

(1963) 03 BOM CK 0013

In the Bombay High Court

Case No : Civil Revision Application No. 472 of 1961

Potu Bhawani

APPELLANT

Vs

Udhao Vithoba Khade

RESPONDENT

Date of Decision : 12-03-1963

Acts Referred:

Citation : (1963) 65 BOMLR 610 : (1963) MhLj 563

Hon'ble Judges : Abhyankar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Abhyankar, J.—By this revision application, the defendant Potu challenges a finding of the trial Court in a pending suit holding that the question of the status of the defendant who claims to be a tenant on the land is not required to be referred to the Tenancy Court u/s 125 of the Bombay Tenancy Act.

2. Opponent Udhao has filed his suit for possession of S. No. 6, area 12.20 acres, revenue Rs. 10 situate at mauza Surdevi, in Kelapur taluq of Yeotmal district. He has also asked for determination of mesne profits and costs of the suit from the defendant. The plaintiff's case is that he was in peaceful possession of the field as tenant in his own right having obtained leasehold rights from the owner of the land one Ramji. This Ramji is not a party to this suit. The plaintiff enjoyed the crop for the, years 1958-59 and 1959-60 as tenant. He then alleges that he took the defendant as a partner for cultivating the field and the terms of partnership are given in para. 3 of the plaint. According to the plaintiff, the partnership accounts of this venture were made at the end of the year 1960-61 and the partnership was dissolved on April 1, 1961. However, the defendant continued in possession of the suit field though he had no right and the plaintiff claims that the defendant is now a trespasser on the land after April 1, 1961. Hence the suit for ejectment. The plaintiff himself claims that he has acquired the status of a tenant under the New Tenancy Act and the suit is in effect a suit in ejectment against a trespasser.

3. The applicant resisted the suit on the ground that not the plaintiff but the applicant himself has been let into possession of the land, by the landlord as tenant. The allegations of partnership made in the plaint are denied. The applicant thus claims the status of a tenant and disputes the jurisdiction of the civil Court to decide the question whether the applicant is himself a tenant on the land or a partner or a trespasser as alleged by the plaintiff. He wants this question to be determined by the Tenancy Court on a reference being made by the civil Court to that effect. The learned Judge finds that it is not necessary to make any such reference.

4. In my opinion, the finding of the learned Judge is correct and must be upheld. On a perusal of the several sections of the New Tenancy Act it appears that several provisions incorporated in this Act are put on the statute book to govern relations between a landlord and tenant. It is undoubtedly true that a Mamlatdar is constituted a tribunal of exclusive jurisdiction to decide several matters enumerated in Sub-clause (1) to (19) of Section 100. Under Sub-clause (2) of Section 100 a Mamlatdar is required to decide whether a person is a tenant, a protected lessee or an occupancy tenant. The question is whether this entry should be so interpreted as to constitute the Tahsildar a tribunal with exclusive jurisdiction whenever a question is raised in a civil Court by a person claiming the status of a tenant not as against the landlord of the land but in any other circumstances or context. In the instant case, both the plaintiff as well as the defendant claim exclusive right and status as a tenant of the same land. The plaintiff claims that he is a tenant and is also recorded as such, in the record prepared u/s 8 of the New Tenancy Act. According to the plaintiff, the applicant was accepted as a partner for cultivation and after termination of the partnership the defendant has no more right to come on the land. On the other hand, the defendant claims the same status as a tenant in pursuance of an independent contract with the landlord Ramji. Unless, therefore, it is possible to uphold the contention that the exclusive jurisdiction of the Tenancy Court embraced other variety of questions relating to the status of a tenant claimed by any person, whether the claim is put forward as against the landlord or otherwise, we shall be unduly enlarging the ambit of exclusion. In my opinion, the scheme of the Act does not warrant such a conclusion. So far as Clauses (3) to (19) of Section 100 are concerned, it could definitely be said that most of the questions required to be determined by the Tahsildar under these clauses are questions between a landlord and tenant. It is difficult to hold, therefore, that the question whether a person is an agriculturist under Clause (1) or the question whether a person is a tenant, a protected lessee or an occupancy tenant under Clause (2) is a general question to be decided at large without reference to the landlord or even in his absence. In my opinion, a more appropriate construction of the section would be that even in respect of decision of such question as to the status of a person claiming to be a tenant, a protected lessee or an occupancy tenant, or claiming to be an agriculturist, it must have reference in the context of the claim against a landlord. It is only to that extent that the jurisdiction of the civil Court is barred

and reference is required to be made to the Tenancy Court.

5. To accept any other construction would lead to anomalous results. If a reference is made to determine the status of the applicant when he claims to be a tenant of the landlord that question will be determined by the Revenue Court in the absence of the landlord. No substantial gain is, therefore, made merely by having a finding one way or the other albeit by the Tenancy Court when that finding will not be binding on the landlord. The scheme of the Act appears to be that the Tenancy Courts of several categories should be able finally to determine the status of a person vis-a-vis the landlord. The idea being that the Tenancy Courts then are able to adjudicate on other rights flowing from that relationship such as commutation of rent or compensation or determination of the right of purchase and other matters. It is not as if a Tenancy Court is constituted a Court of general jurisdiction where the question as to the status of a person claiming to be a tenant at large is to be determined. It is only in the context of that claim against the landlord of the land that the question assumes relevance and importance and is required to be determined by the Tenancy Court. But for this contingency, the normal jurisdiction of the civil Court to determine any claims to land by persons in the position of the applicant is not to be excluded. As is apparent in the instant case, the question whether the applicant is or is not a tenant of Ramji will have limited application and importance vis-a-vis the plaintiff. The plaintiff wants to eject the defendant and claim possession. The defendant says that he has a right to be on land because he has superior claim to remain on land as against the plaintiff. When each party claims a right flowing from the same source the Court will have to determine which party succeeds in establishing such claim. It is again true that the success or failure of either party does not touch the right of the landlord as he is not a party to the suit. If that be the position, I fail to see why exclusive jurisdiction of the Tenancy Court should be attracted for determination of such questions. The scheme is that the civil Court is not an appropriate forum for determination of the relationship between a landlord and tenant. If there is no question of determination of such relationship as between a landlord and tenant which is binding on both the general question as to the right claimed by a person in respect of a particular land is not to be excluded from the jurisdiction of the civil Court. It may be seen that what is to be determined is the status or jural relationship claimed by a person as against the landlord and not the character of the land. In that view of the matter, in my opinion, the finding recorded by the lower Court is correct. The result is that the revision application fails and is dismissed with costs.