

(1978) 11 BOM CK 0012

In the Bombay High Court

Case No : Civil Revision Application No. 561 of 1978

Satvashila and Others

APPELLANT

Vs

Rukmini D. Gath

RESPONDENT

Date of Decision : 17-11-1978

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 63, 85A

Citation : (1978) 11 BOM CK 0012

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Advocate : P.M. Pradhan, for the Appellant; R.M. Agarwal and A.G. Pawar, for the Respondent

Judgement

S.C. Pratap, J.

The opponent plaintiff herein filed Special Civil Suit No. 67 of 1976 in the Court of Civil Judge, Senior Division, Kolhapur, against the petitioners defendants herein for specific performance of an agreement of sale in respect of an agricultural land admeasuring about 2 acres and 18 gunthas out of Division Survey No. 56/6 which survey number admeasured about 5 acres and 18 gunthas assessed at Rs. 23.74 p. Various defence were raised to the said suit. On September 28, 1976 the trial Court framed at Exhibit 15 as many as 15 issues out of which Issue No. 9 was as follows :

"Do they (i.e. the defendants) further prove that the plaintiff was not an agriculturist on the date of the agreement?"

By order dated 27th March, 1978 the aforesaid Issue No. 9 was referred to the Tenancy Court under the provisions of section 85-A of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as "the Tenancy Act").

2. On 22nd August, 1978 the plaintiff through her Advocate filed an applicant at Exhibit 25 for review of the aforesaid order of reference dated 27th March, 1978 contending inter alia that the aforesaid Issue No. 9 was not at all relevant and

useful in any way for either the plaintiff or the defendants and that the decision of the said issue by the Tenancy Court would be futile and outside the real intention of the parties. It was further contended that the finding of the Tenancy Court on the said issue would be totally abortive and the error in question (i.e. framing the referring the said issue to the Tenancy Court) was so manifest that the Court would not permit such an error to remain on record. On the said application the trial Court passed an order on 29th August, 1978, to the effect that section 63 of the Tenancy Act prohibited an actual sale and that there was no restriction for an agreement of sale. Status had to be seen with reference to the date of the actual sale and not with reference to the date of the agreement of sale. The trial Court consequently held that Issue No. 9 aforesaid could not be said to be correctly framed or required for deciding the dispute between the parties in a suit as the instant one for specific performance of an agreement of sale. Issue No. 9 was consequently struck off and deleted. As this order was passed in the absence of the defendants or their Advocate, an application was made for hearing them in the matter. The defendants were thereupon heard through the Advocate and the trial Court by its order dated September 8, 1978, reiterated its earlier observation that section 63 of the Tenancy Act did not prohibit sale to a non agricultural in toto but permits such a sale if permission in that behalf is obtained from the Collector. It was further observed that section 63 was only a conditional restriction and an agreement of sale even to a non-agriculturist can be enforced if the conditions of section 63 are satisfied. In the circumstances the order striking off and deleting Issue No. 9 was maintained and a Yadi was directed to issue to the Mamlatdar for calling back the reference. It is this decision of the trial Court striking off and deleting Issue No. 9 and recalling the reference from the Tenancy Court that is being challenged before me very strenuously on behalf of the petitioners-defendants by Mr. P.M. Pradhan the learned Advocate.

3. According to Mr. Pradhan, on issue whether the plaintiff is an agriculturist even at the date of the agreement of sale was a relevant issue arising from the pleadings between the parties and consequently, such an issue was required to be referred for its determination to the Tenancy Authority under the provisions of section 85-A of the Tenancy Act. I am unable to accept this contention. None of the provisions of the Tenancy Act debar an execution of an agreement of sale of an established agricultural land in a favour of a non-agriculturist. Indeed the Tenancy Act contaminates even a sale deed in favour of a non-agriculturist the only condition in that behalf being permission of the Collector under the provisions of section 63 of the Tenancy Act. If that is the legal position, I do not see how an issue as to whether the plaintiff is an agriculturist at the date of an agreement of sale is, in any way, relevant for the decision of the suit. Merely because the impugned agreement of sale is referred to by the parties in their pleadings, that does not necessarily mean that an issue is required to be settled, decided or determined under any of the provisions of the Tenancy Act. Indeed, validity of an agreement of sale cannot be said to be a question arising within the

exclusive jurisdiction of the tenancy authorities.

4. Mr. Pradhan contended that under the provisions of section 85-A, it was mandatory to refer the issue in question to the tenancy authorities. That undoubtedly is correct if the issue had continued to remain alive. But when the said issue does not at all rise and when the said issue (wrongly framed but rightly deleted)is found to be totally irrelevant for the decision of the suit, it cannot be said that in the present suit the said that in the present suit the said issue is nevertheless "required to be settled, decided or dealt with by any authority competent to settle decide or deal with" such issue within the meaning of section 85-A of the Tenancy Act. An issue in order to be referred to the Tenancy Court must be required to be settled, decided or dealt with under the Tenancy Act. When an issue is not so required to be settled, decided or dealt with the question of referring it to the Tenancy Authority cannot arise. Indeed, reference to the Tenancy Court of any such issue not required to be settled, decided or dealt with by the Tenancy Authority would be a reference, if one may say so, without jurisdiction. In the present case, I am more than satisfied that Issue No. 9 as raised was totally irrelevant for the decision of the suit. The same has been rightly deleted and struck off by the trial Court.

5. Mr. Pradhan the learned Advocate for the petitioners-defendants, next contended that the Civil Court has no power to recall a reference once made and, in the present case, the reference having been made to the Tenancy Court, the order recalling the same was without jurisdiction. I am afraid, I am unable to accept this contention. In the first place, there is nothing in the Tenancy Act which prevents a Civil Court from recalling a reference which it has itself made to the Tenancy Court. The grounds for recalling may or may not be justified and may appropriately be open to a challenge. But it would not be right to hold that the Civil Court has no power at all to recall a reference once made. This is a position different from the Tenancy Court itself refusing to answer a reference. It may not be open to the tenancy authorities to refuse to answer a reference or to suo motu send back the reference unanswered to the Civil Court. Under the provisions of sub-section (2) of section 85-A of the Tenancy Act, on receipt of such reference from the Civil Court, the Competent Authority is bound to deal with and decide the issue and issues referred in accordance with the provisions of the Tenancy Act and is bound to communicate its decision to the Civil Court in that behalf. This however, is altogether different from the Civil Court itself recalling the reference earlier made. One can well visualize the entire suit being settled between the parties after an order of reference is made in which case the Civil Court is not powerless from calling back the reference in the circumstances aforesaid. One can also visualize a case where a suit in which reference is made is itself withdrawn by the plaintiff in which event also it cannot be said that the Civil Court is nevertheless still powerless to recall the reference earlier made. One can also well visualize a case as of the present nature where a totally erroneous and irrelevant issue is framed may be through mistake or inadvertence or may be through an erroneous view of the partition involved. In

such a case, it is not at all possible to hold that even though the mistake is realised and the lapse detected, the Civil Court and/or even the parties to the suit must be compelled to await decision in the reference earlier made. In these circumstances, I hold that a Civil Court is empowered to a reference earlier made. Of course, the actual order of recalling the reference may be open to challenge on its own merits, but the power itself cannot be denied.

6. Allied to this contention, Mr. Pradhan also contended that there was no power to review the earlier order of reference. Suffice to state that the earlier order of reference can never be said to be final and binding for all times Civil Courts have sufficient powers to correct their own mistakes and in a given case, the present and being such case, exercise of the power of review can be said to have been pre-eminently justified.

7. In the result, rule in this revision application is discharged. Interim stay to stand vacated. In the circumstances of the case, there will be no order as to costs. Writ to be sent down expeditiously.