

(1966) 10 BOM CK 0009

In the Bombay High Court

Case No : Civil Revision Application No. 924 of 1964

Rajaram Totaram Patel

APPELLANT

Vs

Mahipat Mahadu Patel and Others

RESPONDENT

Date of Decision : 27-10-1966

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 70, 85

Citation : AIR 1967 Bom 408 : (1967) 69 BOMLR 282 : (1967) MhLj 522

Hon'ble Judges : Kotval, C.J.;Tarkunde, J;Chitale, J

Bench : Full Bench

Advocate : H.R. Shah, for V.M. Limaye, for the Appellant; K.R. Bengeri, C.K. Bengeri and U.K. Bengeri, for the Respondent

Judgement

Kotval, C.J.

(1) This revision application was referred first to a Division Bench by Mr. Justice Chandrachud and the Division Bench referred it to a Full Bench, because they found that there was some conflict between two decisions of two Division Benches on the question as to the proper construction of Section 70(b) of the Bombay Tenancy and Agricultural Lands Act read with Section 85 thereof.

(2) The matter arose out of a suit filed by the plaintiffs alleging that the plaintiffs and the sole defendant were co-tenants of a field bearing Survey No. 139, but on 20-6-1962 the defendant obstructed the plaintiffs' cultivation contending that he had been declared the purchaser of the field by the Tenancy Court after the tiller's day under the said Act. The plaintiffs' case was that the decision to declare the defendant as the purchaser tenant was taken behind their back and without hearing them, and that they should have been declared the purchasers along with the defendant. The plaintiffs alleged in the suit that they were in possession and claimed an injunction against the defendant restraining him from interfering with their possession. The defendant on his part alleged that he was the sole tenant and the plaintiffs had no right to appeal. A preliminary issue came to be raised as to whether the Civil Court had jurisdiction to try the suit in

view of the provisions of Sections 70 and 85 of the Tenancy Act. The Civil Judge relying upon a decision of this Court in *Sidhrata Bujanga Gujare v. Rachappa Bujanga Gujare*, Special Civil Appln. No. 3059 of 1956 (Bom), decided by a Division Bench on 24-1-1957 held that Section 70 contemplated a decision by the Revenue Court of the dispute between a landlord and tenant only and not between two persons both of whom claimed to be the owners of the tenancy rights. Therefore, the case did not fall within the ambit of Section 70 (b) of the Act and the Civil Court would have jurisdiction to try the suit.

(3) Undoubtedly the question that arises is a question which will govern a large number of a cases and for that very reason we also find that the question is dealt with in a very large number of decisions of this Court to some of which we shall presently refer. In the decision which was relied upon by the Civil Judge the plaintiff had claimed a declaration that the defendant, his brother was not a tenant and had dispossessed the plaintiff, though the defendant had absolutely no interest in the tenancy. It was argued by Counsel before the Division Bench that such a question raised by the plaintiff was a question whether the plaintiff was an exclusive owner of the tenancy lands in dispute and whether the defendant had no interest in the tenancy whatsoever. Such a claim, it was urged, raised a question of title and not of tenancy and, therefore, the provisions of Section 70 of the Tenancy Act would not be attracted. That contention prevailed with the Division Bench, and they observed;

"By Section 70 one of the duties/imposed on the Mamlatdar is to decide whether a person is a tenant or a protected tenant. That, in our view, contemplates a decision by the Mamlatdar of a dispute between a landlord and a tenant and not between two persons who claimed to be the owners of certain tenancy rights."

In so far as the Division Bench held that the question "whether a person is a tenant or a protected tenant" falls u/s 70 because it raises a dispute between a landlord and a tenant, one can take no exception. But then follows the further observation which has caused an acute debate at the Bar, viz., that the question under S. 70 does not relate to a dispute "between two persons who claimed to be the owners of certain tenancy rights."

(4) Before we go to the decisions, we may say a word as to the provisions of law, which should govern the question. Section 85 (1) says that:

"No Civil court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal, a Manager, the Collector or the Maharashtra Revenue Tribunal in appeal or revision or the State Government in exercise of their powers of control".

The Explanation to the section indicates that a Mamlatdar's court constituted under the Mamlatdar's Courts Act, 1906,. is for the purpose of the section a Civil Court. But for that express declaration a Mamlatdar's Court is not a Civil Court./ It will be noticed, therefore, that if the matter should fall within the jurisdiction of

the Mamlatdar (we are not here concerned with the other authorities mentioned in Section 85(1)), then the Civil Court's jurisdiction would be ousted.

(5) As to the matters which would fall all within the jurisdiction or some within the purview of the Mamlatdar, Section 70 indicates what matters will so fall. They are mentioned in Clauses (a) to (o) of that Section. The relevant clause is only Clause (b) which runs as follows

"For the purposes of this Act the following shall be the duties and functions to be performed by the Mamlatdar

(b) to decide whether a person is a tenant or a protected tenant or a permanent tenant".

We are not here concerned with the claim of a permanent tenant or a protected tenant, but undoubtedly involved in the plaint allegation was the plea that the defendant was not a tenant.

(6) We may first of all dispose of the argument that since the section in conferring power upon the Mamlatdar uses the words "to decide whether a person is a tenant", there is no power to decide that a person is not a tenant, in other words, that the negative issue cannot be tried, though the positive issue whether a person is a tenant can be so tried. Now, in this respect it is unnecessary to discuss the matter in detail, for we think that the question is settled by the decision of a Full bench of this Court in *Nivrutti Laxman Kondobahiri v. Shivdayal Laxminarayan Sarda*. 61 Bom LR 957: AIR 1960 Bom 56. That was a case where precisely the same prayer was made that the defendant was not the tenant. Of course, in that case it was the landlord making the prayer and not another tenant, but that does not affect the position so far as the point before us is concerned. One of the points urged before the Full Bench was that u/s 70 (b) the Mamlatdar can have no jurisdiction to decide upon the relief claimed, viz., that the defendant was not the plaintiff's tenant. The contention was repelled as follows:

"Under Clause (b) of Section 70 of the Act, the Mamlatdar has jurisdiction to determine whether a person is a tenant. He can, therefore, also decide that a person is not a tenant. If he can decide this question on an application made to him by a tenant, it is difficult to understand why he should not be able to decide this question, when the application is made by the landlord. In either case, the question which the Mamlatdar will have to determine is whether the relationship of landlord and tenant exists between the parties. The jurisdiction to decide this question vests exclusively in the Mamlatdar and the Civil Court is not competent to decide it."

The decision of the Full Bench was, in our opinion, and we say so with all respect, a correct decision, and is binding upon us.

(7) A contrary view was brought to our notice, expressed by a Full bench of the Mysore High Court in *Rachagouda v. Kamabai* AIR 1963 Mys 21 . The case arose

under the same Act and, no doubt, the Full Bench held that the Mamlatdar is not competent to give a negative declaration that a person is not a tenant. Since, however, the Mysore Full Bench has expressly referred to the above decision of the Full bench of this Court, and dissented from it, and since, in our view, the decision of this Court was with all respect, a correct decision, we turn to examine the reasons which impelled the decision of the Mysore High Court.

(8) In coming to their decision that a negative declaration that a person is not a tenant cannot be granted by the Mamlatdar u/s 70 (b) of the Act the Mysore High Court referred to the opening clause of section 70 (b) and particularly the words used therein "For the purposes of this Act." One argument which was advanced before them was that nothing which is not for the purposes of the Act can be the duty of the Mamlatdar. The Mysore High Court accepted that contention and construed clause (b) of section 70 in the light of the opening clause of section 70. It was also argued before us that it could surely not be the purpose of the Act to decide, whether at the instance of the landlord or the tenant or any other person, that a person is not a tenant and, therefore, clause (b) of section 70 should be construed in conformity with the opening clause of section 70 and confined only to cases of declaration that a person is a tenant. It seems to us that the argument merely begs the real question to be determined. Every decision which affirmatively states that a fact exists necessarily implies that the negative does not exist. If a Mamlatdar decides that a person is a tenant he necessarily negatives the issue that he is not a tenant, yet it is said that he can decide the former but not the latter issue. Vice versa if the Mamlatdar decides that a person is not a tenant he necessarily negatives the issue that he is a tenant. Yet in this case it argued that he cannot decide the former issue but only the latter one. Why the Mamlatdar cannot do so it is difficult to see. Similarly every decision which the Mamlatdar may make that a person is a tenant in a litigation between two parties both claiming to be tenants must necessarily imply a decision that the other party is not a tenant. We are unable to appreciate the contention, therefore, that the latter issue cannot be decided by the Mamlatdar for the purposes of the Act.

(9) The same argument was advanced before the Full Bench of this Court in 61 Bom LR 957 = AIR 1960 Bom 56, and in terms negated in the passage, which we have quoted above. Of course, the facts of the case before the Full bench were somewhat different. There it was contended that the landlord cannot ask that it be declared that a person is not his tenant. Here it is being contended that co-tenant cannot ask that another co-tenant be declared not to be a tenant. But for the purposes of the point before us that would not make any material difference.

(10) Then we turn to the 2nd point argued. It is that having regard to the language of Clause (b) of section 70, only the case of a tenant applying for a declaration against his landlord that he is a tenant is contemplated therein and not where a person claims that he is a co-tenant along with another tenant. Even

having regard to the terms of section itself we cannot see how the contention can possibly be upheld. All that the section says is that "for the purposes of this Act the following shall be the duties and functions to be performed by the Mamlatdar," and one of those functions is that described in Clause (b) "to decide whether a person is a tenant or a protected tenant." Nowhere does the section say at whose instance that issue has to be decided. It does not say that it must be decided only if it is raised by a landlord or only by a tenant and we can see no reason, therefore, why the issue cannot be decided whether raised by a tenant or a landlord or by a co-tenant or any other person.

(11) These points were met in the Full Bench case. At p. 960 of the Bombay Law Reporter (at p. 57 of AIR) the Full Bench observed:-

"If he (the Mamlatdar) can decide this question on an application made to him by a tenant,. it is difficult to understand why he should not be able to decide this question, when the application is made by the landlord

The jurisdiction to decide this question vests exclusively in the Mamlatdar and the Civil Court is not competent to decide it."

(12) In this connection and particularly with reference to the emphasis on the opening words of the section "For the purposes of this Act" the Full Bench had occasion to lay down generally what in their view was the ambit of the section and what the Full Bench there said is of great importance:

"The words "for the purposes of this Act" is our opinion, mean for the purposes of deciding any question relating to a matter, which is regulated or governed by the provisions of this Act. If, therefore, the question raised before the Mamlatdar relates to a matter, which is to be decided by reference to the provisions of the Act, its determination by the Mamlatdar will be for the purposes of the Act and it is immaterial whether the application raising the question is made by the landlord or by the tenant."

We are in respectful agreement with this statement as to the general scope and object of the section.

(13) In a recent decision of the Supreme Court in *Bhimaji Shanker Kulkarni Vs. Dundappa Vithappa Udupudi and Another*, , the Supreme Court had occasion to consider the provisions of sections 70 and 85 of this Act and as to the combined effect of those provisions the Supreme Court held as follows:

"The Mamlatdar has exclusive jurisdiction to entertain an application by a landlord for possession of agricultural lands against a tenant, and the Civil Court has no jurisdiction to entertain and try a suit by a landlord against a tenant for possession of agricultural lands. The Mamlatdar has no jurisdiction to try a suit by a landowner for recovery of possession of agricultural lands from a trespasser or from a mortgagee on redemption of a mortgage, and the Civil Court had jurisdiction to entertain such a suit; but if the defendant to the suit pleads that he is a tenant or a protected tenant or a permanent tenant and an issue arises

whether he is such a tenant, Court must refer the issue to the Mamlatdar for determination, and must stay the suit pending such determination, and after the Mamlatdar has decided the issue, the Court may dispose of the suit in the light of the decision of the Mamlatdar."

This decision also suggests that the question whether a person is a tenant is not limited to the narrower issue whether a person is a tenant of a particular landlord irrespective of the question whether the issue is raised by the landlord or a tenant or a co-tenant or any other person. It will still be a question whether a person is a tenant. Therefore, in our view, the question contemplated in section 70(b) is not limited to an issue between the landlord and the tenant. The correct view in this respect was stated by the Chief Justice Chainani in Special Civil Application No. 1617 of 1963. That was also a case where the dispute was only between the tenants. What the learned Judges held was:

"If, therefore, any Civil Suit involves any issue which under the Act is required to be decided by the Mamlatdar the Civil Court must refer it to the Mamlatdar for determination. Under clause (b) in section 70 it is the duty of the Mamlatdar to decide whether a person is a tenant. The question whether the petitioner or the Respondents were tenants has therefore to be decided by the Mamlatdar."

(14) Reliance was placed upon the earlier decision of the Division Bench of this Court in Special Civil Appln. No. 3059 of 1959 (Bom), which decision is also mentioned in the order of reference before us. In that case an argument was advanced by Counsel that where the tenant claimed that he was an exclusive owner of the tenancy of the land in dispute under a particular landlord and claimed that the tenant had no interest in the tenancy and by that claim the tenant was raising only a question of title and not one of tenancy. That view seems to have prevailed with the Division Bench and they held that "By section 70 one of the duties imposed on the Mamlatdar is to decide whether a person is tenant or a protected tenant. That, in our view, contemplates a decision by the Mamlatdar of a dispute between a landlord and a tenant and not between two persons who claimed to be the owners of certain tenancy rights." While we are in agreement with what is stated in the above passage, we respectfully dissent from the last clause in the above quotation "and not between two persons who claimed to be the owners of certain tenancy rights". As we have said the section is in plain English and in our opinion clear beyond any doubt. It is the function of the Mamlatdar to decide whether a person is a tenant and when the Legislature has used that expression we can see no reason curtailing its amplitude by saying that the issue which the Mamlatdar has to decide is only an issue whether a person is tenant of a particular landlord. Whenever the issue is raised in any suit whether a person is a tenant, by whomsoever it is raised, the issue will have to be decided by the Mamlatdar.

(15) A similar line of reasoning was adopted by the learned Single Judge in a decision under the Bombay Tenancy and Agricultural Lands Act (Vidarbha Region and Kutch Area) where section 100 clause (2) was in question. It is in almost

identical terms as section 70 (b). To the extent that that decision is not in conformity with the view we have already expressed we are unable to accept. It has been brought to our notice that a decision under the earlier Act containing similar provisions in Civil Revision Appln. No. 679 of 1956 decided on 20th December 1956 by Mr. Justice Gajendragadkar, as he then was, took the same view that we have expressed and which has been taken in Special Civil Application No. 1617 of 1963.

(16) Upon the view, which we have taken, it is clear that the issue which properly arose for decision before the Mamlatdar's Court in the present case was:

"Whether the defendant was the sole tenant of the field in dispute or the plaintiffs and the defendant were joint tenants of the field on the tillers" day?"

That issue, in our opinion, involves the decision of a question whether the plaintiffs or the defendant or both were the tenants. That issue therefore, clearly falls within the ambit of section 70 (b). Therefore, that question cannot be tried by the Civil Court. It will have to be referred to the Mamlatdar for decision.

(17) Since this was the sole point raised in the Civil revision Application before the Single Judge as well as the Division Bench, we asked Counsel for the parties whether anything else remains to be determined in the Civil Revision Application, and the Counsel agreed that that being the only point this Court may as well decide the revision finally.

(18) In the result we allow the revision set aside the order of the Civil Judge, Junior Division Chopada, and order that the issue which we have framed above shall be sent to the Mamlatdar for decision. There shall be no order as to costs.

(19) Revision allowed.