

**(1993) 09 BOM CK 0042**

**In the Bombay High Court**

**Case No : Writ Petition No. 3843 of 1992**

Shri Parshuram Kathod Gaikar

APPELLANT

Vs

Pandu Mahadu Hard and Another

RESPONDENT

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**Date of Decision : 17-09-1993**

**Acts Referred:**

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 43

**Citation :** (1994) 1 BomCR 715 : (1993) MhLj 1570

**Hon'ble Judges :** M.F. Saldanha, J

**Bench :** Single Bench

**Advocate :** A.P. Mundergji, for the Appellant; M.R. Katikar, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

M.F. Saldanha, J.—A short but interesting issue arises in this petition concerning the applicability of section 43 of the Bombay Tenancy & Agricultural Lands Act, 1948. The section in effect, prescribes a bar on alienation of agricultural lands in respect of which the tenant has been conferred ownership, save and except in a situation where the previous sanction of the Collector has been obtained. In these circumstances, the question arises as to what is the remedy available if an arrangement has been entered into in breach of the provisions of law.

2. The petitioner before me is the original defendant in Regular Civil Suit No. 221 of 1991 filed in the Court of the Civil Judge, Senior Division, Kalyan by the tenant plaintiff. The plaintiff had approached the Court for the relief which was confined to an injunction restraining the defendant from obstructing/disturbing the peaceful possession and occupation of the plaintiff. The dispute concerns two pieces of land and it is admitted that in or about the year 1981 the plaintiff borrowed a sum of Rs. 6000/- from the defendant ostensibly for the purpose of paying the purchase price of those lands. It is not in dispute that the plaintiff-tenant is the owner of those lands and further that they are agricultural lands. The plaintiff entered into and executed a document in the year 1981 which purports to be an agreement of sale in respect of two pieces of land it is also

indicated from the record that the defendant had at that time paid a sum of Rs. 6000/-. The agreement inter alia states that the requisite permissions are to be asked for and that the tenant had agreed to sell the land to the defendant. In the year 1991 the defendant who states that he had been in possession of the lands for a long period of 10 years and was cultivating the same, served a notice on the tenant-plaintiff calling upon him to complete the sale and execute the sale deed. The tenant refused to do this and thereafter filed the present suit wherein he contended that there was an understanding between the parties that in return for the payment of Rs. 6000/- in the year 1981 that the defendant would be permitted to cultivate the land in question for a period of 10 years by which time he would recover the return of his payment. The tenant contended that the period of 10 years had elapsed and that the defendant was wrongfully insisting on cultivating the lands and obstructing his user of the same and consequently the Court ought to restrain the defendant from interfering with the peaceful possession of the tenant. The trial Court after hearing the parties passed an order on Exhibit 5 holding that no case for injunction had been made out and rejected the prayer for interim relief. The matter was carried in Appeal and the Appeal Court after examining the material placed before it by order dated 16-7-1992 granted interim relief. Briefly stated, the Appeal Court proceeded on the footing that it was not permissible for the tenant to have parted with possession of the agricultural lands by virtue of the provisions of section 43 of the Act and secondly that the 7/12 extracts of the year 1990-91 very clearly indicated that the possession of the lands was with the tenant-plaintiff in so far as his name appeared in the cultivators column apart from the owners column. It is against this appellants order, that the present petition came to be filed.

3. This petition was admitted on 7-9-1992 and by way of interim relief, the order of the Appeal Court was stayed. After service on the respondent his learned Counsel applied to this Court that having regard to the fact that the respondent is a very poor person who has wrongfully been deprived of the use of his lands and virtually driven to starvation, that the matter should be heard out of turn. It was for this reason that the petition was taken up for early hearing.

4. Mr. Mundergi, learned Counsel appearing on behalf of the petitioner points out to me from the pleadings that even assuming everything that has been stated is accepted that it is not permissible for the plaintiff to move the Court by way of proceeding wherein the final relief is confined only to an injunction simpliciter. Mr. Mundergi elaborates and points out that if the plaintiff contended that the possession should be restored to him that he has to file a suit making for possession and unless and until he gets possession by procedure prescribed by law, that there can be no question of restraining his clients who are in fact in possession of the lands in question. Mr. Mundergi states that admittedly his clients had parted with Rs. 6000/- that the execution of the document is admitted that the fact that his clients were put in possession in 1981 is also admitted and in these circumstances, it would first have to be shown to the satisfaction of the Court that the plaintiff was in fact in possession of the

disputed lands on the date of filing of the suit. He states that the defendant had never surrendered possession and that the learned Appellate Judge was in error in having gone by the 7/12 extract for the year 1990-91 which showed that the plaintiff was in possession. On facts, therefore, Mr. Mundergi submits that the order of the Appeal Court is unjustified.

5. Coming to the legal aspect, Mr. Mundergi submits that if the execution of the agreement is admitted and the consideration is admitted that the only remedy open to the plaintiff if he disputes the legal validity of the document, is to file a suit before a competent Court for the purpose of obtaining a declaration that the document in question is void, and to thereafter apply for consequential reliefs. Mr. Mundergi justifies the transaction by pointing out that the law does not prohibit the execution between this aspect of the transaction and a concluded agreement. He contends that if under an agreement for sale, the parties intend to transfer the rights in respect of the lands that such an agreement of sale would be perfectly valid and it would only take effect after the required permission from the Collector is obtained. In sum and substance, Mr. Mundergi's argument is that the permission is condition precedent, only for execution of the sale deed and that it cannot affect the validity of the agreement of sale.

6. Mr. Katikar who appears on behalf of the original plaintiffs has submitted that the order of the Appeal Court is perfectly valid and justified that the 7/12 extract has presumptive value and that it conclusively establishes that on the date of filing of the suit the tenant was physically in possession in so far as he was the cultivator and in these circumstances, the plaintiff had made out prima facie case for the grant of injunction. It is Mr. Katikar's submission that since he was in possession of the disputed lands that he was perfectly justified in having moved the trial Court for the grant of limited relief to the extent that his possession should not be disturbed.

7. Section 43 of the Act reads as follows:

(1) No land purchased by a tenant u/s 32, 32-F, (321, 320, (330 or 43-ID) or sold to any person u/s 32-P or 64 shall be transferred by sale, gift, exchange, mortgage, lease or assignment without the previous sanction of the Collector, (such sanction shall be given by the Collector in such circumstances and subject to such conditions, as may be prescribed by the State Government)

Provided that, no such sanction shall be necessary where the land is to be mortgaged in favour of Government or a society registered or deemed to be registered under the Bombay Co-operative Societies Act, 1925, for raising a loan for effecting any improvement of such land."

It is abundantly clear from a plain reading of this section, and to my mind for very good reason, that the legislature has prescribed a total and complete bar on alienation of the agricultural lands in question without the previous sanction of the Collector. There is no dispute about the fact that the intention behind the promulgation of this provision of law was in order to completely protect the

tenant-agriculturists who were not only poor but invariably illiterate and therefore extremely valuable to all sorts of methods whereby they would be divested of the lands that had been conferred on them by operation of law. The reform in question would have been totally frustrated if what the legislature was to give with one hand was permitted to be taken away by the other and it was for very good reason therefore that the previous sanction of the Collector was made a condition precedent. By this it would mean that there was a total prohibition or a legal bar on alienation of the lands in question and if one were to read the wording of the section, more carefully, it would include any attempt of doing so or for that matter the execution of any document in pursuance thereof. It is in these circumstances that I am unable to draw a distinction between the agreement to sell and the conclusion of the sale. Though under normal circumstances, the argument canvassed by Mr. Mundergi is a perfectly justifiable one, in the present case however, we do have a specific statutory bar that prohibits any transaction in relation to alienation. In these circumstances, it would be extremely difficult to impart even the slightest garb of legal validity to the transaction entered into in the year 1981. A detailed analysis of this aspect of the matter however will be undertaken by the trial Court when the suit is heard but for the purposes of deciding the present petition, which is no more than an interim relief, it will have to be held prima facie that the plaintiff, de-hors the transaction of 1981 has made out a prima facie case for grant of relief.

8. To my mind, at the preliminary stage at which the proceeding is, the Appeal Court was justified in having placed reliance on the 7/12 extract which was the latest one prior to the filing of the suit and which unequivocally indicated that the plaintiff was in possession in so far as his name appears in the cultivators column. This document has certain presumptive value and the Court at the interim stage would be justified in relying on it in the absence of conclusive evidence to the contrary. Under these circumstances, to my mind, the conclusion arrived at by the learned Appellate Judge was fully justified.

9. I need to clarify here that the observations made in this order are for the limited purpose of the present petition. The suit is pending before the trial Court and it is open to both the parties to agitate their respective cases without being prejudiced even in the least by any of the observations made in this judgment. The learned Judge presiding over the trial Court shall consequently take note of this fact while deciding the suit. Having regard to the fact that the dispute is within a narrow ambit and that it was of the year 1981, the hearing of the suit is expedited and the trial Court shall dispose of the same on a priority basis.

10. In the result, the petition fails and stands dismissed. The interim relief is vacated. The order of the Appeal Court is restored and shall continue until the hearing and disposal of the suit. In the circumstances of the case there shall be no order as to costs.

11. Mr. Mundergi points out that the disputed lands are used exclusively for paddy cultivation and admittedly the standing paddy crop in those lands was put

down during the present monsoon. The trial Court shall therefore permit the present petitioners to continue to tend the paddy crop that is at present standing in the two fields and to harvest the same. Immediately thereafter, however the interim relief granted shall come into operation.

Rule discharged. No order as to costs. Liberty to the parties to apply to the trial Court for appropriate orders. Office to furnish certified copy forthwith on application.