
(1989) 10 GUJ CK 0010
In the Gujarat High Court

Shah Chandulal Valchand

APPELLANT

Vs

Amthaji Bhalaji Thakore and Others

RESPONDENT

Date of Decision : 24-10-1989

Acts Referred:

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 36A, 36B, 6(2), 6(2)

Citation : (1990) 1 GLR 669

Hon'ble Judges : G.T. Nanavati, J

Bench : Single Bench

Judgement

G.T. Nanavati, J.—The petitioner who is the original plaintiff has filed Regular Civil Suit No. 33 of 1978 in the Court of Civil Judge (J.D.), Chanasama against the respondents, who are the original defendants. The suit has been filed by the plaintiff for the purpose of obtaining possession on the basis of his title claiming the same under a sale made in his favour by the defendants. It appears that defendants Nos. 2 and 3 wanted to amend the written statement and ultimately succeeded in obtaining such an order from this Court. Thereafter they amended their written statement and applied to the trial Court to refer issues Nos. 8 and 9 raised in view of the amended written statement to appropriate authorities. The issues are:

8. Whether the defendants Nos. 2 and 3 prove that the suit field is fragment? If yes, what is the effect?

9. Whether the plaintiff proves that he was an agriculturist on 29-6-1968?" The learned Civil Judge granted that application, Ex. 79, and ordered that issue No. 8 be referred to the Prant Officer, Patan and issue No. 9 be referred to the Competent Agricultural Lands Tribunal and Mamlatdar. Aggrieved by that order, the plaintiff has filed this revision application.

2. What is urged by the learned Advocate for the petitioner is that merely because the defendants have raised a plea that the land which came to be sold to the plaintiff is a fragment, the Civil Court did not lose its jurisdiction to decide

that question and it was, therefore, not necessary for Civil Court to make a reference to the Prant Officer, Patan for his decision on that issue. He further submitted that unless it is shown that the land is a fragment and that notice as contemplated by Sub-section (2) of Section 6 of the Bombay Prevention of Fragmentation and Consolidation of the Holdings Act, 1947 was given, transfer of the fragment cannot be said to be in violation of the Act. He submitted that except raising a plea that the suit land is a fragment, no material whatsoever has been produced by the defendants before the notice u/s 6(2) of the Act was given in respect of that land. He also submitted that there is no specific provision in the Act providing for a decision of any authority on the question as to whether a particular place of land is a fragment or not and whether transfer of such a fragment is void or not. It was submitted that only for the purpose of imposing fine and for summary eviction the Collector has been given a power under the Act to find out whether the transaction is void or not. Since there is no specific provision requiring that a question as to whether a particular place of land is a fragment or not and whether its transfer is void is to be settled, decided or dealt with by the State Government or any officer or authority, the Civil Court had no jurisdiction to refer the issues.

3. "Fragment" is defined under the Act as a plot of land of less extent than the appropriate standard area determined under the Act. The State Government determines the standard area for each class of land in such local area, as it may deem fit. On notification of standard area under Sub-section (3) of Section 5 for a local area all fragments in the local area are to be entered as such in the Record of Rights in such village record as the State Government may prescribe. Sub-section (2) of Section 6 requires that notice of every entry made under Sub-section (1) shall be given in the prescribed manner. Section 7 prohibits transfer of a fragment, except go the owner of a contiguous survey number or recognised sub-division of a survey number. The proviso to Sub-section (1) of Section 7 carves out such an exception but that is not relevant for the present revision application and, therefore, the same need not be referred to. Section 9 provides that transfer or partition of any land contrary to the provisions of the Act shall be void. Sub-sections (2) and (3) are also material for our purposes and therefore Section 9 as a whole is set out hereinbelow:

9. (1) The transfer or partition of any land contrary to the provisions of this Act shall be void.

(2) The owner of any land so transferred or partitioned shall be liable to pay such fine not exceeding Rs. 250 as the Collector may, subject to the general orders of the State Government, direct. Such fine shall be recoverable as an arrear of land revenue.

(3) Any person unauthorisedly occupying or wrongfully in possession of any land, the transfer or partition of which either by the act of parties or by the operation law is void under the provisions of this Act, may be summarily evicted by the Collector.

Other relevant sections are Sections 36A and 36B which read as under:

36A. (1) No Civil Court or Mamlatdar's Court shall have jurisdiction to settle decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the State Government or any Officer or authority.

(2) No order of the State Government or any such Officer or authority made under this Act shall be questioned in any Civil Criminal or Mamlatdar's Court.

36B (1) If any suit instituted in any Civil Court or Mamlatdar's Court involves any issues, which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues under this Act (hereinafter referred to as to competent authority") the Civil Court or Mamlatdar's Court shall stay the suit and refer such issues to such competent authority for determination.

(2) On receipt of such reference from the Civil Court or Mamlatdar's Court, the competent authority shall deal with and decide such issues in accordance with the provisions of this Act, and shall communicate its decision to the Civil Court or Mamlatdar's Court and such Court shall thereupon dispose of the suit in accordance with the procedure applicable thereto.

4. The Act was enacted with a view to prevent fragmentation of agricultural holdings and to provide for the consolidation of agricultural holdings for the purpose of better cultivation thereof. The scheme and object of the Act is disclosed by the provisions contained in Sections 3 to 10 so far as prevention of fragmentation is concerned. Those provisions clearly disclose that the legislature did not want transfer of any fragment except in certain cases or for which special provisions are made. Sub-section (1) of Section 9 is quite eloquent in this behalf as it makes transfer of any land contrary to the provisions of the Act void. Not only that the Collector has been given power to impose fine on the owner of the land, if he transfers the same contrary to the provisions of the Act. The Collector is also given a power to summarily evict any person in unauthorised occupation or wrongfully in possession of the fragment even if such occupation or possession is as a result of a purchase or transfer but contrary to the provisions of the Act. This is so notwithstanding the fact that he might have paid full consideration for the same. In spite of payment of full consideration he can be deprived of the occupation or possession of the land. It is in this context that I have to consider the validity of the contentions raised by the learned Advocate for the petitioner.

5. It is no doubt true that there is no specific provision as we find in some other Acts providing either by way of a function of the authority or duty of the authority to decide certain questions arising under the Act. But Sections. 7 and 9 clearly imply that whenever a question arises as to whether there is a transfer of fragment or not and whether that transfer is void or not has to be decided either by the State Government or by the authority to whom the powers might have been delegated by the State Government. As pointed out above, Section 9 authorises the Collector to impose fine or to summarily evict a person

unauthorisedly in occupation or wrongfully in possession of any fragment. That necessarily implies that the Collector will have to decide first whether the transfer is contrary to the provisions of the Act and, therefore, void or not. It is difficult to appreciate as to how without deciding those questions the Collector can either impose fine or summarily evict a person in occupation or possession of the same. Once we reach that conclusion, it will have to be held, in view of the provisions contained in Sections. 36A and 36B of the Act, that neither the Civil Court nor the Mamlatdar's Court can settle, decide or deal with such questions. Section 36A bars the jurisdiction of Civil Court to settle, decide or deal with such questions and Section 36B provides that if any suit instituted in any Civil Court or Mamlatdar's Court involves issues which are required to be settled, decided or dealt with by any authority competent to settle, decided or deal with such issues under the Act, the Civil Court or Mamlatdar's Court was to stay the suit and refer that issue to such competent authority for determination. That is exactly what the learned Civil Judge has done after coming to the conclusion that it will have to be decided whether the suit field is a fragment or not and if it is a fragment then what is the effect of transfer of that land. Before reaching the final conclusion it will have to be decided whether the plaintiff is an agriculturist or not and that will have to be decided under the provisions of the Bombay Tenancy & Agricultural Lands Act.

6. In the result, this revision application is dismissed. Rule is discharged with no order as to costs.

7. However, as the matter is very old and there is a possibility of the hearing and final disposal of the suit getting delayed, it is directed that the Prant Officer. Patan and the Competent Agricultural Lands Tribunal and Mamlatdars" shall decide the questions referred to them as early as possible and preferably within six months from the date of the receipt of the reference by them.