
(2004) 03 BOM CK 0109
In the Bombay High Court
Case No : Writ Petition No. 2084 of 2002

Prabhakar Chavan

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 29-03-2004

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 29(3), 8
Succession Act, 1925 — Section 213(2), 57

Citation : (2004) 4 MhLj 887 : (2004) 4 MhLj 886

Hon'ble Judges : B.R. Gavai, J

Bench : Single Bench

Advocate : M.G. Bhangde, for the Appellant; D.B. Patel, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

B.R. Gavai, J.—The present petition impugns the order passed by the Sub-Divisional Officer, Yavatmal dated 30-4-2002 in Revenue Case No. 2/LND-32/98-99 Wadgaon, later on changed to Revenue Case No. 1/LND-26/2001-02. The facts in brief giving rise to the filing of the present petition are as under:-

2. That the field Gut No. 78/2 situated at Mouza Wadgaon, District Yavatmal admeasuring area of 1 Hectare 27 Ares was allotted to one Shri Tukaram L. Shelke under the provisions of Section 27 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter referred to as "the Ceiling Act"). That according to the petitioner, said Tukaram Shelke cultivated the said lands and acquired the status of occupants Class-I. It is the case of the petitioner that said Shri Tukaram was maternal uncle of the petitioner and, therefore, on 16-1-1990, said Shri Tukaram by a registered Will bequeathed the aforesaid land in favour of the petitioner. Said Shri Tukaram died on 29-12-1998. The Sub-Divisional Officer, Yavatmal has passed order on 26-7-2001, thereby forfeiting the aforesaid land to the Government, on the ground that prior permission of the

Collector u/s 29(3) of the Ceiling Act was not obtained, for transfer by Will by the allottee, in favour of the petitioner.

3. Being aggrieved by the order passed by the learned S.D.O. dated 26-7-2001, the petitioner herein preferred an appeal before the learned Maharashtra Revenue Tribunal, being Appeal No. ALC.A- 17/01. The learned Maharashtra Revenue Tribunal by order dated 23-1-2002, remanded the matter to the Sub-Divisional Officer for fresh enquiry. The learned M. R. T. also directed the petitioner to obtain the heirship certificate from the Competent Court, within a period of six months, from the date of the order, failing which it was to be presumed that the claim of the petitioner of being legal heir was not correct. In pursuance of the said order, the proceedings have been remanded to the learned Sub-Divisional Officer, Yavatmal, before whom the petitioner made an application for fixing the date for evidence. The petitioner in the said application, submitted that he wants to adduce oral and documentary evidence in support of his submission. However, the learned S. D. O., vide his order dated 30-4-2002 rejected the application at the stage of presentation, as the directions given by the learned M. R. T. were not complied with. Being aggrieved by the said order, the petitioner approaches this Court by way of present petition.

4. Shri M. G. Bhangde, the learned Counsel for petitioner, contended that the provisions of Section 29(3) of the said Act, were not applicable to the facts of the present case, inasmuch as the transfer contemplated u/s 29 of the Ceiling Act, does not contemplate transfer by Will. In support of his contention, he has relied on the judgment of this Court in the case of Vimalabai Govind Juverkar vs. State of Maharashtra and others reported in 1976 Mh.LJ. 358. Shri Bhangde further submitted that in view of the provisions of Section 213 read with Section 57 of Indian Succession Act, 1925 (hereinafter referred to as "the Succession Act"), when a right as executor or legatee is to be established in respect of an immovable property, it was not necessary to obtain a probate of the Will under which the right is claimed. In view of this submission, he relied on the judgment of this Court in the case of Jyoti w/o Jagdish Singhai vs. State of Maharashtra reported in 1979 M.L.J. 308.

5. On the contrary, Shri D. B. Patel, the learned A.G.P. appearing for respondent State, submitted that the Sub Divisional Officer was not a competent Court to decide regarding the validity of the Will and that the exclusive jurisdiction to decide the same lies with the Civil Court. He, therefore, submits that the learned M. R. T. has rightly directed the petitioner to obtain the heirship certificate and has further directed that if the petitioner fails to obtain the same within a period of six months, it shall be held that the claim of the petitioner is no good.

6. In view of the rival submissions made on behalf of the parties, it will be necessary to refer to some of the provisions of the Ceiling Act and the Succession Act. Section 29 of the Ceiling Act reads thus:-

"Section 29. (1) Without the previous sanction of the Collector, no land granted u/

s 27 or granted to a joint farming society u/s 28 shall be -

(a) transferred, whether by way of sale (including sale in execution of a decree of a Civil Court or of an award or order of any competent authority) or by way of gift, mortgage, exchange, lease or otherwise; or

(b) divided whether by partition or otherwise, and whether by a decree or order of a Civil Court or any other competent authority,

such sanction shall not be given otherwise than in such circumstances, and on such conditions including condition regarding payment of premium or nazarana to the State Government, as may be prescribed;

Provided that, no such sanction shall be necessary where land is to be leased by a serving member of the armed forces or where the land is to be mortgaged as provided in Sub-section (4) of Section 36 of the Code for raising a loan for effecting any improvement of such land.

(2) If sanction is given by the Collector to any transfer or division under Sub-section (1) subsequent transfer or division of land shall also be subject to the provisions of Sub-section (1).

(3) Any transfer or division of land, any acquisition thereof, in contravention of Sub-section (1) or Sub-section (2) shall be invalid; and as a penalty therefor, any right, title and interest of the transferor and transferee in or in relation to such land shall, after giving him an opportunity to show cause, be forfeited by the Collector and shall without further assurance vest in the State Government."

This Court in the aforesaid case of Vimlabai vs. State of Maharashtra, cited supra, after considering the judgments on the point, has held that the transfers which are by act of parties made inter vivos or a result of a decree or an order of the Court, Tribunal or Authority, are alone covered by the said term as defined in Explanation (2) of Section 8 of the Ceiling Act. This Court has further held that it will not include the testamentary dispositions of the property not made inter vivos. Thus, this Court has taken a view that a testamentary disposition by Will is not covered by the word "transfer" as per the provisions of Section 5 of the Transfer of Property Act. This Court has further while dealing with the certain provisions of the Ceiling Act has in unequivocal terms held that the transfer under the Ceiling Act would not include the testamentary disposition of the property not made inter vivos. In that view of the matter, insofar as the findings of the learned S. D. O. that the transfer is bad in law in view of provisions of Section 29(3) of the said Act is not sustainable in law.

7. The next question that arises is whether it is necessary to obtain a probate, so as to claim right as executor or legatee for the lands in question.

8. It would be appropriate to refer to certain provisions of the Succession Act. The relevant portion of Section 213 reads as under:-

"S. 213. Right as executor or legatee when established. - (1) No right as

executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in India has granted probate of the will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed.

(2) This section shall not apply in the case of wills made by Muhammadans, and shall only apply -

(i) in the case of wills made by any Hindu, Buddhist, Sikh or Jaina where such wills are of the classes specified in Clauses (a) and (b) of Section 57; and

(ii)"

Section 57 reads as under :-

"Section 57. Application of certain provisions of Part to be a class of wills made by Hindus, etc. :-

The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply -

(a) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such Wills and codicils made outside those territories and limits so far as relates to immovable property situate within those territories or limits and

(c) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applied by Clauses (a) and (b):

Provided that marriage shall not revoke any such will or codicil."

9. In the case of Jyoti w/o Jagdish Singhai (cited supra) one Padmabai had asked for reference u/s 18 of the Land Acquisition Act and the matter was referred to the Civil Court. During the pendency of the reference, said Padmabai made a Will on 11-4-1974 under which she had bequeathed some immovable properties belonging to her to some persons other than the applicant in the said writ petition. However, by residuary clause in the Will she bequeathed all her movable and immovable properties belonging to her to the applicant in the said writ petition. During the pendency of the proceedings, Padmabai expired on 19-6-1974. The applicant Jyoti by her application applied for her name to be brought on record in the place of Padmabai. In the said application, she had based her claim on the strength of the said Will. An objection was raised that the right to claim compensation could not be considered in the absence of probate or letter of administration from the competent Court. The learned District Judge had directed the applicant Jyoti to obtain probate within a period of three months and

stayed the proceedings for that period. That order was subject matter of challenge in the said writ petition.

10. This Court while considering the provisions of Section 213 read with Section 57, found that generally if an executor or a legatee claims anything under the Will, he has to obtain a probate or letter of administration if he wants to establish his right in any Court of justice. However, this general rule as contemplated u/s 213 was subject to certain exceptions, which were provided in Sub-section (2) of that Section itself. Sub-section (2) provided that Section 213 will not apply in case of Wills made by Mohammedans but it shall apply only in case of Wills made by Hindus, Buddhists, Sikhs, Jaina where such Wills are of the class specified in Clauses (a) and (b) of Section 57.

11. It can be seen that Clause (a) applies to Wills made by Hindus, Buddhist, Sikhs or Jains on or after 1st day of September, 1870 within the territory mentioned therein. It could further be seen that Clause (a) applies to Wills made within the territories which at the said date were subject to Lieutenant Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras or Bombay. It could further be seen that it applies to both movable as well as immovable properties. Then Clause (b) governs all such wills and codicils made outside those territories or limits. Thus, in all the territories excluding the territories included in Clause (a) insofar as they relate to immovable properties, they would be governed by the general rule as contemplated u/s 213.

12. Clause (c) of Section 57 deals with all Wills and codicils made by any Hindu, Buddhist, Sikh or Jain on or after the 1st day of January, 1927 to which those provisions are not applied by Clauses (a) and (b).

13. It can clearly be seen that the present Will is executed at Yavatmal which is admittedly not covered under the territories included in Clause, (a) of Section 57. For all other territories, if the property is an immovable property, it will be governed by the general rule of Section 213 if the property is an immovable property. However, admittedly, the property in question is not an immovable property. Therefore, the Will of the nature with which we are concerned would be governed by Clause (c) of Section 57. Now referring back to Section 213, it will be clear that the general rule, wherein it has been made necessary to obtain a probate or letter of administration for raising a right as executor or legatee, by virtue of Sub-section (2) has been made applicable to wills made by any Hindu. Buddhist. Sikh or Jaina where such Wills are referable to clauses specified in Clauses (a) and (b) of Section 57. It is, therefore, clear that the Wills of the nature covered by Sub-clause (c) of Section 57 are not covered by the general rule u/s 213, which requires a probate or letter of administration to enable a person to raise a claim to a right as an executor or legatee. The Legislature by exclusion has not made the provisions of Section 213 applicable to the Wills covered under the provisions of Sub-clause (c) of Section 57.

14. I am, therefore, in respectful agreement with the view taken by this Court in the aforesaid case of Jyoti, cited supra, wherein it has been held that for the Wills which are covered under Sub-clause (c) of Section 57, it is not necessary to obtain a probate or letter of administration, so as to establish right as an executor or legatee.

15. In that view of the matter, I am of the considered view that the approach of the learned M. R. T. in directing the petitioner to obtain heirship certificate within a stipulated period was not right in law. The petitioner could have established his right as executor or legatee even without there being a probate or letter of administration in his favour. The directions, therefore, in so far as that aspect of the matter is concerned by the learned M. R. T. are not sustainable in law in view of the judgment of this Court in the aforesaid case of Jyoti cited supra. These directions will, therefore, have to be quashed and set aside.

16. In that view of the matter, the order of the learned S. D. O. rejecting the application of the petitioner for adducing the evidence will also not be sustainable in law.

17. The petitioner in view of provisions of Section 213 read with Section 57 of the Succession Act is entitled to base his claim on a Will without there being a probate or a letter of administration. It is a different matter as to whether the petitioner will be in a position to establish his claim or not. But not to permit the petitioner to lead the evidence, in my view, would be travesty of justice. The petitioner is entitled to raise his claim in view of the aforesaid discussions on the basis of the Will without there being a probate or a letter of administration granted to him.

18. In that view of the matter, the writ petition is allowed. The order passed by the learned Member, Maharashtra Revenue Tribunal dated 23-1-2002, thereby directing the petitioner to obtain heirship certificate and the order passed by the learned Sub-Divisional Officer dated 30-4-2002, thereby refusing the permission to the petitioner to adduce documentary and oral evidence are hereby quashed and set aside. The learned Sub-Divisional Officer is directed to hold the enquiry afresh, by granting opportunity to the petitioner to adduce oral as well as documentary evidence. The learned Sub-Divisional Officer is directed to take appropriate decision after considering the evidence led by the petitioner, in accordance with law.

19. Rule is accordingly made absolute with no order as to the costs.