousin of the opponent, he should be regarded as a member of the family within the meaning of section 4 of the Tenancy Act, as there was no other evidence to show that the relationship of landlord and tenant existed between the petitioner and the opponent. The Revenue Tribunal, therefore, set aside the order passed by the Deputy Collector and restored the order made by the Mamlatdar, who had rejected the application made by the petitioner.

23. Thereafter, the order of the Revenue Tribunal was challenged in the Special Civil Application. This Court confirmed the view taken by the Revenue Tribunal observing as follows:

The petitioner's own admission, therefore, shows that he is the first cousin of the opponent. The Revenue Tribunal has therefore held that he can be regarded as a member of the opponent's family. A good deal can be said in support of the view taken by the Revenue Tribunal. It is, however, not necessary for us to decide this point in this application, because it seems to us That the order made by the Revenue Tribunal can be supported on another ground. Section 4 of the Act only raises a presumption in favour of the person, who is cultivating the land, that he is a tenant. This presumption can, however, be rebutted, in this case, the opponent has stated that she had not created any tenancy rights in favour of the petitioner and that she had given the land to him for his maintenance as he was her brother. These statements made by the opponent are supported by other evidence and also by the circumstances of the case. Raghunath Bhandare, who belongs to the same family as the opponent, has also stated in his evidence that the lands had not been leased to the petitioner. Although the petitioner has been cultivating the lands for several years, his name has never been shown as a tenant in the revenue records. No application was a/so made by him previously for his name being so entered. The petitioner has also not been able to produce any receipt or any other evidence indicating that he had paid any rent to the opponent. These circumstances support the opponent's statement that she had given the lands to the petitioner so that he might enjoy the income thereof for his maintenance and that she did not intend to create any tenancy rights in his favour. The presumption, if any, arising u/s 4 has, therefore, been rebutted.

24. Although, the Division Bench did not decide the question as to who is a member of the landholder's family, the Division Bench appears to have been inclined to say a good deal in support of the view taken by the Revenue Tribunal in that case, which was similar to the view, which I am inclined to take in the present case also and generally on the interpretation of the words "members of the landholder's family".

25. Moreover, as observed by the Supreme Court in the aforesaid Madras case, it must not be forgotten that the Tenancy Act applies not merely to a Hindu family, where partition has peculiar incidents, but also to families of other religions, where the concept of joint family does not exist. In the circumstances, the mere fact that there was separation between the deceased husband of the petitioner's

brother, or that the defendants were living separately from the petitioner, would not alter the blood relations or the family ties brought out by biological propinquity. They can never be extinguished by separation in property or status of the joint family. Blood will always remain thicker than water.

26. Mr. Bhadekar, the learned counsel appearing for the heirs of respondent No. 2, contended that the findings of the Deputy Collector and the Revenue Tribunal that the respondents are tenants, are essentially findings of facts which should not be interfered with by this Court in exercise of its extraordinary powers under Article 227 of the Constitution of India, having regard to the decision in AIR 1975 1297 (SC) .

27. As stated above, the finding of fact is arrived at by the three authorities without a proper application of mind to the provisions of section 2 (1) (g) and section 5 (a) of the Hyderabad Tenancy and Agricultural Lands Act, 1950, although the Naib Tahsildar has referred to section 5 (a), in support of his decision. In the circumstances, the decisions of the Deputy Collector and the Revenue Tribunal must be held to be patently illegal, as the same are based on grossly erroneous interpretation of section 5 (a), though the Legislature did not intend to give protection to the relatives of persons like a widow or old people, who could not personally cultivate or do physical labour in the lands. The Revenue Tribunal and the Deputy Collector have interpreted the laws as if the Legislature intended to confer a right of protection on persons, who were never included in the category of tenants under the Tenancy Law.

28. In the result, the Special Civil Application is allowed. For the reasons stated above, the order passed by the Deputy Collector, Land Reforms, on June 14, 1968, and the order passed by the Maharashtra Revenue Tribunal, Aurangabad, on February 21, 1970, are set aside and quashed; and the order passed by the Naib Tahsildar, Tuljapur, on January 30, 1968, declaring that the defendants have no locus standi as tenants of the suit lands, is restored. Rule is made absolute with costs.