

(1979) 09 BOM CK 0047

In the Bombay High Court

Case No : Spl. Civil Application No's. 122 and 123 of 1974

Rama Bhopya Teli

APPELLANT

Vs

Naimunnisa Naimunbi

RESPONDENT

Date of Decision : 19-09-1979

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 100, 100(2), 101, 102
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 70
Mamlatdars Court Act, 1906 — Section 36, 5(3), 5(4), 7
Transfer of Property Act, 1882 — Section 44

Citation : AIR 1980 Bom 247 : (1980) MhLj 82

Hon'ble Judges : Mohta, J

Bench : Single Bench

Advocate : A.M. Bapat, for the Appellant; V.R. Talukdar, for the Respondent

Judgement

1. Both these petitions raise common questions. Field Survey No. 20, measuring 30 acres 30 gunthas of Mouza Hiwari, Taluka Kelapur, District Yavatmal is in possession of Petitioner in Special Civil Application No. 122/74 and Field Survey No. 26/1, measuring 7 acres 22 gunthas of the same village is in possession of the petitioners in Special Civil Application No. 123/74. The landholder/respondent is common. Some time in the year 1968, the respondent filed two applications u/s 100 (2) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as "the Act") for a declaration that the petitioners were not tenants over the property and that they were trespassers.

2. The undisputed facts emerging from the pleadings as well as from the evidence seem to be as under:--

(1) That the property in dispute some time before 1951 belonged to the mother of the respondent on whose death, disputes started in the revenue Courts about the succession to the property.

(2) The properties were in actual possession of Illahiuddin and during the

pendency of these cases, a compromise was arrived at on 14-4-1958, as a result of which division of the properties by metes and bounds took place, some properties having been allotted to the share of Illahiuddin and some to the share of respondent.

(3) Adjudication of the right about getting share in the property thus took place on 14-4-1958 when only for the first time, respondent's right to succession and also about the extent of her share was determined.

(4) Illahiuddin gave the property on lease to the petitioner Rama Bhopya (petitioner in Special C. A. No. 122/74) and one Kanhu Mani (the predecessor-in-title of the petitioner in Special Civil Appln. No. 123/ 74).

(5) Record of rights and crop statement right from the year 1951 show cultivation by these two persons as tenants and also show Illahiuddin as the land owner.

(6) The tenancy list also shows the name of these two persons as tenants.

(7) After the year 1958, the property is recorded in the name of the respondent,

3. In the background of these undisputed position on 22-8-1968, the proceedings u/s 100 (2) referred to above, came to be initiated at the instance of the respondents. She came up with a case that the cultivating possession of the petitioners was without any rights whatsoever and that they have trespassed over the field property in her absence when she went to village Yerala in Hinganghat Tahsil of District Wardha along with her husband. She, however, in the application did not state as to when she left the village and actually when she learnt about the alleged trespass. However, it appears that for the first time on 8-7-1968, she gave a notice making a grievance that the petitioners were taking advantage of her absence and that they should stop cultivating the field. As they continued possession over the property, these proceedings were filed the cause of action for which, it is stated, had arisen on 13-7-1968, when the notice was received. The petitioners filed a reply raising a contention that they are in cultivating possession as lessees since 1951-52 from Illahiuddin who was recorded as owner of the lands in question during the relevant period and that they were tenants and have become deemed tenants under the Act having been in lawful possession of the property, on 30-12-1958 when the Act came into force. An application for better particulars was also filed at the earliest opportunity seeking details as to when according to the respondent, she was married when she left the village and when according to her, the petitioners entered into the so-called illegal possession. That application was seriously opposed on behalf of the respondent and came to be rejected. Various documents were filed including a receipt dated 2-4-1952 under signature of Illahiuddin, who is reported to have died long ago. Oral evidence was recorded and the respondent in the course of her examination has given the following admissions :--

- (1) That she had to fight from 1951 to 1958 to get her right established as legal heir of her deceased mother.
- (2) That the property in question, in compromise, was allotted to her share for the first time in the year 1958 and that it was Illahiuddin who gave possession.
- (3) From 1958 till giving of notice, she neither took any action nor cultivated the field.
- (4) She did not know if the petitioners were inducted as tenants by Illahiuddin.
- (5) She was aged 5 years when her mother died.
- (6) When she took possession, the petitioners were already on land but she did not know since when.
- (7) She did not know anything about the entries recorded in the Government papers.
- (8) She was married in the year 1952 and since 1952 she did not know whether the petitioners were cultivating the property as tenants.
- (9) Even in the year 1958, she never visited the field.
- (10) For a period of 17 years, she did not take any action against the person in occupation excepting giving the notices and no attempt was made even to correct the so called incorrect entries in the Government papers.

4. There is other oral evidence also, but, reference to all in details, is not necessary. The Tenancy Naib Tahsildar, Kelapur, granted a declaration in favour of the respondent mainly on the reasoning that after the compromise dated 24-4-1958, which is recorded in the record of right parchas, the respondent alone is shown to be the owner and as the petitioners were not claiming tenancy from her, no valid relationship of landlord and tenant is created. Illahiuddin had no authority to create tenancy and therefore, lease granted by him was not binding on the respondent. As regards the question of limitation, the finding was that it arose for the first time on 13-7-1968 when the petitioners received notice given by the respondent showing that the respondent was not conscious of possession of the petitioners before that day. The appeals carried by the tenants were dismissed and so also their petitions for revision before the Maharashtra Revenue Tribunal. Shri Bapat, the learned Advocate for the petitioners has submitted in the first place that under the circumstances it was a case of a valid lease created by the recorded land owner in possession. The partition took place for the first time in 1958 in which also the rights of Illahiuddin were recognised as a result of which properties were divided and thereafter record of rights entries mention the respondents as owners by virtue of partition. These events do not take away retrospectively the right of Illahiuddin over the property in the year 1951-52 and so also his right to create tenancy. In any case, the petitioners were tenants from the ostensible owners whose title in the property was recognised even in the compromise. It is a different question that by way of

compromise the property was allotted to the snare of somebody else. In his submission, therefore, the principles as to whether or not a tenant-in-common can create a tenancy without the consent of the other co-owner does not fall for consideration in this case. Shri Talukdar, the learned counsel for the respondent, invited my attention to Section 44 of the Transfer of Property Act and also to the fact that the landholders were Mohammedans and therefore, there was nothing like a joint tenancy in the personal law with which they are governed. In my view, in the background of this case, these questions do not fall for consideration at all, as the tenancy when created was not illegal.

5. One of the points that was canvassed was about the petitioners becoming the tenants by adverse possession. Reliance on certain cases was placed. But, as rightly pointed out by Shri Talukdar, this point has absolutely no substance nor can it arise for consideration even on admitted facts.

6. The next serious point that was raised was about the limitation. My attention was invited to Section 102 of the Act, which reads as under :--

"In all inquiries and proceedings commenced on the presentation of applications u/s 101, the Tahsildar or the Tribunal shall exercise the same powers as the Mamlatdar's Courts under the Mamlatdars' Courts Act, 1906 and shall save as provided in Section 36 follow the provisions of the said Act, as if the Tahsildar or the Tribunal were a Mamlatdar's Court under the said Act and the application presented was a plaint presented u/s 7 of the said Act. In regard to matters which are not provided for in the said Act, the Tahsildar or the Tribunal shall follow such procedure as may be prescribed by the State Government. Every decision of the Tahsildar or the Tribunal shall be recorded in the form of an order which shall state the reasons for such decision."

7. On a plain reading of this section it would appear that to the proceedings which commence on presentation of application u/s 101 to the Tahsildar or the Tribunal, the provisions of the Mamlatdars' Courts Act, 1906 applies and the application has to be treated as a plaint presented u/s 7 of the Mamlatdars' Courts Act. In case we turn to the relevant provisions of the Mamlatdars' Courts Act, which is Section 5 (3), it would be seen that limitation for commencement of suits is six months from the date of cause of action as mentioned in Sub-section (4) of Section 5. Section 5 (3) and (4) of the said Act reads as under:--

"5(3). No suit shall be entertained by a Mamlatdar's Court unless it is brought within six months from the date on which the cause of action arose.

(4) The cause of action shall be deemed to have arisen on the date on which the impediment to the natural flow of surface water or the dispossession, deprivation or determination, of tenancy or other right occurred, or on which the impediment, disturbance or obstruction, or the attempted impediment or disturbance or obstruction, first commenced."

8. Reliance in support of this proposition was also placed on the Division Bench

decision of this Court at Bombay Bench, in Spl. Civil Appln. No. 707 of 1958 decided on 17-6-1958 and so also on the case of Patil Rama Khatra v. Babu Dundya Pawar (Spl. Civil Appln. No. 1061 of 1966 D/- 12-11-1968). Those cases dealt with Section 70 (B) of the Bombay Tenancy Act, 1948 which is analogous provision to Section 102 of "the Act." Reference to these cases can be found at page 267 of 1970 Tenancy Law Reporter.

9. It seems to me clear that the limitation of six months contemplated u/s 5 (3) of the Mamlatdars' Courts Act does apply to the proceedings u/s 100 of the Act.

10. Shri Talukdar, the learned Advocate for the respondent, while not disputing this proposition has contended that the finding given about the date of the cause of action being 13-7-1968 was a question purely of fact and therefore, this finding needs no interference in these petitions. In view of the undisputed and proved circumstances on record, the finding that cause of action arose on 13-7-1968 is wholly perverse and is not sustainable at all. Thus, the application u/s 100 of the Act was clearly barred by time and was not maintainable even on this ground.

11. In the result both the petitions are allowed. The orders passed by all the authorities are quashed. However, under the circumstances there will be no order as to costs.

12. Petitions allowed.