

(1980) 06 BOM CK 0012

In the Bombay High Court

Case No : Special Civil Application No. 2655 of 1975

Ramchandra Balwantrao Dubal

APPELLANT

Vs

Dhondiram Tatoba Kadam and Another

RESPONDENT

Date of Decision : 21-06-1980

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 15(1), 29(1), 76, 84C, 85A

Citation : (1980) 06 BOM CK 0012

Hon'ble Judges : M.P. Kanade, J

Bench : Single Bench

Advocate : Bhimrao N. Naik, for the Appellant; S.M. Mhamane and S.R. Vaidya for respondent No. 1 and C.R. Dalvi, for the Respondent

Judgement

M.P. Kanade, J.—This application is filed by the original plaintiff-landlord Ramchandra Balwantrao Dubal, challenging the legality and the correctness of the judgment and order dated March 31, 1975 passed by the learned Member of the Maharashtra Revenue Tribunal, Poona in Revision Application filed on 16-9-1974, against the decision in Tenancy Appeal No. 101 of 1973, dated 1-7-1974 by the Sub-Divisional Officer, Satara Division, Satara. The said Revision Application bears No. MRT NS. IX/7/74 (Ten A.B. 83/74) Poona.

2. It is necessary to state a few relevant facts which give rise to this Special Civil Application. The petitioner Ramchandra Dubal is the owner of the land bearing Revision S. No. 403/7, admeasuring 3 acres 8 gunthas of village Khodashi in Taluka Karad of Satara District. He executed a conditional sale (possessory mortgage) in respect of the suit land on June 23, 1952 in favour of respondent No. 2 Vyankatrao Ramchandra Dubal for a consideration of Rs. 2,000/-. It appears that under a registered lease-deed Dhondiram Tatoba Kadam and Shankar Babu Kadam were inducted as tenants on the said land by the petitioner Ramchandra Dubal. At the time of the execution of the conditional sale-deed, it is alleged that the tenants surrender their tenancy rights, restored the possession

of the lands to the petitioner Dubal and the petitioner in return put the Mortgagee, respondent No. 2 in actual possession of the said land, on June 23, 1952. The tenant Dhondiram Tatoba Kadam has admitted that the tenants had surrendered their tenancy rights before the execution of the conditional sale-deed by the petitioner Ramchandra Dubal in favour of respondent No. 2 Vyankatrao Ramchandra Dubal. It further transpired that on June 30, 1952 respondent No. 1 Dhondiram Tatoba Kadam and Shankar Babu Kadam executed a registered lease deed in favour of Vyankatrao Ramchandra Dubal, respondent No. 2. The Revenue records show that the tenants were in possession of the suit land from 1951-52 to 1956-57. Thereafter the names of the tenants were deleted from the revenue record in respect of the suit land. However, a pencil entry has been made in favour of only one tenant Dhondiram Tatoba Kadam in respect of the lands for the year 1968-69.

3. The petitioner Ramchandra as mortgagor issued a notice to Vyankatrao Ramchandra Dubal, respondent No. 2 on April 26, 1969, to accept the amount of Rs. 2,000/- and redeem the said mortgage dated June 23, 1952 and asked for restoration of possession of the suit land. Respondent No. 2 Vyankatrao Dubal replied the said notice on May 4, 1969 to the petitioner. He refused to redeem the mortgage and deliver possession of the suit-land. Respondent No. 2 contended in his reply that the period of a conditional sale was over and he had become the absolute owner of the suit land, that he had made some improvements in the said land and having become the owner thereof, he refused to restore possession of the disputed land. After the receipt of the reply from the respondent No. 2, the petitioner filed Reg. C.S. No. 179 of 1971 on July 28, 1971, against the respondent No. 2, Dubal, because his name appeared in the revenue records. As there was a pencil entry in the record of rights in favour of the respondent No. 1 Dhondiram Tatoba Kadam, the tenant, Dhondiram, respondent No. 1, was joined as defendant No. 2 in the said suit because, respondent No. 2 managed to enter the name of respondent No. 1 Dhondiram, the tenant, in pencil in the village. Form VII-XXII (Kulkhand Column) for the year 1968-69. It is the contention of the petitioner in the said suit that respondent No. 1 and respondent No. 2, both colluded with each other and took up a false defence. They also collusively got made the bogus entry in the record-of-rights. It was contended that respondent No. 2 Vyankatrao Dubal has no right to create any tenancy in respect of the suit land Rev. S. No. 403/7. In the said suit, respondent No. 1 Dhondiram, the tenant, gave his written statement, contending that he was a tenant before the mortgage and continued to be the tenant till the date of the suit. Respondent No. 2 Vyankatrao Dubal also supported the plea of respondent No. 1 Dhondiram Kadam with regard to the tenancy rights of respondent No. 1.

4. The learned Civil Judge was pleased to frame two issues as under :

"(1) Does the defendant No. 2 prove that he was a tenant over the suit property since the mortgage transaction on 23-6-1952 ?

(2) Does he further prove that he is indisputably a tenant of defendant No. 1 over the suit land since 1952 ?"

The Civil Court referred these issues for findings to the Tenancy Court under the provisions of S. 85-A of the Bombay Tenancy & Agricultural Lands Act, 1948 (hereinafter referred to as the Bombay Tenancy Act). The aforesaid reference made by the learned Civil Judge was numbered as Tenancy Case No. 47 of 1972. The said reference was entertained by the Tenancy Aval-Karkun, Karad, who after recording the evidence of the parties and considering the oral and documentary evidence on record, came to the conclusion that respondent No. 1 Dhondiram Kadam is not a tenant of the disputed land. It is further held by him that there was a collusion between respondent No. 1 and respondent No. 2 and a false entry was created in the revenue records to defeat the rights of the mortgagor. With regard to the rent-receipts at Exhibits 10 (1, 2 and 3), produced at the time of arguments the Aval-Karkun held that these receipts were created only for the purposes of the said proceedings and accordingly were fabricated documents which were produced in the proceedings. It is further held by him that the tenant had surrendered his tenancy rights, and, therefore, he cannot be said to be a tenant on the suit land.

5. Respondent No. 1 Dhondiram Kadam, feeling aggrieved by the said judgment and order of the Tenancy Aval-Karkun dated February 23, 1973, preferred Tenancy Appeal No. 101 of 1973 in the Court of the Sub-Divisional Officer, Satara Division, Satara, and the Sub-Divisional Officer, Satara, on appreciation of the evidence on record by his judgment and order dated July 1, 1974 was pleased to confirm the findings of fact recorded by the Tenancy Aval-Karkun, Karad. Thereafter the said respondent No. 1 Dhondiram Kadam filed a revision application before the Maharashtra Revenue Tribunal, at Pune. After hearing the parties, the learned Member of the Revenue Tribunal, Pune was pleased to allow the revision application and was pleased to set aside the orders of the lower authorities and recorded a finding that respondent No. 1 was a tenant of the suit land. Original plaintiff landlord feeling aggrieved by the judgment and order of the learned Member of the Maharashtra Revenue Tribunal has filed this Special Civil Application challenging the legality and the correctness of the order passed by the learned Member of the Revenue Tribunal.

6. Mr. Bhimrao N. Naik, the learned Counsel appearing on behalf of the petitioner, urged that the learned Member of the Revenue Tribunal had exceeded in the exercise of his jurisdiction in disturbing the concurrent finding of fact. It is further argued that the Tribunal had ignored the material evidence on record as to surrender of the tenancy rights in respect of the disputed land on or before June 23, 1952. Lastly, it is submitted that the Tribunal committed an error apparent on the face of the record to hold the applicant Dhondiram Kadam as tenant when he was not in possession of the suit land for more than 12 years. Rights, if any of the tenants in respect of the disputed land ought to have been held extinguished as the remedy to recover possession was lost under the

provisions of the Bombay Tenancy Act.

7. M/s. S.M. Mhamane and C.R. Dalvi for the respondents Nos. 1 and 2 respectively, submitted that the surrender on the basis of a Wardi dated December 14, 1956, evidenced by Mutation Entry 2479 and supported by a further entry in the 7x12 extracts of the record of rights, is invalid inasmuch as section 15(1) of the Bombay Tenancy Act was amended by Amendment Act No. XIII of 1956 introduced on 1st August, 1956. The amending provision of section 15(1) required that the surrender must be in writing and must be verified before the Tahsildar in the prescribed manner. The said requirement of law has not been carried out by the petitioner, and, therefore, the alleged surrender is invalid. The tenancy of respondent No. 1 has not been lawfully terminated and it is, therefore, that the respondent No. 1 continues to be the tenant of the suit land. Lastly, it is argued by both the learned Counsels that the learned Member of the Revenue Tribunal had not disturbed the concurrent finding of fact, but decided on the point of law that the surrender, as alleged, was not a valid surrender, and therefore, the learned Member of the Revenue Tribunal had both exercised powers illegally or disregarded the limitation imposed upon the powers of the Revenue Tribunal u/s 76 of the Tenancy Act.

8. Having heard the learned Counsels on both the sides, it appears to me that the learned Member of the Tribunal had committed an error apparent on the face of the record in holding that respondent No. 1 was a tenant and continued to be a tenant on the said land. It is not disputed that respondent No. 1 Dhondiram T. Kadam and Shankar Babu Kadam were the tenants under the registered sale-deed executed on June 15, 1949 (Exhibit 4-A). It was agreed that one-thirds crop share or Rs. 100/- was the rent. It is also not in dispute that there was a conditional sale-deed in favour of respondent No. 2 Vyankatrao Ramchandra Dubal. Having regard to the provisions of the Bombay Tenancy Act, no transfer of interest is possible without the consent of the tenant. If there are tenants on the land, they are alone entitled to purchase the land and a sale in favour of a stranger will be invalid. The conditional sale was for a consideration of Rs. 2,000/-. Actual possession of the lands was with the tenants before June 23, 1952. It is not in dispute that respondent No. 2 was put in possession of the land on June 23, 1952. Transfer of possession of the land could not be had without a surrender of possession by the tenants. Respondent No. 1 Dhondiram T. Kadam has admitted in his deposition that there was a surrender of the land and the land was put in the possession of Vyankatrao R. Dubal, respondent No. 2 herein. The learned Tribunal reversed the findings observing:

"... ..it will be seen that there is not an iota of evidence to support the alleged surrender. On the contrary, the entries in V.F. VII, XII at page 95 clearly show that since 1950-51, to 1956-57, the applicant cultivated the land without any break or without any interruption."

This observation of the learned Member of the Revenue Tribunal is not correct, inasmuch as he totally ignored the admission of respondent No. 1 Dhondiram in

his own deposition. As stated above, the transaction of conditional sale could not have come into existence without surrender of tenancy rights by the tenants and transfer of possession in favour of the vendee. The learned Member was not justified in law to interfere with the concurrent finding of fact recorded by both the authorities below with regard to surrender before June 23, 1952.

9. There is another registered lease-deed executed by respondent No. 1 and Shankar Babu Kadam in favour of respondent No. 2 to which the petitioner-landlord is not a party. It is also proved on the record that the tenants continued to be in the possession of the land till 1956-57. It is thereafter that a Wardi dated 14-12-1956 was given by the tenants to the Talathi. That Wardi seems to have been accepted and a mutation Entry No. 2479 in the record of rights was made. It is admitted that the mutation entry subsequently had been duly certified and the name of the tenants have been deleted from the record, and thereafter there is no entry in favour of respondent No. 1 as tenant in the revenue records till the year 1968-69. The above stated facts are undeniable facts. The learned Member of the Revenue Tribunal construed the said surrender effected after the Amending Act No. XIII of 1956 had already come into force and in the absence of proper verification by the Mamlatdar in the prescribed manner and in the absence of an order u/s 29(2) by the Tahsildar, it is held that the surrender was invalid. It is necessary at this stage to state the contents of the Wardi by the tenants which is as under :

"On the basis of the Wardi dated 14-12-1956 given by the ordinary tenants of Vyankatrao Ramchandra Dubal, viz. Dhondiram Tatoba Kadam, and Shankar Babu Kadam, stating therein that they had surrendered their possession, and hence their names are deleted from the tenancy column and the name of the owner has been entered in it."

The respondent No. 1 has not produced the original Wardi. Only a mutation entry has been produced at Exhibit 2(1). This mutation entry does not show on what date the possession was delivered the tenancy rights were surrendered. In the absence of any positive evidence on the record, the learned Member of the Revenue Tribunal was not right in coming to the conclusion that the alleged surrender has been effected after the Amending Act XIII of 1956, and, therefore, the surrender was invalid. Before 1st August, 1956 on oral surrender was possible. However, it was necessary to obtain an order of the Tahsildar u/s 29(2) of the Act for restoration of possession of the surrendered land. The learned Member of the Revenue Tribunal further observed that the surrender was not valid in law nor was it binding on the tenant by reason of the fact that it was not in accordance with the provisions of section 15(1) of the said Act. In such a case the latest authoritative view on the point is that there is no lawful termination of the tenancy. In other words, it means that the relationship of landlord and tenant between the parties does not come to an end by means of such an invalid surrender. In support of this proposition, reliance was placed on a Supreme Court decision in Vallabhbai Nathabhai v. Bai Jivi, 72 Bom.L.R. 185 and also on an

unreported decision of this Court in (Special Civil Application No. 2817 of 1967, dated August 27, 1971), by Bhole J. The case reported in 72 Bombay Law Reporter 185 is a case where a tenant has submitted an application under the provisions of section 84-C of the Bombay Tenancy Act in connection with the invalid surrender of land or obtaining possession by the landlord in pursuance of such surrender. Surrender is not transfer or acquisition of land within the meaning of section 84-C of the Bombay Tenancy Act, and therefore, the action under that section cannot be taken in respect of such a surrender. It is held in that case by the Supreme Court that in the case of surrender which is not valid and binding on the tenant by reason of its not being in accordance with the proviso to section 15(1) of the Bombay Tenancy Act, as there is no termination of tenancy, and, therefore, the landlord is not entitled to retain the land even though possession thereof has been handed over to him or has been voluntarily taken by him. The position in such a case is that a tenant has right to apply to the Mamlatdar for restoration of possession to him claiming that there has been no termination of tenancy, that his possession continues to be protected by the provisions of the Act and that, therefore, possession should be restored to him. Such an application lies u/s 29(1) of the Act and, when so made, it becomes the duty of the Mamlatdar u/s 70(n) read with section 29(1) of the Act to put the tenant in possession of the land in question "under this Act." In such a case, the tenant is claiming possession under the provisions of the Act and not on the strength of his own title, as when he applies for possession against a trespasser. It is further held that section 29(1) and 84 of the Act do not provide for alternative remedies to the tenant, and section 84(a) of the Act applies to transfers or acquisition which are in breach of the provisions of Chapter V of the Act and possession or occupation whereof has been obtained under such invalid transfers or acquisition.

10. This authority of the Supreme Court in the case of Vallabhnbhai Nathabhai (supra) is misunderstood by the learned Member of the Revenue Tribunal. It is true that there is no termination of tenancy in the case of an invalid surrender. But the tenant's right is the restoration of possession is governed by the provisions of section 29 of the Bombay Tenancy Act. What has been observed by the Supreme Court is that the tenant has a right to apply to the Mamlatdar for restoration of possession to him for claiming that there has been no termination of tenancy, i.e. the possession continues to be protected by the provisions of the Act, and, therefore, the possession should be restored by him. Similar is the view expressed by the Division Bench of this Court in Narayan Dagadu Mane v. Bapu Maruti Neel, 65 Bom.L.R. 665. Relief for possession by the tenant against the landlord could be had only u/s 29(1) and not u/s 84-C of the Bombay Tenancy Act. In the present case, it is not proved as a matter of fact that since 1956-57, the tenants are in possession of the suit land till 1968-69. There are no entries in the extracts of records of rights in favour of the tenants in respect of the suit lands. u/s 29 of the Bombay Tenancy Act, the tenant if entitled to the possession of any land, he must make an application within a period of two years from the

date on which the right to obtain possession of the land or dwelling house is deemed to have accrued to the tenant admittedly, the tenants did not take any steps within the period of two years to obtain possession of the suit land. Their remedy was barred by limitation u/s 29(1) of the Bombay Tenancy Act. If the remedy is lost having regard to the facts of the present case, it must be stated that the right of the tenancy is also lost. When remedy is lost, the right as a tenant is also extinguished. In the view that I have taken, it must be held that the respondent No. 1 was not the tenant of the suit-lands because his remedy was lost. In my view, the learned Member of the Maharashtra Revenue Tribunal was not right and/or justified to record a finding that respondent No. 1 was a tenant.

11. The finding of the learned Member of the Revenue Tribunal is also not justified because of another important circumstance of the case. Vyankatrao Ramchandra Dubal, respondent No. 2, who is a mortgagee, appears to have insisted for actual possession of the suit land at the time of the conditional sale-deed from the tenants. Petitioner Ramchandra Balwantrao Dubal was in need of Rs. 2,000/-. It appears that he agreed to pay Rs. 900/- to the Tenant Dhondiram for surrender. In the conditional sale-deed, it is mentioned that the actual possession has been delivered. This fact is admitted by respondent No. 2 Vyankatrao Ramchandra Dubal, who has stated in the cross-examination that Rs. 1,300/- were given to Ramchandra on June 23, 1952 and the rest of Rs. 700/- were paid to Dhondiram. Dhondiram, respondent No. 1 himself admitted that he had surrendered his tenancy rights. In the said circumstances, it is rather intriguing as to how another registered lease-deed has been executed by the tenants in favour of Vyankatrao, respondent No. 2. Vyankatrao, respondent No. 2, appears to be a shrewd man. He thought that there could not be a conditional sale unless there is a surrender of tenancy rights. Accordingly, he managed to get a surrender from the tenants. It is further found on the record that Vyankatrao, respondent No. 2, having realised the importance of the Tillers' day asked the tenant to file a Wardi of surrender in favour of Vyankatrao on 14-12-1956, so that the tenant should not become a deemed purchaser on 1-4-1957. He alone continued to be in possession of the land for more than twelve years till the fictitious pencil entry is made in the record of rights in the year 1968-69. From all these facts, it appears that it is Vyankatrao Dubal, respondent No. 2, who manipulated and got a document from the tenant as he liked. The tenancy Awal-karkun and the learned Sub-Divisional Officer were justified in recording a finding that there is collusion between respondent No. 1 and respondent No. 2 Vyankatrao. It is found by both the courts below that fabricated documents, such as the rent receipts ; have been produced in the case and a false entry has been made in the record of rights thus, the findings of the authorities below are justified by the record and the learned Member of the Revenue Tribunal had totally ignored these circumstances while recording finding with record to the surrender of the tenancy rights of the tenant. In my view, the learned Member of the Revenue Tribunal exceeded in the exercise or its

jurisdiction u/s 76 of the Bombay Tenancy Act in disturbing the finding of fact recorded by the courts below.

12. The learned Member of the Revenue Tribunal further committed an error which is patent on the record in holding that the new sub-section (1-B) of section 32 of the Bombay Tenancy Act would protect the rights of the tenants and the tenants will be entitled to be restored in possession of the land under the provisions of the said section. As stated above, the tenants right to get possession u/s 29(1) of the Tenancy Act has been lost. It must be seen as to whether the tenant is entitled to the benefit of the provisions of the sub-section (1-B) of section 32 of the said Act. The requirements of the said sub-section are that the tenant must be in possession of the land on the Appointed day, i.e. 15-6-1955, and he must have been dispossessed before the 1st day of April, 1957 otherwise than in the manner and by an order of the Tahsildar as provided in section 29, and that he should be in possession of the land on the said date and the land is the possession of the landlord or his successor-in-interest on the 31st day of July, 1969. If all these facts are found by the Tahsildar, notwithstanding anything contained in the said section 29 of the Act he may either suo motu or on the application of the tenant, hold an inquiry and direct that such land shall be taken from the possession of the landlord or, as the case may be, his successor-in-interest, and shall be restored to the tenant. In the present case, all these requirements have not been proved. It is the tenant's case that in the year 1968-69, the tenants were in possession and they continued to be in possession of the land, and the landlord was not in possession on 31st July, 1969. Having regard to the case sought to be put up by the tenants in this case, the provisions of sub-section (1-B) of section 32 are not attracted by the facts of the present case. The tenants will not be entitled to the restoration of possession under the provisions of the tenancy Act. The learned Member of the Revenue Tribunal totally ignored the case of the tenants as set up by them in the present proceedings. In the said circumstances, observations made by the learned Member of the Revenue Tribunal with regard to the provisions of section 32 (1-B) of the said Act are not justified by the record, and therefore, the finding recorded by it is not correct in this regard.

13. Lastly, it is observed by the learned Member of the Tribunal in the judgment that irrespective of the fact that there is collusion between the respondent No. 1 and respondent No. 2, and even granting that the applicant had surrendered his possession in favour of his erstwhile landlord, there is nothing in law to prevent the latter as the mortgagee in possession from reinducting him as a tenant so long as the mortgage in his favour subsists or stand unredeemed, or at least till the suit for redemption came to be filed, and in this connection the learned Member of the Tribunal accepted the evidence of respondent No. 2 Vyankatrao Dubal. In making these observations in the last paragraph of the judgment, the learned Member of the Tribunal acted in complete disregard of its powers and proceeded as though it were, either dealing with the matter as a Court of first instance or as an Appellate Court. The Tribunal while exercising its powers u/s 76

of the Act had no such power to re-appreciate the evidence and disturb the concurrent findings of fact. The Supreme Court in Maruti Bala Raut Vs. Dashrath Babu Wathare and Others, held---

"That the Tribunal acted in complete disregard of its powers and proceeded as though it were either dealing with the matter as a Court of first instance or as an Appellate Court. While the Special Deputy Collector dealt with the Mamlatdar's order as an Appellate Authority and was, therefore, entitled to appreciate the evidence, and come to his own conclusion, the tribunal while exercising its powers u/s 76 had no such power."

Taking into consideration all the material circumstances and the probabilities of the case, it appears that the learned Member of the Tribunal completely lost sight of the very important circumstances, of admission and the probabilities and a dishonest plea taken by the respondents and it appears to have solely relied upon the fact that there was no termination of tenancy of the tenants, and therefore, they were tenants on the suit land irrespective of the fact whether their remedy was lost and the right was extinguished. In the view which I have taken, the judgment of the learned Member of the Revenue Tribunal will have to be set aside.

14. In the result, the order passed by the learned Member of the Maharashtra Revenue Tribunal, Pune, on March 31, 1975 in No. M.R.T.M.S. IX. 7/74 (Ten. AB. 83/74 Poona, is set aside and that of the Tenancy Awal Karkun, Karad in Tenancy Case No. 47 of 1972, on February 23, 1973 and of the Sub-Divisional Officer, Satara Division Satara, in Tenancy Appeal No. 101 of 1973 dated July 1, 1974 are restored.

15. Rule is made absolute with costs throughout.