
(2000) 08 BOM CK 0079

In the Bombay High Court

Case No : Writ Petition No. 2922 of 1990

Ramesh Rasiklal Suchak deleted through L.Rs. Pushpa Ben
and Others

APPELLANT

Vs

Shyamsunder Rajelal Suroshiya

RESPONDENT

Date of Decision : 04-08-2000

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2001) 1 BomCR 509

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : Savitri Dave, for the Appellant; A.B. Choudhari, for the Respondent

Final Decision : Allowed

Judgement

A.M. Khanwilkar, J.—This writ petition under Article 227 of the Constitution of India takes exception to the order passed by the Resident Deputy Collector, Yavatmal, dated 8th June, 1990 in R.C.A. No. 26-71/1986-1987 of Yavatmal.

2. Briefly stated, the predecessor of the petitioners, Shri Rasiklal Bhagwanji Suchak, was the tenant in respect of the suit premises bearing Nazul Plot No. 15/2, Sheet No. 49-A of Yavatmal, in Ward No. 16, bearing House No. 17, consisting of five rooms. The suit premises were taken on lease by him from the original owner/landlord of the property, Shri Mansukhlal Narsee of Deoli, in the year 1962, for residential purpose. It appears that the respondent purchased the suit property on 29-8-1975. The respondent filed an application before the Rent Controller, Yavatmal, praying for permission to initiate action against the petitioner for possession of the suit property on the ground under Clause 13(3) (vi) of the C. P. and Berar Letting of Houses and Rent Control Order, 1949 (hereinafter referred to as the Rent Control Order, 1949 for short.) The case made out in the application filed by the respondent, on 4th December, 1976, would indicate that the applicant, his two brothers Dr. Reshesyam and Santoshkumar and their father Rajelal Sukhnandanlal Suroshiya purchased the

suit house along with other property, from one Kantilal Bhanji Unalkar by registered sale deed dated 29-8-1975. It is stated that the four brothers of the respondent, their mother and the respondent became the owners of the suit property, which was the joint family property. It is further stated that the brothers of the respondent and their mother executed a partition deed dated 14th June, 1976 pursuant to which the suit property fell to the share of the respondent. The application further states that the respondent has, therefore, become absolute owner of the suit property. It is further stated that by virtue of the said partition deed, the premises which are presently occupied by the respondent have gone to the share of his brother Santoshkumar. It is further stated in the said application that the respondent has increased the duration of his stay at Yavatmal from 3 to 5 days in a week and, therefore, he needs the suit premises which are occupied by the petitioners, for his own personal and bona fide occupation, within the meaning of Clause 13(3)(vi) of the Rent Control Order, 1949.

3. In response to the said application, on 1-8-1977, the petitioners filed reply before the Rent Controller. It is common ground that the petitioners have not specifically dealt with the assertion made by the respondent in his application, about partition, but have vaguely denied the contents of para 6 of the application. It is further mentioned in the reply that the Rent Controller has no jurisdiction to decide the title or ownership and consequently of relationship of landlord and tenant in respect of the suit premises. The stand taken by the petitioners in para 8 of the reply would indicate that they were disputing that the respondent was the lessor of the petitioners or rightful reversioners of the lessor Maganlal Narsi. On this ground the maintainability of the application was questioned by the petitioners. It is further stated in the said reply that there was dispute between petitioners and said Kantilal (original owner) as the petitioners had filed application for fixing standard rent, therefore, Radiyatbai and Kantilal were annoyed and they have brought about the alleged fictitious transactions of the alleged transfer of the ownership of the suit premises in favour of the respondent with a view to harass the petitioners and to evict the petitioners from the suit premises. The petitioners also denied that the premises were absolutely required by the respondent for his personal use and occupation.

4. Immediately after filing the above said reply, the petitioners filed another application on 19-11-1977, raising specific plea that the alleged partition deed dated 14th June, 1976 was inadmissible in evidence, being an unregistered document. This objection was considered by the Rent Controller on the same day i.e. on 19th November, 1977 and came to be negatived on the ground that on examining the partition deed, it appears that the decision in respect of partition was already taken and merely reduced into writing by the said deed, therefore, it was neither a partition deed nor a relinquishment deed and as such there was no necessity to have it registered. According to the Rent Controller, the document alleged to be a partition deed only maintained the status quo in respect of the shares allotted to the parties long back and as such no registration of the said

document was necessary. It is relevant to point out that this order was taken up in appeal before the Resident Deputy Collector, Yavatmat at the instance of the petitioners. There is no dispute that the Resident Deputy Collector, Yavatmal, by order dated 14th July, 1978, kept the said question regarding admissibility of the partition deed open for being decided during the enquiry before the Resident Deputy Collector.

5. The Rent Controller proceeded with the enquiry and by order dated 19-11-1978, was pleased to allow the application for permission. Although the issue - whether the partition deed is admissible in evidence or not, was specifically kept open as aforesaid, however, the Rent Controller without adjudicating the same, proceeded to hold that the respondent was landlord in respect of the suit premises and was, therefore, entitled to make the application. With regard to the bona fide requirements, the same was also answered in favour of the respondent. Accordingly, permission to determine the tenancy under Clause 13(3)(vi) of the Rent Control Order, 1949 came to be granted.

6. This order was taken up in appeal by the petitioners before the Resident Deputy Collector, Yavatmal. The Resident Deputy Collector, Yavatmat, by the order dated 31st December, 1979, allowed the appeal preferred by the petitioners. The Appellate Court referred to some new documents produced before it to hold in favour of the petitioners.

7. This decision came to be challenged before this Court by Writ Petition No. 1981 of 1980, at the instance of the respondent. This Court, by order dated 22nd October, 1986, was pleased to set aside the order passed by the Appellate Court and remanded the matter to the Appellate Court for fresh enquiry. The principal reason for remanding the matter was that the respondent was not given fair opportunity to adduce evidence in rebuttal of the documents relied upon by the petitioners. Accordingly, the entire issue regarding whether the permission should be granted in favour of the respondent or not on the ground under Clause 13(3)(vi) of the Rent Control Order, 1949, was left open before the Appellate Court.

8. After the remand, the respondent preferred an application for amendment of the original application which was filed before the Rent Controller. In the said amendment application, a totally new case was made out by the respondent to the effect that the respondent was the tenant of his brother Dr. Santoshkumar in respect of the premises presently occupied by him. It is further stated in the said amendment application that the respondent has no concern with the said premises, which are owned by his brother. This amendment was objected to by the petitioners by filing reply on 30-9-1987. The Appellate Court, however, allowed the said application preferred by the respondent. The Appellate Court has mainly held that the issue relating to the relationship of the parties as landlord and tenant has attained finality and the same was not open to be questioned in the remand proceedings, as the same was finally considered by the High Court while remanding the appeal. Before the Appellate Court, the

petitioners contended that the respondent was not the absolute owner of the suit premises and therefore, the ground on which the application was made, was not available to him. In other words, it was contended that there was no cause of action to make such application on behalf of the respondent. The Appellate Court, however, negated the stand taken by the petitioner and proceeded to allow the appeal by granting permission in favour of the respondent under Clause 13(3)(vi) of the Rent Control Order, 1949.

9. It is against the said decision of the Appellate Court dated 8th June, 1990, the present petition has been filed under Article 227 of the Constitution of India. Besides raising the grounds for challenging the correctness of the order passed by the Appellate Court on merits, the petitioners have filed an application for permission to amend the writ petition. This application has, however, been filed on 10th July, 2000, just before the writ petition had reached hearing. By this amendment application, the petitioners sought to urge the following ground:

That the deed of partition relied upon by respondent effecting partition of joint family properties and value of more than Rs. 100 by metes and bounds, registration is compulsory and in absence of such registration it is inadmissible to prove title of any of the coparceners to any of the property. It is admissible only to prove an intention of coparcener to become divided in status.

This application has been seriously objected to by the respondent on the ground that no sufficient cause has been made out for taking out the said application at such a belated stage. It is further contended by the respondent that even on merits, the application needs to be dismissed inasmuch as the question about the partition between the family members of the respondent has attained finality and cannot be reopened at this stage. It is also stated in the reply filed by the respondent that in absence of any express liberty given by the High Court in the previous round, to raise the question of admissibility of the partition deed, it was not open for the petitioners to urge the same at this stage. The learned counsel for the respondent further contends that assuming that it was open for the petitioners to raise the question about the admissibility of the partition deed, even then the same will have to be rejected. According to the respondent, the partition deed was, in fact, a document which merely records the oral arrangement arrived at between the parties and, therefore, did not create any right or title for the first time in favour of the parties, for which reason the registration of the said document was wholly unnecessary. In support of this contention, reliance has been placed on the following citations :

(i) Roshan Singh and others vs. Zile Singh and others, AIR 1988 Supreme Court page 881, para 6 to 12.

(ii) Bakhtawar Singh v. Gurdev Singh, (1996) 9 SCC 370 .

(iii) Taraknath and another vs. Sushil Chandra Dey by L.Rs. and others, (1996) 9 SCC 697 para 4.

10. The learned counsel for the petitioners, on the other hand, submits that the ground sought to be raised is a basic question, which if answered in favour of the petitioners, would go to the root of the matter. According to the petitioners, the question regarding admissibility of the partition deed, being pure question of law, can be raised at any stage. What is argued on behalf of the petitioners, is that if the partition deed is inadmissible, then the ground on which the application seeking permission under Clause 13(3)(vi) of the Rent Control Order, 1949 has been filed by the respondent, would become a nonexistent ground in which case there would be no cause of action for the respondent to maintain this proceedings against the petitioners. The learned counsel for the petitioners further contended that on plain reading of the partition deed it would appear that rights have been created in favour of the parties only by virtue of the said document and the same does not refer to any oral partition already arrived at between the parties. According to the petitioners, since this document creates right in favour of the parties, same was required to be registered and the decision referred by the respondent of the Apex Court would be of no avail. Petitioners have placed reliance on the decision of the Apex Court in *Shiromani and Others Vs. Hem Kumar and Others*, as well as decision in *Kalimoyee Ghosh and Others Vs. Narendra Nath Ghosh and Others*, . It is also contended that since the issue of admissibility of document was specifically kept open by order dated 14-7-1978, it was obligatory on the Courts below to adjudicate the same before examining the plea of the respondent relating to bona fide and personal need. It is also submitted that there was no occasion for the petitioners to seek liberty from this Court in the previous round to agitate the said question on remand inasmuch as this Court had remanded the matter to be considered afresh and it was, therefore, necessary for the Appellate Court to consider the said question.

11. Having considered the rival submissions, I am inclined to accept the stand taken by the petitioners that the question raised, albeit by way of amendment application, about the admissibility of the partition deed, is a question which would go to the root of the matter. I am of the view that if it is held that the partition deed, which has been placed on record as Exh. A-3, is inadmissible; and, therefore, cannot be looked into, the effect would be that the factum of partition cannot be said to have been proved by the respondent, in which case the suit property will have to be held as a joint family property. The petitioners are also right in contending that if the partition deed is discarded, then it will necessarily follow that even the property which is presently in possession of the respondent is a joint family property; and if such conclusion is arrived at, it is not possible to contend that the respondent is occupying the said premises as tenant of his brother, in which case there would be no cause of action for the respondent to maintain this proceeding. All these aspects can be examined only after the question as to whether the partition deed dated 14th June, 1976 is admissible in evidence or not, is answered. No doubt, the Appellate Court has referred to three other documents as circumstances to hold that the respondent was landlord in

respect of the suit premises. Be that as it may. The said documents cannot decide the question of title in respect of the suit premises and in respect of premises presently occupied by the respondent. Moreover, when the respondent had approached the Court with a specific case on the basis of the partition deed, it would be imperative to first answer the question with reference to the admissibility of the said partition deed instead of referring to the peripheral matters and any other circumstances, as has been done by the Appellate Court. It is already seen that the question whether the partition deed is admissible in evidence or not, was specifically kept open to be adjudicated at the time of enquiry of the application for permission filed by the respondent. Notwithstanding this position, neither the trial Court nor the Appellate Court has adverted to the said question when the matter was finally adjudicated between the parties. In my view, the question whether the said partition deed is admissible or not, even though was not specifically raised before this Court in the previous round when the writ petition came to be decided in favour of the respondent, the same would not make any difference for the simple reason that this Court merely remanded the matter for fresh enquiry and, therefore, it was not only open for the petitioners to raise the same but also obligatory on the Appellate Court to decide the same for full, complete and effectual adjudication of the matter. Moreover, this question is a pure question of law. It is also well settled that interpretation of document is a pure question of law. Naturally, therefore, the same could be raised even at this stage particularly because it goes to the root of the matter. I am of the view that instead of examining this question before this Court, it would be appropriate and in the interest of justice to send back the matter to the Appellate Court to adjudicate the same on merits in accordance with law. This course will not only provide a fair opportunity to the parties but more than that this Court will have the advantage of a reasoned judgment of the Appellate Court on this aspect.

12. In the circumstances, it would be in the interest of justice that the matter is remanded to the Appellate Court with the direction that the Appellate Court will decide the issue of admissibility of the said partition deed and after recording its clear finding on the said aspect would then proceed to deal with the rival contentions as to the consequences thereof. The Appellate Court shall give fair opportunity, including to lead further evidence, if any, to both the parties, in the context of the said issue only. It is made clear that no other question has been examined by this Court on merits of the contentions with regard to the ground of bona fide requirement and the same is kept open. In other words, it will be open to the petitioners to raise all other questions before this Court if the matter is decided against them by the Appellate Court in remand proceedings.

13. For the aforesaid reason, the writ petition is allowed. Rule is made absolute in the above terms. The matter is remitted to the Appellate Court i.e. Resident Deputy Collector, Yavatmal. The Appellate Court shall decide the appeal within a period of six months from the receipt of this order. Parties shall appear before the Appellate Court on 5th September, 2000, to enable the Appellate Court to fix

the matter for further hearing.

14. Parties to act on the copy of this judgment duly authenticated by the Court Sheristedar.