

(1977) 07 BOM CK 0026

In the Bombay High Court

Case No : Spl. C. Application No. 6 of 1972

Sheikh Mohammad Shah Mohammad

APPELLANT

Vs

Daulat Punjaji Marathe and others

RESPONDENT

Date of Decision : 25-07-1977

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 20, 36(1)

Citation : (1977) 07 BOM CK 0026

Hon'ble Judges : B.C. Gadgil, J

Bench : Single Bench

Advocate : V. D. Chahande, for the Appellant; J. N. Chandurkar and N. K. Kherdekar, For respondents No. 2(a), (b), (d) to (g), for the Respondent

Judgement

B.C. Gadgil, J.—The only question that arises in this writ petition is as to whether the petitioner is entitled to restoration of possession of survey Nos. 52 and 53 situate at Gandhala in Washim Tahsil.

2. The case of the petitioner is that he was a tenant of these two lands since the time of Punjaji, the father of respondents to this proceedings, and that after the death of Punjaji, he continued to be the tenant of Daulat and Vyankati, respondents 1 and 2. During the pendency of this writ petition, Vyankati, respondent No. 2 died and his legal representatives have been brought on record. But in this judgment Daulat and Vyankati are referred to as respondents. It is alleged that on 1-4-1960, the two respondents dispossessed the petitioner. There was a surrender-deed executed by the petitioner Sk. Mohammad in favour of Daulat and Vyankati. That surrender is at page 63 of the original record. On that very day Daulat and Vyankati informed the petitioner that nothing was recoverable from the petitioner in connection with the cultivation of the land. Section 20 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, (hereinafter referred to as the Tenancy Act) lays down that a tenant may terminate the tenancy by surrendering his interest as a tenant in favour of the landlord. The proviso to that section says that surrender shall be in writing and

shall be verified before the Tahsildar in the prescribed manner. Vyankati made an application to the Tahsildar of Washim for verification of the said surrender. A copy of the application is as page 59 of the record. In that application it is said that the present petitioner was a tenant of Daulat and Vyankati and that the petitioner has surrendered his tenancy rights in their favour and that the possession was also delivered to them. Vyankati filed an application for verification of the surrender in his capacity as the karta of the family. The Tahsildar, however, on enquiry, came to a conclusion that the surrender was not a voluntary one and, as such it should not be verified and accepted. He, therefore, rejected the said surrender on 24-4-1961. The petitioner filed an application u/s 36(1) of Tenancy Act on 15-3-1963 seeking restoration of possession. The allegation in that application is that the loss of possession on the basis of the said surrender deed was not in accordance with the provisions of the Tenancy Act and, as such, the tenant-petitioner was entitled to get back the land. This application was numbered as Rev. Case No. 4/59 (10-A)/62-63. The application was opposed. The main contentions were that the petitioner was not a tenant and that the petition was bad as all the owners of the land are not made parties. The Naib Tahsildar rejected these contentions and passed an order in favour of the petitioner. The respondents took the matter in appeal before the Special Deputy Collector, Akola. That appeal was numbered as Appeal No. 45/59 (10-A)/68-69. It was dismissed on 16-12-1969. The respondents preferred a revision petition to the Maharashtra Revenue Tribunal (M.R.T.) (being Tenancy Revision No. 398/1970). On 24-6-1971, it was allowed and the petitioners main application was dismissed on the ground that the application was bad for non-joinder of parties. The reason is that Daulat and Vyankati have three sisters and. according to the Maharashtra Revenue Tribunal, it was necessary for the petitioner to join these sisters as the non-applicants in the original proceeding. It is this order that is being challenged before me.

3. The Naib Tahsildar, the Special Deputy Collector as well as the Maharashtra Revenue Tribunal have recorded concurrent findings of fact that the petitioner was a tenant; that he executed a surrender-deed in favour of Daulat and Vyankati and that the Tahsildar did not accept the said surrender-deed. It was contended on behalf of the respondents that the petitioner was not really a tenant in the land and that he was a partner in cultivation. This submission was made with a view to object the maintainability of the application on the ground that the petitioner was not a tenant. I am afraid that the said contention cannot be accepted for the simple reason that all the three authorities below have recorded a concurrent finding about the status of the petitioner as the tenant. It was submitted by Mr. Chandurkar that certain entries in the record of rights can as well be interpreted to prove that the petitioner was a partner in cultivation. Before the Naib Tahsildar, the petitioner had examined himself and some witnesses to prove that he was a tenant. Similarly, some evidence was recorded on behalf of the other side alleging that the petitioner was not a tenant. It is this evidence that has been scanned and assessed for the purpose of coming to a

conclusion that the petitioner was a tenant. It will not be possible for the respondents to urge at the stage of a writ petition that this concurrent finding should be set aside. Apart from that, I think that the said finding is quite consistent with the facts of the case. The conduct of the respondents in getting the surrender-deed executed from the petitioner would itself be an indication that they took the petitioner as a tenant and wanted to get the termination of that tenancy with the help of such surrender. The plain reading of the surrender executed by the petitioner in favour of the respondents would, therefore, connote that the petitioner was a tenant. Secondly, one of the respondent, viz Vyankati filed an application u/s 20 of the Tenancy Act for the verification of the said surrender and in that application he has made a statement that the petitioner was a tenant and that he has surrendered his tenancy rights. This statement could be taken as an admission of Vyankati that the petitioner was a tenant. It would not, therefore, be correct for the respondents to agitate the question about the tenancy of the petitioner. As stated earlier, the Maharashtra Revenue Tribunal has disallowed the claim of the petitioner only on one ground viz, the non-joinder of the three sisters of Daulat and Vyankati as parties to the original proceeding. It was contended by Mr. Chahande that the said three sisters-were neither necessary nor proper parties and that the application should not have been dismissed on that count. The case of the petitioner is that the respondents Daulat and Vyankati has dispossessed him at the time of taking surrender. Section 36 (1) of the Act enables the tenant to apply for restoration of possession whenever there has been an eviction in contravention of the provisions of the Tenancy Act. For obvious reasons that restoration would be from a person who has unlawfully evicted the tenant. In the present case it is Daulat and Vyankati who have taken possession of the land from the petitioner and, as such, there was nothing wrong when the petitioner claimed possession from them. To such a proceeding the three sisters of Daulat and Vyankati were not at all necessary or proper parties.

4. The matter can also be viewed from another angle. The application for possession on the strength of surrender was made by Vyankati and therein he has stated that he has made the application as a karta. Technically the three sisters would be the co-owners with Daulat and Vyankati. However, the conduct of Daulat and Vyankati in taking possession of the land would normally be for and on behalf of the three sisters. The three sisters are said to be in possession jointly with Daulat and Vyankati. Such a joint possession would arise only if they accept the action of Daulat and Vyankati as for and on behalf of them (sisters) also. Such a question has been considered by this Court in *Mahomedkhan v. Dagaclu* Special Civil Application No. 1242 of 1967, decided on 7-7-1970. In that case the landlord was a Mahomedan. He died leaving behind him the petitioner as his son and certain other heirs. The respondent was a tenant in the land and he made an application for restoration alleging that the petitioner had dispossessed him. That application for restoration was opposed on various grounds. One of them was that the application was bad for nonjoinder of the

other heirs as parties. This Court has held as follows:

"The heirs of M would be co-owners and would take as tenants-in-common in different shares according to Mahomedan Law; that ordinarily proceedings could be taken by or against them together and any heir would not represent others, that there may however, be cases where one co-heir may represent others in all transactions and all matters in which case proceeding by or against that particular co-heir may be sufficient; that as petitioner was voluntarily placed in possession he must have taken possession as representing the other co-owners and was acting for and on behalf of them and they were acquiescing in the act; that the act of taking possession would be lawful but for the contravention of the provisions of the Tenancy law and would bind the other co-owners; that the petitioner was thus acting in a representative capacity and the non-joinder of others was not fatal.....,"

5. In the present case the position is still more favourable as the family of the landlords was not Mahomedan but Hindu. Usually there would be a joint Hindu family or coparcenery and Daulat and Vyankati and one of them can act for and on behalf of others. Of course, the three sisters are married but that would not make any difference particularly when there could not be any averment or allegation that Daulat and Vyankati acted against their interest when they took possession from Sk. Mahommed, such an allegation would be prejudicial to the sisters inasmuch as in that case they would not be able to retain possession along with Daulat and Vyankati

6. The result, therefore, is that the proceeding against Daulat and Vyankati is quite sufficient in order to get the possession from whom so ever in possession of the property. The order that would be passed in such a proceeding would be binding upon Daulat, Vyankati as well as the three sisters in as much as the three sisters are claiming possession on the strength of the surrender that has been taken by Daulat and Vyankati.

7. Thus, the petition succeeds. The rule is made absolute. The order passed by the Maharashtra Revenue Tribunal in Tenancy Revision No. 398 of 1970 is set aside and in its place the order passed by the Naib-Tahsildar in Rev. Case No. 4/59 (10-A)/62 63, directing the restoration of possession in favour of the petitioner is restored. The petitioner to get his costs from the respondents.