
(1999) 11 BOM CK 0044
In the Bombay High Court
Case No : Writ Petition No. 364 of 1985

Rangrao Kulkarni

APPELLANT

Vs

Syed Hakim and others

RESPONDENT

Date of Decision : 19-11-1999

Acts Referred:

Citation : (2000) 1 ALLMR 417 : (2000) 2 BomCR 211 : (2000) 2 BOMLR 542 : (2000) 2 MhLj 659

Hon'ble Judges : B.H. Marlapalle, J

Bench : Single Bench

Advocate : S.A. Deshmukh, for the Appellant; S.G. Mantri and D.V. Tele, A.G.P., for the Respondent

Judgement

B.H. Marlapalle, J.—The subject matter of this petition pertains to land admeasuring 11 Acres and 15 Gunthas in Survey No. 15 of village Warphal, Taluka Partur. The said land belonged to one Lambabai had no son and, therefore, had adopted Vithal the son of her daughter. The respondent No. 1 filed Regular Civil Suit No. 50 of 1974 in the Court of Civil Judge, Junior Division at Partur for perpetual injunction against the present petitioner (defendant No. 2) while Vithal was impleaded as defendant No. 1, contending therein that the plaintiff was cultivating the said land as a tenant for the last about 10/ 12 years and in the agriculture year 1974-75 his possession was disturbed by defendant No. 2. The present petitioner/defendant No. 2 filed his written statement opposing the suit and contended the Vithal had inducted him as a tenant since 1972 in pursuance of the Thoka Patrak dated 1st March, 1972 and subsequently by a registered sale-deed executed in 1974 the suit land was purchased by him from defendant No. 1. In view of this the rival claims of tenancy by both plaintiff as well as defendant No. 2, the learned Judge referred the following two issues to the Tenancy Court for determination:-

(1) Does the plaintiff prove that he is a tenant over the suit land since the year 1963 till now?

(2) Does the defendant No. 2 prove that he was in possession of the suit land as a tenant for one year since 1st March, 1972 as contended by him?

2. The Naib Tahsildar by his judgment dated 7th December, 1976, after recording the evidence, gave a finding that the plaintiff had failed to prove his tenancy and the defendant No. 2 had proved that he was a tenant of the suit land. This order came to be challenged in an appeal before the Deputy Collector, Land Reforms, who, by his judgment and order dated 1st January, 1979 was pleased to dismiss the appeal. The plaintiff, therefore, approached the Maharashtra Revenue Tribunal in Revision and by judgment and order dated 8th June, 1981 the Tribunal was pleased to remand the matter for fresh enquiry and decision, to the Deputy Collector. On remand, the Deputy Collector considered the documentary as well as oral evidence and by his order dated 15th December, 1983 confirmed the decision of the Naib Tahsildar dated 7th December, 1976. The plaintiff, therefore, approached the Maharashtra Revenue Tribunal by way of a revision which came to be allowed by the impugned judgment and order dated 19th April, 1985.

3. For the purpose of deciding this petition it is necessary to consider whether the following two issues are proved on the basis of the evidence that was recorded by the Naib Tahsildar while passing his order dated 7th December, 1976.

(1) Whether it is proved that the plaintiff was tenant till the agricultural year 1971-72?

(2) Whether the defendant No. 2 has proved that he was a tenant for the agriculture year 1972-73 onwards till he purchased the suit land?

4. From perusal of the record and proceedings received from the lower courts/ Authorities it is clear that the plaintiff had relied upon Batai Patrak executed on 2nd June, 1965 and the receipt dated 10th April, 1967. In addition, he had examined himself and other independent witnesses namely Rangnath S/o Bhau Sonar, Ahmedmiyan S/o Gausmiyan. The defendant No. 2 examined himself and other witnesses by name Narayan S/o Bhanudas Sawant, Shaikh Mohiuddin S/o Shaikh Haju and Asoba S/o Bhimrao Jadhav in support of his case. The Batai Patrak dated 2nd June, 1965 was referred by the Naib Tahsildar to the Civil Court and this action was most uncalled for. Though the learned Judge of the Civil Court observed that it was not required to forward this document to him, by way of advice he forwarded a written reply stating that the document was a mortgage deed. This advice is a nullity in law and should not have been relied upon either by the Naib Tahsildar or the Deputy Collector as has been rightly held by the learned Member of the Maharashtra Revenue Tribunal.

5. The document dated 2nd June, 1965, if read as it is, is undoubtedly a Batai Patrak and it was signed by Limbabai as the guardian of Vithal, who was then a minor. On the day when the evidence was recorded by the Naib Tahsildar, Limbabai admittedly was not alive and a lame plea has been raised as to why Vithal defendant No. 1 was not examined in support of this document. This plea

has to be considered only for being rejected. Not only the plaintiff himself and his two witnesses but the defendant No. 2 and his three witnesses have, in no unambiguous language, admitted before the Naib Tahsildar that the plaintiff was cultivating the suit land before it came in possession of the defendant No. 2. In fact, the second witness of defendant No. 2 Shri Asoba Bhimrao Jadhav went a step further in his examination-in-chief and stated that he was a party to the Batai Patrak that was executed between the plaintiff and Limbabai and the plaintiff continued to be a tenant of Limbabai for seven years which period was again extended by one more year. The learned Member of the Maharashtra Revenue Tribunal has rightly assessed this evidence and reversed the finding recorded by the Deputy Collector as the said finding was perverse and contrary to the evidence on record regarding the status of plaintiff as a tenant on the suit land.

6. The defendant No. 2, in support of his case that he was inducted as a tenant in the suit land by Vithal, defendant No. 1, relied upon the Thoka Patrak dated 1st March, 1972. This Thoka Patrak, written on a plaint paper, was produced before the Naib Tahsildar and it was allegedly signed by Vithal himself. When the evidence was recorded Vithal was alive and surprisingly he was not examined as a witness by the defendant No. 2. The first witness of the defendant No. 2 by name Narayan S/o Bhanudas Sawant, whose depositions were recorded by the Naib Tahsildar on 22nd November, 1975, when confronted on the Thoka Patrak, stated initially that the Thoka Patrak was executed one year back, he corrected himself and stated that it was executed six months before. While concluding the depositions the Naib Tahsildar asked him a question as to when exactly this Thoka Patrak was written, the witness replied that he had signed on the Thoka Patrak about two years back, which will refer to the year 1973. Nothing prevented the defendant No. 2 to examine defendant No. 1 as a witness in support of this Thoka Patrak which was the sole document in support of his case that he was a tenant on the suit land from the year 1972 onwards. The failure on the part of defendant No. 2 to take proper steps to prove the Thoka Patrak before the Naib Tahsildar has, thus, made the said document unreliable and it cannot be taken into consideration as a piece of evidence. There is one more aspect which needs to be considered and which has been rightly considered by the learned Member of the Maharashtra Revenue Tribunal. The defendant No. 2 is an educated man, his close relation was working, at the relevant time, as a Tahsildar of a nearby Taluka and he failed to bring on record 7/12 extract in respect of the suit land to show that for the years 1972-73 onwards his name was entered in the cultivation column. When he was questioned on this aspect he merely stated before the Naib Tahsildar that he had made such applications but did not pursue them and did not bother whether the applications were allowed or not. The 7/12 extract, which is brought on record before the Naib Tahsildar, pertains to the agricultural year 1974-75 onwards in which the name of the defendant No. 2 has been shown as the owner and his name also has been entered into the cultivation column. It is, therefore, clear that there was no iota

of evidence in support of the case of the defendant No. 2, the present petitioner, that he was cultivating the suit land as a tenant or in any other capacity for the agricultural years 1972-73 onwards or till he became the owner of the suit land.

7. The learned Counsel for the petitioner relied upon the following judgments of this Court:

(1) Pandu Dhondi Yerudkar and Another Vs. Ananda Krishna Patil, .

(2) Nilesh Construction Company and Another Vs. Gangubai and Others, and

(3) Anandrao Bandu Jadhav and Another Vs. Bibijan, .

8. In the case of "Pandu" (supra) this Court, in para 3, observed:

"... .. When a vague plea is made by the defendant contending that he is a tenant of the land, the Court should hesitate to frame such an issue on such a vague plea, unless the defendant is able to give particulars showing the time when the tenancy was created, the person by whom it was created and the terms on which it was created. If in spite of such particulars being asked for the defendant is unable to furnish the same, the Court should not raise an issue on a vague plea that he, the defendant, is a tenant of any particular piece of land. Normally the rules of pleadings require that these particulars are the minimum particulars which a man must furnish before he can request the Court to frame an issue as regards the claim made for tenancy."

9. The judgment in the case of "Pandu" (supra) was referred to and followed by this Court in the subsequent judgment in the case of "M/s Nilesh Construction Company" (supra). I am afraid all these judgments cited by the learned Counsel do not support the claim of the petitioner/defendant No. 2 in the facts and circumstances of this case.

10. While deciding the Revision Application the learned Member of the Maharashtra Revenue Tribunal, on perusal of the oral and documentary evidence, noted that the findings recorded by the Deputy Collector, even on the fresh enquiry, on both the issues, were not supported by the evidence that was recorded before the Naib Tahsildar and the learned member was justified to do so while deciding the revision. It is well established in law that a revision Court is empowered to set aside the findings impugned before it if the said findings are perverse and not supported by the evidence available on record. This exercise cannot be called as re-appreciation of evidence. No fault could be, therefore, found with the impugned judgment and order of the Maharashtra Revenue Tribunal and the findings recorded by the Deputy Collector have been rightly reversed. It is informed by the learned Counsel for the petitioner across the Bar that the suit is still pending for trial inspite of the fact that there was no such stay granted by this Court on the trial of the suit during all these years and it appears that an application came to be filed before the learned Judge of the trial Court to stay the proceedings and perhaps the proceedings are stayed.

11. In the result, the writ petition is dismissed and the impugned order passed by the learned Member of the Maharashtra Revenue Tribunal is hereby confirmed. The learned trial Judge is directed to try and decide the Regular Civil Suit No. 50 of 1974 as expeditiously as possible and in any case within a period of six months from the receipt of writ from this Court. Rule discharged. No costs.

12. Petition dismissed.