
(1979) 09 BOM CK 0033

In the Bombay High Court

Case No : Spl. C. Appln. No. 193 of 1974

Ramkrishna Ajabrao and others

APPELLANT

Vs

Vithal Laxman Vanmali

RESPONDENT

Date of Decision : 11-09-1979

Acts Referred:

Citation : (1979) 09 BOM CK 0033

Hon'ble Judges : V. Mohta, J.

Bench : Single Bench

Final Decision : Allowed

Judgement

V. Mohta, J.—One Ajabrao who was admittedly a tenant in respect of the field property in dispute had filed the present petition. During pendency of this petition, he expired as a result his three sons have been joined as petitioners. Respondent is a landholder.

2. On 18-5-1964 the landholder respondent got possession of the property from the erstwhile tenant on the ground that it was needed for bona fide personal cultivation. It appears that even after taking possession of the property on that ground, the field was not cultivated as a result of the proceeding under section 52 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, (hereinafter referred to as "the Act") was initiated. These proceedings terminated in favour of the tenant on 24-4-1969. Consequently, the possession was restored to him on 5-11-1969. Sometime afterwards, the tenant filed an application on 29-1-1971 under section 49-A of the Act for fixation of the purchase price. These proceedings were registered as Revenue Case No. 1/59 (13-A)/70-71 of Hatgaon, before the Tenancy Naib-Tahsildar, Murtizapur, decided on 31-7 1971. In these proceedings, the respondent filed a written statement purporting to bear the date 24-4-1971 which came to be filed on 11-5-1971 as the order sheets record. Amongst the various pleas that the respondent raised, one was that he was a person under disability unable to do any sort of work and labour. He stated that he was always sick from acute pain in the stomach and

had a stunted growth. His age was 36 but he looked merely like a boy. He is also of unsound mind and as he was a person under disability the purchase price could not be determined under the circumstances. In the concluding part of the written statement, there is a mention that he is filing the copy of his birth register and a medical certificate about the state of his health. Though it appears from the record that these documents, namely, birth register and medical certificate were not filed on 11-5-1971 along with the written statement but on the next date which was 28-5-1971 the said two documents came to be filed on the record. It is worthwhile noting that on that day the case was adjourned to 18-6-1971 for producing record-of-rights and crop-statements but later on at the request of Shri Pande, the Advocate for the respondent-landlord these two documents came to be filed. The Medical certificate which is at Record Page 25 in the hand-writing of a registered medical practitioner supports each and every statement of the respondent in the written-statement and clearly mentions about his incapacity of cultivating the land either by personal labour or supervision. From 28-5-1971 till 26-7-1971 there have been as many as five hearings. On 21-7-1971 it appears that even the arguments in the case were heard and the parties had sought some time to produce copies of certain decided cases and for that purpose the case was fixed on 26-7-1971. On this day, the tenant filed one application for amendment and also a Pursis admitting the contention of the tenant regarding his disability. The tenant was represented at that time by the Advocate Shri Pande. After, this, the case was fixed for order on 31-7-1971. The Agricultural Lands Tribunal, Murtizapur, came to the conclusion that the application for compulsory purchase was not filed within one year from the date of possession as a result it was barred in terms of section 50 of the Act. Tenants contention that sometime in the month of October 1970 he had attempted to file an application but the same was returned on the ground that it was not accompanied by relevant documents was negatived in the absence of any proof in support of such allegation. The original application which was returned was also not produced on the record. No importance to this aspect of the matter was attached by the Tribunal and in my view rightly. The land holder's contention that he was a disabled person unable to cultivate the land, was not accepted on the ground that he himself had filed previously an application for restoration of land.

3. Tenant Ajabrao filed an appeal against this order which was decided by the Sub-Divisional Officer, Murtizapur, on 24-11-1971. He came to the conclusion that in Lower Court the admitted position was that the landholder was a person under disability. On the basis of the material on the record and what was argued before him, the learned Sub-Divisional Officer recorded a finding that the landholder was a man under disability and, therefore, purchase price could not be fixed, thus dropping the proceedings for fixation of purchase price. In terms, the order of the lower Court was set aside.

4. The landholder approached the Maharashtra Revenue Tribunal in the revisional jurisdiction. The revision application dated 7-2-1972 is annexed to the petition. It

contains the statement of facts as well as the grounds. Following are some of the statement of facts mentioned in the said memo:

The non-applicant submitted that he was a person under disability and, therefore, the purchase price could not be determined for this reason.

The learned Sub Divisional Officer failed to notice that the plea of being under physical and mental disability put forth by the landlord before the trial Court was not pressed in service. Though this is a plea of fact no evidence was led on it. The learned trial Court was, therefore, right in rejecting this plea considering all the matter together as put forth before it. The plea was rightly rejected by the lower Court under the circumstances on the ground that in the proceedings under section 39 of Tenancy Act, this plea was not raised.....

Thus, the lower Court was right in not going into the question of fact on which no evidence was led, especially where the case was directly hit by a pure question of law. It appears that in appeal since the non-applicant was aware that he had absolutely no case on question of law and that he was bound to lose on that score, he tried to take an advantage of the fact that though for a plea's sake, a plea was taken by the applicant that he was a person under disability, he tried to lay the whole stress on this ground alone. It is pertinent to note that this was never the plea taken by the non-applicant at any point of time. On noticing that he had no answer to the bar of limitation under section 50 of the Tenancy Act, during appeal for the first time the tenant began to bank upon the plea of person under disability. The learned Sub-Divisional Officer suffers from this fundamental defect. Hence this application for revision of the same. The Maharashtra Revenue Tribunal reversed the order of the Sub-Divisional Officer and maintained that of the Agricultural Lands Tribunal by holding as under:

The appellate Court committed an error of law in dropping proceedings in view of the application made by the tenant on 26-7-1971, stating therein that the owner is under disability. This question is of secondary importance in view of the mandatory provisions of section 50 of the New Tenancy Act. Under these facts and circumstances the order of the appellate Court cannot be sustained. Being aggrieved by these findings, the tenant has moved this Court and presently his legal representatives are on record.

5. Shri P. C. Madkholkar, the learned counsel for the petitioners has assailed the impugned order mainly on two grounds. One limb of his argument is that even in terms of section 50 of the Act the provisions of sections 41 to 44 mutatis mutandis apply as a result, the landlord being a person subjected to any physical or mental disability, the right to purchase the land is postponed in any case till the cessation of such a disability. The second limb of the argument is that this was a pure case of an admission of a certain fact by the landlord and, therefore, the Agricultural Lands Tribunal as well as the Maharashtra Revenue Tribunal had plainly fallen in error in not straightway banking upon the same. He has fairly conceded that his application under section 49-A of the Act was certainly beyond

time but it had no bearing on the lines on which the impugned orders are being attacked. Section 50 of the Act reads as under:

50. Where a tenancy is restored under sections 7, 10, 21, 52 or 128-A or is created by a landlord not being a landlord within the meaning of Chapter III-A in any area after the date specified in sub section (1) of section 49-A, every tenant holding land under such tenancy and cultivating it personally shall be entitled to purchase within one year from the commencement or as the case may be, the restoration of the tenancy so much of such land as he may be entitled to purchase under section 41 and the provisions of sections 41 to 44 both inclusive shall mutatis mutandis apply to such purchase." (Emphasis supplied.) As the petitioners are heavily relying upon section 41, it is necessary to produce the relevant portion out of the same :

41 (1) Notwithstanding anything to the contrary in any law, usage or contract but subject to the provisions of sections 42 to 44 (both inclusive) a tenant other than an occupancy tenant shall, in the case of land held by him as a tenant, be entitled to purchase from the landlord the land held by him as a tenant and cultivated by him personally.

(2) Where the landlord is of the following category, namely :

(a) a minor;

(b) a widow;

(c) * * *

(d) a person subject to any physical or mental disability,

such tenant shall be entitled to purchase the landlord's interest under this section after the expiry of two years from the date of which:

(i) the landlord of category (a) attains majority,

(ii) *****

(iii) the landlord of category (d) ceases to be subject to such disability, and

(iv) the interest of the landlord of category (b) in the land ceases to exist:

Shri M. S. Choudhari, the learned counsel for the respondent-landholder has invited my attention to the decision of the Division Bench of this Court in the case of *Vikram v. Eknath* 1977 Mh. L J 520 and so also to the decision of Single Bench of this Court in *Govinda v. Udhaio* 1972 Mh. L J 588. On that basis it was submitted that section 50 and section 49-A of the Act have to be read together and, therefore, limitation of one year prescribed in section 50 of the Act will also apply to the provisions of section 49-A of the Act and, therefore, the present application was clearly barred by time and was, therefore, not maintainable.

6. The distinguishing feature of this case is that here the starting point of

limitation for conferral of right of compulsory purchase has not arisen at all in view of section 41 (2) of the Act. The sole question is whether the provisions of section 41 (2) regarding postponement of entitlement to purchase the landlord's interest till the time he ceases to be a person under disability applies to section 50 or not. The argument is that any such cases, section 41 (2) will apply and these provisions will be deemed to have been engrafted in the provisions of section 50 of the Act as in terms, section 41 has been *mutatis mutandis* made applicable to the provisions of section 50. I think, the argument on this point is extremely sound and has to be accepted.

7. The next limb of the argument which is more seriously refuted, is that the admission contained in the written statement under the circumstances should be straightway relied upon. Shri Choudhari has submitted before me that the said statement or the so called admission should be ignored, because as explained in the revision memo it was made under the peculiar circumstances and also as the tenant of his own accord had never come up with such type of case any time before even though admittedly there were two more proceedings between the parties. The submission is that firstly the so called admission should be ignored and secondly in the alternative, chance should have been given to the person making the said admission to explain it and the circumstances under which it was made and without that it should not have been relied upon. It is contended that after all the so called admission is only given in the written-statement and not in the plaint or the application. It was also contended that it was not a statement on oath and, therefore, also could not be used as an admission. Reliance was placed on some authorities in support of this proposition.

8. In the case of *Emperor v. Janki Bai* I L R 49 (1927) All. 482, it has been held as under :- -

Under section 21 of the Indian Evidence Act, a Court is bound to receive in evidence admissions of a party, but no such rule applies to denials. In my opinion an allegation in a written statement is not evidence of any fact which a Court is bound or authorised by law to receive. Section 17 and section 21 of the Indian Evidence Act refer to the subject of admission. Section 17 defines as to what admission is and section 21 deals with the mode of proof of admission. These sections respectively read as under:

17. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned. "21. Admissions are relevant and may be proved as against the person who makes them or his representative-in-interest; but they cannot be proved by or on behalf of the person who makes them or by his representative-in-interest, except in the following cases:

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead it would be relevant

as between third persons under section 32.

(2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Mere perusal of section 17 of the Evidence Act will show beyond doubt that it is not at all necessary that a particular statement for being used as an admission should either be on oath or has to be in the plaint or application only and if it is contained in any written statement or any plea by way of denial it does not amount to an admission. Admission is nothing but a statement, oral or documentary, which suggests any inference of fact which is made by any person. Documentary statement would naturally include not only plaint or application but also reply or written-statement and there is no such scope for drawing any exception as regards the plea which is raised in written-statement if otherwise it amounts to an admission. With respect, therefore, I am unable to agree with the proposition that has been laid down in the aforesaid Allahabad decision. Decision in the case of Prem Ex-servicemen Co-op. Tenant Farming Society Ltd. and Others Vs. State of Haryana and Others, , was relied upon in support of the proposition that in any case opportunity should be given to the respondent to explain the circumstances under which admission was made. It appears that in this particular case before the Supreme Court, the Collector whose order was challenged before the Supreme Court had relied upon certain observations made by the High Court of Punjab and Haryana on the basis of certain admissions made in that case. The Co operative Society had, it appears, made certain statements that certain Pattas were given in the year 1952 under certain circumstances. Dealing with that aspect of the matter and negating the argument that such a statement recorded by the High Court in the previous case amounted to admission, the person who made that admission was canvassing that it was necessary to explain the circumstances under which the admission came to be made. In that particular case in this back ground it was thought that admission was not clear depended upon various circumstances and, therefore, investigation of that aspect was necessary ordering fresh decision of the matter. The next case on which reliance was placed is Sita Ram Bhau Patil Vs. Ramchandra Nago Patil (Dead) by Lrs. and Another, . In that case, certain previous statement made by witness was not put to him even though he had entered into witness-box and the question arose about the effect of section 145 of the Evidence Act vis-a-vis section 21. In that context this is what the Supreme Court observed :

If admission is proved and if it is thereafter to be used against the party who has made it the question comes within the provisions of section 145 of the Evidence Act. The provisions in the Indian Evidence Act that "admission is not conclusive

proof are to be considered in regard to two features of evidence. First, what weight is to be attached to an admission ? In order to attach weight it has to be found out whether the admission is clear, unambiguous and is a relevant piece of evidence. Second, even if the admission is proved in accordance with the provisions of the Evidence Act and if it is to be used against the party who has made it, "it is sound that if a witness is under cross-examination on oath, he should be given an opportunity, if the documents are to be used against him, to tender his explanation and to clear up the point of ambiguity or dispute. This is a general salutary and intelligible rule" (See *Bal Gangadhar Tilak v. Shrinivas Pandit* 42 Ind. App. 135 at p. 147=A I R 1915 P C 7 at p. 11.) The Judicial Committee in that case said, "it has to be observed with regret and with surprise that the general principle and the specific statutory provisions have not been followed". The general principle is that before any person is to be faced with any statement he should be given an opportunity to see that statement and to answer the same. The specific statutory provision is contained in section 145 of the Indian Evidence Act that "A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him or being proved, but if it is intended to contradict him by the writing, his attention must, before the writing can be proved be called to those parts of it which are to be used for the purpose of contradicting him." Therefore, a mere proof of admission, after the person whose admission it is alleged to be has concluded his evidence, will be of no avail and cannot be utilised against him". Thus, it would be seen that the ratio of that case is that if a witness is under cross-examination on oath, he should be given an opportunity to explain if any document is to be used against him so that he can if he so chooses tender his explanation if any and clear up the point of ambiguity or dispute. In the context of this proposition and relying on section 145 of the Indian Evidence Act, it was held that the witness has to be cross examined as to the previous statement made by him either in writing or reduced to writing regarding relevant matters to the question and that his attention has to be drawn to that statement before using the same for contradicting him. After making these observations, the Supreme Court has held that the admission relied upon in the case was not clear and that there was absence of endorsement at the bottom of deposition to the effect that Statement of the witness was read over to him. Before using that statement even the leave of the Court for further cross-examining the witness on the point was not sought. It was thus held that the statement could not be used as substantive piece of evidence.

9. In support of a proposition that on the facts of this particular case the statement about the disability clearly amounted to an admission and should be used as such against the respondent, reliance upon 2 Supreme Court decisions was placed on behalf of the petitioner. In the case of *Bharat Singh and Another Vs. Bhagirathi*, it has been held that admissions can be used as substantive evidence by itself in view of the provisions of section 17 and 21 of the Indian

Evidence Act, though of course no admission can be held to be conclusive proof. Dealing with the proof of admission as a substantive evidence with reference to the provisions of section 145 of the Evidence Act, it has been stated that the purpose of contradicting a witness as contemplated under section 145 of the Evidence Act is wholly different from the purpose of proving the admission. The only principle behind section 145 of the Evidence Act is that previous statement used for the purpose of contradicting a witness does not become a substantive evidence by itself and merely serves the purpose of throwing doubt on the veracity of that particular witness.

10. Shri Madkholkar, also invited my attention to the case of the Union of India (UOI) Vs. Moksh Builders and Financiers Ltd. and Others, and on that basis submitted that if any admission by a party is a substantive evidence of the fact admitted and that admission is duly proved or is admissible as evidence it can be used as such irrespective of whether the party making it appeared in a witness-box or not, and whether that party when appearing as a witness was confronted with those statements in case it made a statement contrary to those admissions. In the face of this position of law, let us see whether under the following undisputed circumstances what has been stated by the landlord is admission or not and whether straight-way it can be relied upon as such.

1. The question of physical or mental disability of a landlord was directly in issue in these proceedings.

2. This plea of disability was not only raised by the landholder but was supported by documentary evidence, namely, a medical certificate.

3. Landholder wanted to place reliance on this document so much that even after the ordersheet was closed, on that very day the documents were filed on the record and the ordersheet was made to be reopened.

4. Before the case was closed for orders, the petitioner gave a Purshis making it clear that he was not disputing the plea raised by the landholder and on this basis the parties proceeded and expected the judgment to be given one way or the other.

5. Even after the filing of the Purshis which was done in the presence of the landholders counsel and before the passing of the order not only no attempt was made to show the circumstance and the reason for which it was given but indeed the landholder heavily banked upon the aspect of the question and expected the claim of the petitioner to be defeated on that circumstance.

6. In the appeal also no retraction of admission on this aspect of the matter was made.

Thus, it will be seen that the landholder heavily relied upon this aspect, submitted a proof thereof and the parties proceeded in trial on this assumption. Perusal of the revision memo will show the grounds on which the respondents want to get over that admission. The first submission is to the effect that this

aspect of disability was not pressed into service before the trial Court. Second is about non-recording of evidence on this point. Third is that he had raised that plea, as on that basis he intended to non-suit the petitioner and the fourth is that such a plea was not raised by the tenant before. It was submitted by Shri Choudhari that in any case under the circumstances, the matter should go back to the trial Court and the respondent should be given opportunity to prove the aforesaid circumstances under which the admission came to be made. In the first place, it may be seen that it is wholly wrong to presume that this aspect of the matter was not pressed into service before the trial Court. Indeed, before the judgment, the tenant filed a specific Purshis in writing admitting his plea.

11. As far as opportunity of adding oral evidence is concerned, it was never sought and, therefore, the question of granting it does not arise. As far as third ground is concerned, that he had raised the plea thinking that on that basis the petitioner will be non-suited it can hardly be a ground to hold that either the admission was not real or that it could not be acted upon. It is not at all necessary for a particular admission to be used as such that it should be against his interest at the time of making it. In this case the admission might have been made with the object of defeating the claim but if ultimately in that very case it has recoiled on him, it is not permissible for him to say at subsequent stage that particular admission was made by him deliberately wrongly. This aspect of the question is also dealt with in the case of *Union of India v. Moksha Builders and Financiers Ltd.* (cited supra) in which the Supreme Court has made the following observations:

So also, there is no force in the argument that the aforesaid admissions or statements of defendant No. 3 could not be read against him as they were not adverse to his interest when made. There is no such requirement of the Evidence Act and the argument is untenable as it unreasonably restricts the opportunity to prove the true state of affairs on the party's own showing and to demolish his subsequent claim as self-contradictory. I am also extracting hereunder the following passage from 1948 Edition of Wigmore on Evidence:

It follows that the subject of an admission is not limited to facts against the party opponent's interest at the time of making it. No doubt the weight of credit to be given to such statements is increased when the fact stated is against the persons interest at the time; but that circumstance has no bearing upon their admissibility. On principle, it is plain that the probative reason why a party-opponent's utterance is sought to be used against him is ordinarily the reason noted above in paragraph (1)b, viz. that it exhibits an inconsistency with his present claim, thus tending to throw doubt upon it, whether he was at the time speaking apparently in his own favour or against his own interest. 12. Thus, it will be seen that it is not possible for a party to blow hot and cold in the same breath. If any statement is made, he has to be prepared for all consequences that flow from the same. To hold contrary will be a fallacy in the fullest sense.

13. As far as the last point that the petitioner had not come up with that plea is

concerned, it will not materially affect the ultimate conclusion in this matter. It is not necessary that party must come with a particular case in order that he should succeed. It is always permissible to succeed in a litigation on the basis of an admission by the other party though such a point is not raised by the one who wants to take advantage of that admission.

14. Under the circumstances, it appears that this was a case of clear cut admission which was rightly relied upon by the Sub- Divisional Officer. I do not think that this is a case in which the party should be allowed to explain this admission and the circumstances under which he made it especially when it is admitted by him that the only reason why he made the admission in this very matter was to non-suit the Tenant. Even if this ground is held to be correct, it will make no difference as in this case the parties have acted upon that admission and the trial has proceeded. Indeed, the landholder will be estopped from now saying that he does not suffer from disability.

15. Thus, the petition is allowed. The order passed by the Sub-Divisional Officer, Murtizapur, is maintained and that of the trial Court and the Maharashtra Revenue Tribunal is quashed. However, there will be no order as to costs.