

(1937) 09 BOM CK 0027

In the Bombay High Court

Case No : Second Appeal No. 30 of 1934

Ramkrishna Jagannath Kadam

APPELLANT

Vs

Bapurao Badajirao Kadam

RESPONDENT

Date of Decision : 29-09-1937

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 84
Khoti Settlement Act, 1880 — Section 9

Citation : AIR 1938 Bom 284 : (1938) 40 BOMLR 390

Hon'ble Judges : Sen, J;Rangnekar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rangnekar, J.—It is said by Mr. Desai that the question raised is not covered by authority. The appeal arises out of a suit brought by the respondents who are knots of the village of Hativ in the Ratnagiri District against the appellants in the following circumstances. One Daji was admittedly an occupancy, or, as he is now called under the present Act, permanent tenant of the lands in suit. On May 13, 1896, Daji sold, or purported to sell, the lands to a predecessor-in-title of the present appellants. After the death of Daji, his nephew, on October 21, 1927, sold the same lands to the plaintiffs and in December, 1928, passed a rajinama in their favour. The plaintiffs admittedly are the khot sharers of the village, owning dhada No. 11, which comprised the khata of the occupancy holding of Daji. The main defence to the suit was that the defendants became the occupancy tenants of the khot by reason of their having held the occupancy holding in question adversely to the khot for more than twelve years. The fact that they were in possession of the lands included in the khata of the occupancy holding is not denied. This contention was accepted by the trial Court but rejected in appeal by the District Judge of Ratnagiri.

2. The only question, therefore, which we have to consider is, whether in the circumstances of the case, the appellants have become the occupants" of this

particular khata or occupancy holding by reason of their adverse possession. Section 9 of the Khoti Settlement Act, as it stood before the amendment of 1912, provides that an occupancy tenancy, or the occupancy tenant's rights, are heritable and they cannot be transferred independently of the consent of the khot. But the old Act did not provide for any penalty for such an unauthorised transfer. That omission is now made up by the amendment of 1912, the effect of which, shortly, is this, that the khot becomes entitled, on such unauthorized transfer by the occupancy tenant or permanent tenant, to forfeit the lands and to enter into possession thereof. That amendment, however, has no retrospective effect and cannot apply to the facts before us. If that had applied, the position in this case would have been extremely simple. The question then is, what was the legal position of the predecessors-in-title of the appellants on the sale made by Daji in 1896 in their favour ? The answer to that is clearly to be found in Section 6 of the Act itself. That section, so far as material, provides that if an occupancy right which is not transferable otherwise than by inheritance has been so transferred, the actual holder of the land shall be deemed to be the tenant thereof. It seems to us clear, therefore, from this section, upon the plain meaning of it, that in this case the predecessors-in-title of the defendants became the tenants of the khot. It was argued that the section does not, in terms, say whose tenant the actual holder of the land should be deemed to be upon an unauthorised transfer of the occupancy right. But, reading the section as a whole, it seems to me to be plain that under this section the actual holder, that is to say, the transferee from the occupancy tenant, can only be the tenant of the khot. Sections 5 and 6 undoubtedly show, as is argued by Mr. Desai, the modes by which the rights of occupancy can be acquired, and it is possible that where a right of occupancy has been wrongly transferred the transferee might become the occupancy tenant himself under certain circumstances, a question which does not arise in the present case. We are not disposed to attach much importance to Mr. Desai's argument that these two sections are placed in the statute under the heading " Inferior Holders," and that Section 9, which is the section which prohibits a transfer of occupancy rights, is placed under the heading " Transfer ...of rights." It is undoubtedly permissible to the Court to refer to marginal notes and headings as aids in interpretation of statutes. But it has never been supposed that, where a section is plain on the express language of it, the plain meaning of that section should be curtailed by any marginal note or by any arrangement made by the authors of the statute.

3. Then Section 8 is relevant. Upon the sale by Daji to the predecessors-in-title of the defendants u/s 6 the latter became the tenants. The question is, what was exactly the nature of the tenancy ? The answer to that is given by Section 8, which says :

Tenants other than permanent tenants shall continue to hold their lands subject to such terms and conditions as may have been, or may hereafter be, agreed upon between the khot and themselves, and in the absence of any such specific-agreement shall be held to be yearly tenants liable to pay rent to the khot at the

same rate as is paid by permanent tenants...

4. No special agreement is set up in this case on behalf of the appellants. It follows, therefore, that they must be deemed to have held the land as yearly or annual tenants of the khot. This is the view which the learned District Judge took, and, we think, rightly. Having regard to the relevant sections of the Khoti Settlement Act, it seems to us to be difficult to hold that a transferee under a wrong transfer can claim to be an occupancy tenant merely because he has been in possession of the land for more than twelve years and also merely because he sets up an adverse possession. This view is indirectly supported by the decision of this Court in *Yesa v. Sakharam*. (1905) 7 Bom. L.R. 941 There Mr. Justice Batty held that an occupancy tenant in a khoti village had a two-fold right, first, that of an ordinary tenant to occupy the land ; and, secondly, an additional right to do so without being liable to eviction so long as he paid the statutory rent. The learned Judge further held that there was nothing in the Khoti Settlement Act to prevent a transfer of the first right, although a similar transfer of the second would be null and void u/s 9, and that, therefore, a non-transferable right remained in the transferor occupancy tenant till its determination by one or other of the modes prescribed in the Act. It follows from this that the transferee becomes an annual tenant of the khot in the absence of a specific agreement to the contrary between the khot and himself. The transferor continues to be the holder of the occupancy rights and the khot is not at liberty to evict the transferee in occupation until the determination of his rights as the occupancy tenant. It is only after he determines the occupancy tenancy in the manner prescribed by the law that the khot has a right to evict the transferee. This has been done in this case, as admittedly a notice to quit u/s 84 of the Bombay Land Revenue Code was given to the appellants. In this, view, therefore, the appeal fails and must be dismissed with costs.

Sen, J.

5. I agree.