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(1970) 06 BOM CK 0001

In the Bombay High Court

Case No : Special Civil Application No. 1133 of 1964

Sahadu Bala Botra and Another — APPELLANT

Vs

Namdeo Bapuji Karale and Others — RESPONDENT

Date of Decision : 18-06-1970

Acts Referred:
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 84

Citation : AIR 1972 Bom 25 : (1971) 73 BOMLR 318 : (1971) MhLj 1014

Hon'ble Judges : Wagle, J

Bench : Single Bench

Advocate : Y.S. Chitale and D.K. Ghaisas, for the Appellant; M.V. Paranjpe and N.D. Hombalkar, for the Respondent

Judgement

1. An interesting point of law that arises in this case is whether the expression "any person other than the tenant in actual possession" used in the second proviso to Section 84-A of the Tenancy Act would include a person other than a tenant jointly purchasing along with the tenant. The facts of this case which have led to this Special Civil Application are the following.

2. S. No. 59 of Sudawadi measuring about 106 acres belonged to the family of Natus which consisted on three branches. On December 18, 1948, an agreement was executed by two of the three branches, viz. Shankar and Harihar, for transfer of their one third share in the joint property to petitioner No.1 and opponent No.1. In pursuance of the agreement to sell, deeds of sale were executed on July 15, 1949 by Shankar and Harihar. Even vendor transferred his one-third share jointly in favour of petitioner No. 2 and Opponents Nos. 2 to 4 in one-half shares. Instead of the purchase being effected in the names of petitioner No. 1 and Opponent No. 1, it was effected in the names of their respective sons. The property, however, continued in the possession of the purchasers.

3. Civil Suit No. 158 of 1955 was filed by the present petitioners Nos. 1 and 2 against opponents Nos. 1 to 4 for partition and possession of their one-half share

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in the two thirds property purchased by them jointly. A contention was taken that the deeds were void under the Tenancy Act, as the purchase was effected by petitioner No. 1 and petitioner No. 2, neither of whom was a tenant. The petitioners, however, had taken up a contention that they were also the tenants. A reference was necessitated and the same was made by an order dated November 9, 1956.

4. In the reference, which was heard by the Revenue forum, petitioner No. 1 as well as opponent No. 1 were both held to be tenants. However, in Appeal No. 21 of 1957 decided on February 28, 1958, petitioner No. 1 was held to be a non-tenant. In order to validate the transaction, proceedings were taken by petitioner No. 1 on June 4, 1958, u/s 84-A for validation of the transaction. Ultimately, the District Deputy Collector by his order dated April 21, 1962, held that since the transaction resulted in the eviction of a tenant, a validation certificate could not be issued. This decision was confirmed by the Maharashtra Revenue Tribunal on March 3, 1964. The present petition is filed by the two petitioners original plaintiffs challenging the orders of the District Deputy Collector and the Maharashtra Revenue Tribunal.

5. Mr. Chitale, who appears for the petitioners, contends that the provisions of Section 84-A have to be construed very strictly if the rights of a purchaser who has paid consideration have to be denied to him. According to Mr. Chitale, the provisions of the second proviso to Section 84-A of the Tenancy Act would not bar a validation certificate being issued to petitioner No. 2 for validating the transaction which was not valid when entered into. The proviso reads as follows :-

1 "Provided further that if any such transfer is made by the landlord in favour of any person other than the tenant in actual possession, and such transfer is made either after the unlawful eviction of such tenant, or results in the eviction of the tenant in actual possession, then, such transfer shall not be deemed to be validated.........."

I am not concerned with the rest of the proviso. The argument that was accepted by the District Deputy Collector and the Revenue Tribunal was that if the transaction was validated, then, in respect of one-half of two thirds, opponent No. 1, who was a tenant would be evicted. Both the authorities, therefore, held that the provisions of the second proviso squarely applied to the circumstances of this case. Mr. Chitale''s argument, however, was that this would not be the correct position.

6. The expression "any person other than the tenant in actual possession" would not include a group of persons which includes the tenant in possession. If a group purchases the property and in the group one purchaser is a tenant in possession, then, according to Mr. Chitale, it cannot be urged that this is a transaction in favour of any person other than the tenant in possession. Since the possession is joint, each purchaser is entitled to contend that he has a share in the entire two-thirds purchased. Although his share may be delimited by one-

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half, still, since the property is held jointly, it cannot be held that the tenant is evicted from any particular piece of land out of the two thirds that was purchased. Mr. Chitale''s argument, therefore, was that since the purchase was jointly made by some persons and amongst those persons there was one person who was the tenant in possession, the provisions of the proviso would not apply in the circumstances of the case.

7. In support of his contention, Mr. Chitale cited a decision of the Rajasthan High Court in Hari Pratap and Another Vs. Ramgopal and Another, . In the Rajasthan case, the facts were that a tenant of a shop had taken it on lease from three landlords. After being the tenant, he purchased the interest of one landlord. The two landlords thereafter filed a suit for possession by terminating the tenancy. The claim made by the landlords was that they were the landlords and the defendant was a tenant. The defendant had taken on tenancy the shop. The tenancy having been terminated, the two out of the three landlords were entitled to get possession of the entire shop. Their claim was negatived by the High Court which held that at best the two landlords would be entitled to joint possession two thirds share of the shop along with the one-third which remained with the tenant. This case has no application to the facts of the instant case. The facts of the Rajasthan case make it clear that if at all the tenancy continued after the purchase of one-third share by the tenant himself, the tenancy could only operate on two-thirds. It was therefore, held that the two landlords could only obtain what they had rented out and they were not entitled to obtain possession of what was rented out by the third landlord. In the instant case, however the facts are that a purchase is effected by one group. The group includes a tenant. There is no termination of a tenancy which continued in the name of opponent No. 1 in spite of the purchase made by opponents Nos. 2 to 4 of one-half of the two-thirds. If, therefore, one-half of the two-thirds has been purchased by a person who is a non-tenant and it would result in the eviction of the tenant, if effect is given to the transaction, the case falls squarely within the provisions of the proviso to Section 84-A. The fact that the purchase is made jointly by a tenant and a non-tenant does not give additional right to the non-tenant. His status continues to be that of a non-tenant in spite of the fact that he had made a joint purchase along with the tenant.

8. A further argument was advanced by Mr. Chitale that the tenancy in respect of the two-thirds portion had been terminated as can be seen from the contentions made by the defendants in the suit. In the written statement a contention is made as follow :-

"(.....)"

Great reliance was placed on this submission in the written statement on behalf of opponent No.1 that since the opponents or the defendants had become the owners of that two-third, the tenancy had automatically come to an end. This argument apparently looks quite good. But the statement made in the written statement cannot be dissociated from the circumstances under which it is made.

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The contention of the defendants in the suit was that the purchase was wholly effected by the opponent No. 1 who had paid the entire consideration and that no consideration had proceeded from the petitioners or either of them. On the basis of this submission, a further submission was made that the defendants had become the owners of the two thirds. The plaintiff''s contention, however, is that they are the owners of one-third and the question u/s 84-A has got to be construed by reference to what the petitioners contend. If the petitioners'' contention is correct and the suit can proceed only on the basis that the same is correct, then the petitioners are the owners of one-half of the two-thirds. If that is so, the possession of that one-half of the two-thirds would definitely evict opponent No.1. The District Deputy Collector and the Revenue Tribual rightly took the view that the provisions of the proviso to Section 84-A would apply to the facts of this case and a validation certificate could not be issued.

9. Rule discharged with costs.

10. Petition dismissed.

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