

(2000) 08 BOM CK 0035

In the Bombay High Court

Case No : Writ Petition No. 2398 of 1986

Rahibai Ladkya Patil since deceased by her heir Waman
Narayan Patil

APPELLANT

Vs

Mathuradas Ramchandra Agarwal, since deceased by his
heirs

RESPONDENT

Date of Decision : 31-08-2000

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 18A, 32G

Citation : (2001) 1 BomCR 420 : (2001) 1 MhLj 242

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

**Advocate : G.B. Karandikar, for the Appellant; M.V. Sali, for Respondent No. 1A,
for the Respondent**

Final Decision : Allowed

Judgement

T.K. Chandrashekhara Das, J.—The petitioner had filed a suit as Civil Suit No. 430 of 1971 against the respondents for injunction restraining them from disturbing the possession of the petitioner. The petitioner claimed to be the tenant of an agricultural land admeasuring 2 acres 20 gunthas in Survey No. 77/3. The claim of tenancy made by the petitioner in the suit, was contested by the respondents. In that circumstances, the question of tenancy was referred to by the Civil Judge J.D. u/s 18-A of the Bombay Tenancy and Agricultural Lands Act, 1940 to the Tahsildar, A.L.T. Thane. The Tahsildar registered the case as Tenancy Case No. 12/1977 and by its order dated 3rd August 1978, the claim of the tenancy made by the petitioner in respect of the suit land was found against. Against that finding, the petitioner filed an appeal before the Additional Collector, Thane. The Additional Collector, Thane registered the appeal TNC/Appeal/18/1979 and passed an order dated 31-3-1982 dismissing the appeal and confirmed the order of the Tahsildar. The petitioner thereupon filed revision before the Revenue Tribunal as TNA No. 181 of 1982. The Revisional Court also dismissed the revision by its order dated 25-7-1985. Therefore, all the authorities below have

found that the petitioner is not cultivating tenant in respect of the land.

2. According to petitioner, the suit property was originally belonging to His Highness Maharaja of Morvi and subsequently one Samaldas Laxmidas Gandhi became the owner of the land. As per the extract of record of rights in respect of Survey No. 77/3, from the year 1931-32, one Gandlya Shinvar was cultivating the land as a tenant till 1935-36. Thereafter, it appears that from the extract of revenue record from 1936-37, the name of one Ladkya Gandlya was appeared in the records as cultivating tenant on payment of 21 mounds of paddy as rent and his name was shown in the records till the year 1956-57. It also appears in the records that till 1950-51, his name was shown as a protected tenant. It is not disputed that Rahibai was the wife of Ladkya Gandlya. Therefore, it could be legitimately assumed that after death of Ladkya Gandlya, the property devolved upon Rahibai as a tenant. The aforesaid Rahibai thus filed the suit and the present petitioner on her death, claimed to be a legatee of Rahibai, steps into the shoe of her and continue the litigation.

3. It is significant to note that all the authorities below, referred to the entries made in the revenue extracts, which shows that Ladkya's name was entered into the records till 1951-52 as a protected tenant but this fact which was disclosed in evidence, has not been properly appreciated and considered by any of the authorities below. In other words, all the authorities relied upon the order passed by the Consolidation Officer in consolidation proceedings initiated in respect of certain lands including the suit property. It may be noted that in consolidation scheme, the land in Survey No. 77/3 allotted to Mr. M.R. Agarwal in Gat No. 60/1 and by letter dated 31-1-1966, Consolidation Officer has informed him that the name of the tenant entered into the register is a clerical mistake and it was ordered to be rectified and thereby the name was deleted. It is to be noted here that the proceedings of the Settlement Commissioner seems to have been taken away the evidentiary value of the entry in the revenue extracts in favour of the tenant as noted above. It is the case of the petitioner that the correction made by the Settlement Commissioner was done without notice to Rahibai or to the petitioner. The contention of the respondents before the authorities that Rahibai or petitioner did not file appeal against the proceedings of the Settlement Commissioner, has been accepted in favour of the respondents. It amounts to a serious miscarriage of justice. Moreover, the authorities below have found that the revenue entries started from 1933 continued till 1957 showing that Rahibai is the protected tenant in the property, which were not considered by the lower authorities. They were only swayed by the oral evidence led by Rahibai and also the correction made by Settlement Commissioner in the property. It is surprising to note that such evidentiary value of an ancient document of revenue extract, has been brushed aside by the authorities below without any justification and denied the claim of the tenancy made by the petitioner heavily depending upon the correction entry made by the Settlement Commissioner. It is interesting to note what has been corrected by the Settlement Commissioner, the portion respecting tenancy only. The documents however, did not correct the portion that

the petitioner or Rahibai was in possession of property. The learned Counsel for the petitioner submits that by invoking section 31-A of the Bombay Fragmentation and Consolidation of Lands Holding Act, 1947, the Settlement Commissioner is not competent to change the status of a party. What is admissible under the Act, is only to correct the certain clerical or typographical error. It is needless to say that entries made in the revenue extracts to the effect that Rahibai is the protected tenant, has been taken away in the consolidation proceeding; that too, on a complaint made by the respondent.

4. The learned Counsel for the respondents, however, asserted that this change effected in the entry in the consolidation proceedings, must be presumed that it is after following the procedure. On the contrary, contention of the learned Counsel for the petitioner is that the entry was made behind back of the petitioner or Rahibai. Be that as it may, it has to be ascertained whether the correction has been made by the Settlement Commissioner after issuing proper notice to the concerned persons, as is not borne out from records that such a notice was given. However, there is absolutely no discussion by any of the authorities below as to how they discarded such valid evidence such as entry in the revenue records which afford to draw strong inference on the basis of an ancient document relating to the status of the party and property in the absence of equal and strong cogent evidence to upset those inferences. On perusal of impugned order, I can see that only on an oral admission made by Smt. Rahibai where she admits that she is the owner and she does not know the rent that is being paid and she does not know who is the landlord, etc. It appears that heavy reliance is placed upon the oral evidence of the petitioner. According to me, in the teeth of the documentary evidence i.e. public document which is maintained in the ordinary course of business of the Government, cannot be simply brushed aside even in the light of the oral admission made by the party. While appreciating the evidence of a party, we should take into consideration other attendant circumstances. The case of Rahibai is that her husband was continuously cultivating the lands from 1931 onwards and after death of her husband, she was cultivating the land and till 1960 nobody had disturbed that cultivation and therefore, she, who is an illiterate lady, may be under impression that she may be cultivating the land as an absolute owner of the land. Moreover, if she is tenant on 1-4-1957, one cannot blame her in her assertion which she made that she is owner of the property. Under any circumstances, I do not find any material before the authorities to outweigh the evidentiary value of the revenue extracts which were there in 1931 to 1958 and therefore, available evidence is quite insufficient to overthrow the strong inference that can be drawn from the revenue records. Under the circumstances, two aspects have to be gone into by the authorities viz : (1) whether before the entry is corrected, Settlement Commissioner has issued notice to the concerned parties and if it is not, that correction cannot be countenance to and (2) the authorities have to arrive at the findings as to how they discarded the revenue entries which were existing from 1931 to 1958 to deny the status of the petitioner as tenant. For the purpose of

answering these two legal aspects, I remand the matter back to the Tahsildar concerned. For that purpose, the impugned orders at Exhibits A, B and C are set aside. The Tahsildar should reconsider the matter afresh in the light of observations made hereinabove, after giving opportunity to the parties concerned to lead evidence.

5. In the result, the petition is allowed. Order impugned, is set aside. Rule is made absolute in the above terms.