

(2018) 01 BOM CK 0015
In the Bombay High Court
Case No : 11550 of 2017

Pramila Balasaheb Bhintade & Ors.

APPELLANT

Vs

Anusaya Sarjerao Gujar & Ors.

RESPONDENT

Date of Decision : 11-01-2018

Acts Referred:

Constitution of India, Article 227 -
Power of superintendence over all courts by the High Court
Bombay Tenancy and Agricultural Lands Act, 1948, Section 15, Section 29(2), Section 33-B - Surrender by tenant - Procedure of taking
possession

Citation : (2018) 01 BOM CK 0015

Hon'ble Judges : Dr. Shalini Phansalkar-Joshi

Bench : Division Bench

Advocate : Dhananjayrao D. Rananaware, Vijay D. Patil

Final Decision : Allowed

Judgement

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Mr. Rananaware, learned counsel for the Petitioners, and Mr. Patil, learned counsel for the Respondents.

2. By this Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 4th October 2017 passed by the District Judge-3, Satara, thereby allowing the Miscellaneous Civil Appeal No.96 of 2017, which Appeal was preferred by the Respondents herein challenging the order dated 6th May 2017 passed by the 7th Joint Civil Judge, Junior Division, Satara, below "Exhibit-5" in Regular Civil Suit No.480 of 2014.

3. The Petitioners herein are the Original Plaintiffs, who had filed the Suit for declaration that, they are the owners and in possession of the suit property and for perpetual injunction, restraining the Respondents from creating obstruction to their peaceful possession over the suit property. Along with the Suit, they had

filed the application for interim injunction at "Exhibit-5", which came to be allowed by the Trial Court. However, in the Civil Miscellaneous Appeal preferred against the same, the order of interim injunction granted by the Trial Court came to be vacated.

4. The case of the Petitioners is that, the agricultural lands, bearing Gat No.169, admeasuring 40 R, situate at Mouje Ambavade, and Gat No.461, admeasuring 70 R, situate at Mouje Bhondawade, Taluka and District Satara, were owned by them. The predecessor of the Respondents, namely, "Bajirao Khetri Gujar" was the protected tenant in the said lands. The Petitioners' predecessor had, therefore, filed Tenancy Case No.54 of 1962, under Section 33-B of the Bombay Tenancy and Agricultural Lands Act, 1948, for recovery of possession of the agricultural lands to the extent of 20 R, out of Gat No.169, and 63 R, out of Gat No.461. The said proceedings were decided in favour of the Petitioners' predecessor on 31st July 1962 and the Respondents' predecessors were directed to handover possession of the said portion of

the lands. As per the Petitioners, the possession of the said portions of the lands, which formed the subject matter of the Suit, was, accordingly, delivered to them in the year 1968 by executing the Possession Receipt (Kabjepatti). The mutation entry to that effect, bearing Mutation Entry No.10, was certified in respect of the suit land, bearing Gat No.461 at Village Bhondawade; while Mutation Entry No.60 was certified in respect of the land bearing Gat No.169 at Village Ambavade. According to the Petitioners, since then, they are in peaceful possession and enjoyment of the suit properties.

5. However, in the meanwhile, the Respondents had initiated Tenancy Proceeding No.31/Ambavade and 20/Bhondawade for purchasing the remaining portion of 20 R, out of Gat No.169, and 7 R, out of Gat No.461. Accordingly, "32-M Certificate" was issued in favour of their predecessor. However, while issuing "32-M Certificate", the entire area of Gat Nos.169 and 461 was wrongly mentioned in the said Certificate. Therefore, the Petitioners initiated proceedings by filing R.T.S. Appeal No.77 of 1985 for cancellation of the mutation entries certified in respect of the whole Gat Nos.169 and 461 in the name of the Respondents' predecessor. The said Appeal has been allowed by the Sub- Divisional Officer, Satara, by an order dated 26th November 1985. The Respondents challenged the said order by filing Second Appeal No.28 of 1981, but not succeeded therein. The Petitioners thereafter filed

Tenancy Inspection Application No.102 of 1993 and Tenancy Appeal No.103 of 1993 for correction of "32-M Certificate" issued in favour of the Respondents' predecessor. The same has been allowed by the Sub- Divisional Officer, Satara, by an order dated 30th March 2002. Accordingly, the names of the Petitioners and Respondents are recorded in the Revenue Record of Gat No.169 and Gat No.461 to the extent of their areas as per the Mutation Entry Nos.708 and 474, respectively.

6. In the backdrop of these facts, the Petitioners claimed the relief of interim injunction, restraining the Respondents from causing obstruction to their possession in the suit lands. The learned Trial Court, after considering the above-said factual aspects and the Revenue Record, allowed the said application holding that, the Petitioners have succeeded in proving their title and possession over the suit properties on the date of filing of the Suit.

7. However, in the Miscellaneous Civil Appeal preferred by the Respondents against the said order, the learned Appellate Court was pleased to hold that, in the absence of any evidence produced on record by the Petitioners, showing that possession of the suit lands was actually delivered to them, as per the procedure laid down under Sections 15 and 29(2) of the Bombay Tenancy and Agricultural Lands Act, 1948, the Petitioners cannot be held to have acquired and thereafter to be in possession of the suit lands. The Appellate Court, therefore, held that, the Petitioners are not entitled to get the relief of interim injunction. The learned Appellate Court, hence, vacated the order of interim injunction passed by the Trial Court in favour of the Petitioners, by allowing the said Appeal.

8. While challenging this impugned order of the Appellate Court, the submission of learned counsel for the Petitioners is two fold. In the first place, it is submitted that, when the Trial Court has exercised its discretion while granting the relief of temporary injunction and that discretion is based upon consideration of material placed before it and is supported by the cogent reasons, the Appellate Court should not have interfered in the said discretion and substituted its own view; especially when the view taken by the Trial Court cannot be said to be perverse in any way.

9. Secondly, it is submitted that, the Revenue Record, which is the prima facie proof of possession over the suit land, clearly goes to show that it is the Petitioners, who are in possession of the said lands. The Trial Court has given its due weightage to the Revenue Record and the Mutation Entry Nos.10 and 60. The Appellate Court should not have brushed aside the said record on supposed consideration that the due procedure for handing over the possession was not followed. It is urged that, at the stage of deciding the application for interim injunction, the Court is not required to consider the legality or nature of the possession, but only the physical possession and which was sufficiently proved to be that of the Petitioners from the mutation entries in the "7/12 Extract". As the Appellate Court has discarded the same and rejected the Petitioners' application for interim injunction, the impugned order passed by the Appellate Court, according to the learned counsel for the Petitioners, cannot be sustained in law and is, hence, liable to be quashed and set aside.

10. Per contra, learned counsel for the Respondents has supported the said order for the reasons given in the same; especially highlighting the aspect that, Section 29(2) of the Bombay Tenancy and Agricultural Lands Act, 1948, mandates a procedure to be followed, when the possession of the land is to be handed over from the tenant to the landlord. In the instant case, there is no

material, worth the name, to show that such procedure was followed. Neither the Possession Receipt (Kabjepatti) is produced, nor any document is produced to show that any inquiry was held by the Mamlatdar before handing over such possession. Thus, according to learned counsel for the Respondents, sans any evidence proving that the possession was actually delivered to the Petitioners by taking it over from the Respondents-tenants, the Appellate Court has rightly held that, in the absence of such evidence, the Petitioners cannot be held to be in possession of the suit lands and the aspect of physical possession over the suit lands being of vital importance for deciding the application for interim injunction and delivery of that physical possession being not proved and the presumption raised by the mutation entries in the Revenue Record being rebutted thereby, the Appellate Court has rightly rejected the Petitioners' application for interim injunction, thereby setting aside the order passed by the Trial Court. According to learned counsel for the Respondents, when the Trial Court has not exercised its discretion properly, it was incumbent on the part of the Appellate Court to interfere in the said discretion, to correct the same.

11. In this case, the only disputed point for consideration is, "whether the Petitioners were actually put into physical possession of the suit lands?" As regards the proceedings before the Tenancy Authorities, initiated by the Petitioners, under Section 33-B of the Bombay Tenancy and Agricultural Lands Act, 1948, which culminated in holding them entitled to the possession of the suit lands, there is no dispute. It is also not disputed that, in respect of the remaining portion of the said lands, the Respondents have obtained "32-M Certificate" and it has become final. It is further not disputed that, as the "32-M Certificate" was initially issued in respect of entire portion of both the lands, on the application given by the Petitioners, the said "32-M Certificate" also came to be corrected. The Tenancy Appeal preferred to that effect by the Petitioners came to be allowed and the Appeal preferred against the same was rejected. Thus, as on today, the Mutation Entry Nos.708 and 474 are standing, respectively, in the names of the Petitioners and Respondents in respect of the areas, to which they are held entitled.

12. To prove that the possession of the suit lands was actually given to them in the year 1968 itself, after the Tenancy Case No.54 of 1962, filed under Section 33-B of the Bombay Tenancy and Agricultural Lands Act, 1948, was decided on 31st July 1962, the Petitioners are relying on the Mutation Entry Nos.10 and 60. The copies of those mutation entries are also produced on record and they reveal that, on the basis of the Possession Receipt (Kabjepatti) dated 16th June 1968, as a result of decision in Tenancy Case No.54 of 1962, the name of the Petitioners were entered in the "Record of Rights". Those mutation entries were neither challenged by the Respondents, nor set aside till the year 1984, when, on account of the "32-M Certificate", issued in the name of the Respondents, inadvertently, in respect of the entire area of both the Gat numbers, the name of the Petitioners came to be removed. However, again after the "32-M Certificate" was corrected, new Mutation Entries Nos.708 and 474 were made and thus, the

names of the Petitioners are definitely appearing in the "Record of Rights" of the suit lands.

13. The question for consideration is, "whether these mutation entries and the entries in the "7/12 Extract" of the suit lands, which are prima facie proof of possession, can be ignored or discarded while deciding the application for interim injunction filed by the Petitioners?"

14. In my considered opinion, the answer thereto has to be held in the negative, because, the mutation entry carry a weight and the presumption; especially, in the present case, when such mutation entry is made on the basis of the Possession Receipt and, that too, in view of the decision given in Tenancy Case No.54 of 1962, which decision has attained finality. As stated above, these Mutation Entries Nos.10 and 60, made in the year 1968, were never challenged at any time by the Respondents also.

15. As to the question "whether the requisite procedure laid down under Section 29(2) of the Bombay Tenancy and Agricultural Lands Act, 1948, of filing an application and Mamlatdar holding inquiry thereto" , is followed or not, it has to be held as complied with in this case, as there is a presumption that all the official acts are done in official way; unless it is shown that they are not so done and the burden is upon the other parties, which asserts that they were not done in the official way or in the manner prescribed by law. Here in the case, the mutation entries clearly go to show that, on the basis of the Possession Receipt (Kabjepatti), the mutation entries were made and, therefore, it follows that such Possession Receipt was executed and one can presume that, it being an official act of the Revenue Authorities, the requisite procedure for executing Possession Receipt was followed. Now it may be, because of lapse of time of more than about 60 years, that the "Document of Possession Receipt" may not be available for the Petitioners to prove that such Possession Receipt was executed or the inquiry was actually conducted. But then, there is no reason to disbelieve the same also, as the Revenue Authorities like Mamlatdar or Tenancy Karkoon were required to follow the procedure, when they were handing over possession from a tenant to the landlord and, that too, on the basis of the decision passed in Tenancy Case No.54 of 1962, under Section 33-B of the Bombay Tenancy and Agricultural Lands Act. At this prima facie stage, there is no reason to disbelieve these mutation entries or to discard them on the supposed consideration that such procedure was not followed, only because the Petitioners have failed to produce the documentary evidence to that effect, on account of their inability to do so due to passage of time.

16. According to learned counsel for the Respondents, however, the Judgment in Tenancy A.L.T. Case No.20 and 31, the copy of which is produced at "Exhibit-C" to the Petition, goes to show that, in the said case, there is clear observation to the effect that, "as the landlord died in the year 1964 before taking over the possession, the decree could not be executed, heirs of the Deceased landlord have already applied to the Mamlatdar, Satara, for grant of possession of the

portions, to which they are held entitled in pursuance of the Decree". Thus, it is submitted that, these averments in the said decision go to show that such possession was not handed over to the Petitioners.

17. However, it is pertinent to note that, this Tenancy Case was decided on 20th February 1967. The very case of the Petitioners is that, the possession was handed over to them in pursuance of the Possession Receipt dated 16th June 1968. Therefore, no question arises of these observations coming into the way of the Petitioners to hold that possession was not delivered to them. Conversely, these observations show that, Petitioners had already applied to the Mamlatdar for grant of possession of the portion given to them as per the order passed under Section 33-B of the Bombay Tenancy and Agricultural Lands Act, 1948. The very fact that such application was made to the Mamlatdar, goes to, prima facie, prove that the procedure required under Section 29(2) of the Bombay Tenancy and Agricultural Lands Act, 1948 Act, was followed.

18. Even further, the averments made in the said decision, in discussion of Issue No.3, show that the Respondents had also, in the said inquiry before the Tenancy Authority, showed their willingness to handover portion of the lands to the legal heirs of the landlord for personal cultivation. Therefore, as regards the delivery of possession of the suit lands, to which the Petitioners were held entitled, under Section 33-B of the Bombay Tenancy and Agricultural Lands Act, 1948, there should not be any reason to doubt.

19. Even in the proceedings for correction of "32-M Certificate", bearing R.T.S. Appeal No.77 of 1985, the copy of which is produced at Exhibit "D" to the Petition, though the Respondents had challenged the possession of the Petitioners on the ground that Possession Receipt (Kabjepatti) was not produced, the said contention was rejected, having regard to the entries in the "7/12 Extract" from the year "1966-67 to 1976-77" in respect of Gat No.461 and "1966-1967 to 1979-1980" in respect of Gat No.169 in the names of the Petitioners. Even in R.T.S. Appeal No.28 of 1986 also, the copy of which is produced on record at Exhibit-A, it was categorically held that, the Respondents, i.e. the present Petitioners, have obtained possession of the suit lands in pursuance of the Possession Receipt (Kabjepatti) dated 16th June 1968, as per the order passed under Section 33-B of the Bombay Tenancy and Agricultural Lands Act, 1948, and they are in possession of their respective portions.

20. Thus, consistent evidence on record goes to show that the Petitioners were actually put into possession of the suit lands. Only because of the non-availability of the relevant documents like Possession Receipt and the papers of inquiry conducted by the Mamlatdar, that too, on account of passage of time and for no fault on the part of the Petitioners, the Appellate Court has, on supposed consideration that such requisite procedure laid down in Section 29(2) of the Bombay Tenancy and Agricultural Lands Act, 1948, was not followed, disbelieved these mutation entries and disturbed the well reasoned order of the Trial Court. As rightly held by the Trial Court, at the stage of deciding the application for

interim injunction, the Court can safely place reliance on the entries in the "Revenue Record" and in this case, those entries clearly go to show the Petitioners' possession in the suit land. Those entries also show that requisite procedure was followed. The presumption of official acts being done in proper official way, in accordance with the law, was also available in the case. That presumption does not stand rebutted at this stage. For the purpose of deciding the application for interim injunction, as there was sufficient material, proving the possession of the Petitioners over the suit property since the year 1968, the Appellate Court should not have disturbed the well-reasoned order of the Trial Court.

21. When the view taken by the Trial Court was the possible view of the matter based on the material produced before it, the Appellate Court has committed a jurisdiction error in substituting its own discretion in the place of the discretion exercised by the Trial Court. The law is fairly well settled that the Appellate Court should not interfere in the discretionary order passed by the Trial Court in respect of interim injunction, unless it comes to the conclusion that the order is vitiated by an error apparent or it is perverse and it can result into manifest injustice.

22. As held by the Apex Court in the case of Skyline Education Institute (India) Private Limited Vs. S.L. Vaswani & Anr., 2010 (2) ALL MR 427, "The Appellate Court should be loath to interfere in the discretionary order of the Trial Court, simply because of a de novo consideration of the matter, it is possible for the Appellate Court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity."

23. One can also place reliance in this respect on the landmark decision of the Apex Court in the case of Wander Ltd. & Anr. vs. Antox India P. Ltd., 1990 (supp.) SCC 727, wherein the Apex Court has reiterated that, the Appellate Court should restrain itself from interfering in the discretion exercised by the Trial Court, merely because the Appellate Court may arrive at a different view. For ready reference, paragraph No.14 of the said Judgment can be reproduced as follows :- "14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the Court of first instance and substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely, or, where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not re-assess the material and seek to reach a conclusion different from the one reached by the Court below, if the one reached by that Court was reasonably possible on the material. The Appellate Court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage, it would have come to a contrary conclusion. If the discretion has been

exercised by the trial Court reasonably and in a judicial manner, the fact that the Appellate Court would have taken a different view, may not justify interference with the trial Court's exercise of discretion."

24. In the instant case, therefore, it has to be held that, the impugned order passed by the Appellate Court cannot be sustained in law on merits, as well as being found to be beyond the scope of its jurisdiction. The Writ Petition is, therefore, allowed. The impugned order passed by the Appellate Court is set aside and the order passed by the Trial Court below "Exhibit-5" is restored.

25. Rule is made absolute in the above terms.