
(1998) 07 BOM CK 0037

In the Bombay High Court

Case No : Appeal From Order No. 50 of 1998

Shri Rajaram Rau Patil

APPELLANT

Vs

Shri Marcel de Piedade Braganza and others

RESPONDENT

Date of Decision : 03-07-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 4, 151, 152

Goa, Daman and Diu Agricultural Tenancy Act, 1964 — Section 13A, 58(2), 8

Citation : (1998) 4 ALLMR 592 : (1998) 4 BomCR 203

Hon'ble Judges : R.K. Batta, J

Bench : Single Bench

Advocate : V.D. Jadhav, for the Appellant; A.R. Kantak, V.P. Thaly, R.S. Kakodkar and D. Pangam, for the Respondent

Judgement

R.K. Batta, J.—The appellant had filed a suit for declaration and permanent injunction. The declaration is sought in relation to lawful possession of the property "Maida" having various survey numbers, out of which survey Nos. 3/1, 4/1, 6/1 and 10/1 are disputed properties which have been referred to as the suit property. The appellant also sought declaration that the sale deed executed by defendants No. 1 and 2 on or about 11-4-85 and registered on or about 3-7-1985 in favour of defendant No. 3 in respect of the suit property is null and void. Defendants No. 1, 2 and 3 are respondents No. 1, 2 and 3 in this appeal. The appellant had also sought injunction to restrain defendants No. 3 to 5 in the suit who are respondents No. 3 to 5 in appeal from in any manner disturbing the possession of the appellant in respect of the suit property. Civil Judge, S.D. had initially granted ex-parte injunction on 20th April, 1988 and had issued show cause notice to the defendants. Defendant No. 3 namely respondent No. 3 in this appeal filed application under Order 39, Rule 4 read with section 151 C.P.C. and on this application, ex-parte order was passed varying the ex-parte injunction granted on 20-4-88 to some extent. The appellant had not filed any affidavit along with the application for injunction, but he filed affidavits in rejoinder.

2. The appellants' case, in brief, is that the suit property was leased to him and defendant No. 6 Anandrao Patil who is respondent No. 6 in the appeal by lease deed dated 29th August, 1969. The period of lease was for nine years with effect from 1-1-1970 when the possession of the suit property was handed over to the appellant and respondent No. 6. In the lease deed, option was given to the appellant and respondent No. 6 for further renewal for a period of five years. According to the appellant, about 80 hectares of land from the suit property was brought under sugar cultivation and the said land was never surrendered by the appellant or respondent No. 6. The appellant claims that he has become deemed tenant of the suit property under the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (hereinafter called the said Act). It was also revealed by the appellant that on 8-9-86 he had received summons in Regular Civil Suit No. 125/86 filed by the present respondent No. 6 against present respondents No. 1 to 5 and the appellant seeking permanent injunction against the present respondents No. 1 to 5. However, the said suit was withdrawn by the present respondent No. 6 on 11-2-88 by admitting that he had no right, title or interest in the suit property. According to the appellant, he came to know of this withdrawal of the suit only on 23-3-88 and it was on receipt of summons in this suit that he had come to know for the first time about the invalid and illegal transfers made by the present respondents No. 1 and 2 in favour of present respondent No. 3. It was also alleged that some of the respondents got their names entered in the Record of Rights fraudulently and the same cannot bind the appellant. On the above mentioned facts, the suit was filed.

3. The defence put up by the respondents is that the lease had been terminated vide notice dated 12-2-82, after which the appellant had agreed to purchase the suit property by agreement of sale dated 11-6-82, but as the sale deed did not materialise and the possession of the suit property was with respondents No. 1 and 2, which fact was specifically mentioned in the agreement of sale dated 11-6-82, respondents No. 1 and 2 had later sold the property to respondent No. 3.

4. After hearing Advocates on either side, the that Judge found that the appellant had suppressed material document of agreement of safe dated 11-6-82; that after the suit property was sold by respondents No. 1 and 2 to respondents No. 3 to 5, Special Civil Suit No. 17/84 was filed by respondents No. 1 and 2 seeking injunction on the ground that they were interfering in the property which suit ultimately ended in consent decree; that the Civil Suit No. 125/86 filed by the present respondent No. 6 had been withdrawn by him on the ground that neither he nor the appellant were in possession of the suit property; that no acts of possession had been established by the appellant after 1982 till the filing of the suit, whereas respondent No. 3 had listed the acts of possession from February, 1988 till the filing of the suit in April, 1988; that no affidavit had been initially filed by the appellant along with the application for injunction and it is only in the affidavit-in-rejoinder that certain affidavits were filed and that the trial Court believed the affidavits filed on behalf of respondent No. 3. The trial Court also

found that in the Record of Rights entries in Form I and XIV, there were entries in favour of the appellant only upto the year 1978/79 after which the suit property was shown as fallow and in respect of Survey No. 10/1, Record of Rights entries are in favour of respondents No. 1 and 3. On the basis of the above mentioned findings, the trial Court vide impugned order dated 5th September, 1988, which is subject matter of challenge in this appeal vacated the ex-parte injunction dated 20th April, 1988 and dismissed the application for injunction filed by the appellant. Certain errors were noticed in the said order and by order dated 12th September, 1988 the same were corrected u/s 152 C.P.C.

5. Learned Advocate Shri V.D. Jadhav, appearing on behalf of the appellant, urged before me that the tenancy and possession of the appellant upto the year 1981 is not disputed and in fact prior to that, in 1976, the appellant had already become a deemed tenant under the said Act; that due to litigation the appellant had forgotten to mention the facts relating to agreement to sell dated 11-6-82; that though he was a party to Civil Suit No. 125/86 filed by the present respondent No. 6, yet the appellant was not given an opportunity on the question of withdrawal and any admission made by respondent No. 6 in the said proceedings would not bind the appellant and that the appellant has produced various documents on record to establish his possession which include lease, extracts in Form I and XIV, receipts and other documents. He also referred to various provisions of the Goa, Daman Diu Agricultural Tenancy Act, 1964 and submitted that no person holding land as tenant is liable to be evicted except in accordance with the said Act. It was also pointed out that the tenancy can be terminated on the grounds specified in the said Act and that the tenant has a first right of purchase u/s 13-A of the said Act. He also urged that the appellant had become deemed tenant and any sale in violation of the terms of the said Act is void. In respect of the agreement of sale dated 11-6-82 it was pointed out that admission of possession, if any, in the said document, cannot operate as estoppel since it is contrary to the provisions of the Tenancy Act. Relying upon various judgments which lay down principles to be followed in grant of injunction; power of the Appellate Courts and decisions under the Bombay Tenancy Act, it was submitted that the impugned order cannot be sustained and is liable to be set aside.

6. Learned Advocate Shri V.P. Thaly, argued on behalf of the heirs of respondent No. 3 and respondent No. 4 that the appellant had suppressed material facts from the Court as no reference whatsoever was made by the appellant in the plaint that the lease had been terminated and that there was an agreement to sell dated 11-6-82 in respect of the suit property between respondents No. 1 and 2 and the appellant; that there was clear admission on the part of respondent No. 6 who was the co-lease holder of the suit property along with the appellant that neither he nor the appellant had any right or interest in the suit property and the withdrawal of the said Special Suit No. 17/84 was never challenged by the appellant; that the Record of Rights entries in respect of the suit property are in favour of respondents No. 1 to 3 indicating that they were in possession of the

suit property; that the appellant has not placed any acts of possession in respect of the suit property from 1983 to 1988 i.e. for five years prior to the filing of the suit; that the appellant had not filed any affidavit along with the application for temporary injunction and had only filed affidavits-in-rejoinder and that the trial Court, placing reliance on the affidavits filed by the respondents had properly exercised discretion in the matter while refusing the injunction application filed by the appellant. On the question of tenancy it was urged that the same is required to be decided by the Tenancy Court and the Civil Court has no jurisdiction to decide the same; that since the appellant claimed to be in possession of the suit property as tenant, the remedy for him was to approach the Mamlatdar u/s 8-A of the said Act and in view of the same, the Civil Court had no jurisdiction to grant injunction. It was pointed out that the rulings of the Bombay High Court under the Bombay Tenancy Act would not in any manner help the appellant since there is no provision like section 8-A of the said Act in the Bombay Tenancy Act on account of which the Civil Court would have jurisdiction to entertain matters relating to injunctions which is not so in the instant case. Learned Advocate Shri R.S. Kakodkar, appearing on behalf of respondent No. 7 had no submissions to make on the controversy.

7. On perusal of the records and the rival contentions advanced, I am of the view that there is no merit in this appeal since the trial Court has properly exercised the discretion in the facts and circumstances of the case and has refused the equitable relief of injunction sought by the appellant. The Apex Court in *Wander Ltd. and Another Vs. Antox India P. Ltd.*, has laid down :-

"The Appellate Court will not interfere with the exercise of discretion of the Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the Court below solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial Court reasonably and in a judicial manner the fact that the Appellate Court would have taken a different view may not justify interference with the trial Court's exercise of discretion."

8. The trial Court has elaborately discussed and taken into account all the relevant factors and, as such, I shall briefly record reasons in support of the conclusion that there is no merit in this appeal. The appellant had suppressed material facts having bearing in the matter from the Court as the fact of termination of tenancy and agreement to sell dated 11-6-82 between respondents No. 1 and 2 and the appellant was never disclosed in the plaint. The explanation furnished by learned Advocate for the appellant that the appellant forgot to mention the said details due to litigation is a lame excuse to justify the

suppression of facts. The said agreement dated 11th June, 1982 recites in categorical terms that the vendors namely respondents No. 1 and 2 are owners in possession of the suit property. This document gives the background in which the same was executed under which the appellant had agreed to purchase the suit property within six months. The appellant is a signatory to this document and cannot now factually dispute the contents thereof which show that the possession of the suit property is with the vendors namely respondents No. 1 and 2. The said agreement also recites that in case the sale deed is not done due to the fault of the appellant, the earnest money shall stand forfeited, the agreement shall come to an end and the vendors shall be free to sell the said property to any other person. In this connection, it has been contended by learned Advocate for the appellant that the appellant had become deemed tenant in view of the Fifth Amendment to the Goa, Daman and Diu Agricultural Tenancy Act, 1976 and, as such any admission in the said agreement dated 11-6-82 cannot operate as an estoppel since the same is contrary to the Tenancy Act. The question relating to tenancy is required to be settled by the Tenancy Court under the said Act and the same cannot be decided by the Civil Court. However, the fact remains that the agreement of sale dated 11-6-82 to which the appellant was signatory, clearly proves that the vendors namely respondents No. 1 and 2 were in possession of the suit property after the lease had been terminated. The question relating to termination of lease is required to be decided by the Tenancy Court and the Civil Court has no jurisdiction to decide the same. Learned Advocate for the appellant had submitted that para 4 of the reply at page 289 would go to show that the appellant was in possession of the suit property, but I do not find any merit in this contention, as the contention of learned Advocate is not supported by the contents of para 4. It is pertinent to note that under the Goa, Daman and Diu Agricultural Tenancy Act, 1976, there is a clear provision u/s 8-A where a tenant can approach the Tenancy Court for protecting his possession. The case of the appellant is that he was in possession of the suit property when the suit was filed and if that is so the appropriate remedy for him was to move an application u/s 8-A of the said Act so as to protect his possession and the filing of the Civil Suit for seeking injunction to protect possession was misconceived. Section 58(2) of the said Act lays down that save as provided in the said Act, no Court shall have jurisdiction to settle, decide or deal with any question which is by or under the said Act required to be settled, decided or dealt with by the Mamlatdar, Tribunal, Collector or Government, and no order passed by these authorities under the said Act shall be questioned by any Civil or Criminal Court. As already pointed out, a tenant in possession who apprehends wrongful dispossession, has to approach the Mamlatdar u/s 8-A of the said Act and the Mamlatdar is required to deal with such a situation.

9. The Record of Rights Form I and XIV in respect of the suit property shows that the appellant was in possession of the suit property till the year 1979/80. The same were kept fallow thereafter and in respect of Survey No. 10/1 the same was cultivated by respondent No. 1 Marshal Braganza in the year 1983/84 and

thereafter by respondent No. 3 in the years 1984/85 and 1985/86. The appellant has not been able to show any acts of possession in respect of the suit property after the year 1981/82 till the filing of the suit. It has to be pointed out that the appellant has not filed any supporting affidavits in support of his application for temporary injunction and it was only along with the affidavit-in-rejoinder that some affidavits were filed. The affidavits on behalf of either parties were scrutinised by the trial Court and the trial Court for valid and justifiable reasons has believed the affidavits filed on behalf of the respondents and the affidavits-in-rejoinder filed on behalf of the appellant were rejected. The trial Court has elaborately discussed the affidavits filed on either side and it is not necessary to deal in details this aspect. The respondent No. 3 in her application under Order 39, Rule 4 C.P.C. had listed specific acts of possession from the month of March, 1988 and her case is that she has been in possession of the suit property from the year 1983 in pursuance of sale of the suit property in her favour.

10. It is also pertinent to note that present respondent No. 6 had instituted Civil Suit No. 125/86 in which the present appellant was also one of the respondents wherein the present respondent No. 6 claimed to be lessee in possession of the suit property along with the appellant. However, this suit was withdrawn by the present respondent No. 6. According to the appellant he came to know the withdrawal of the said suit on 23-3-88. The said suit was withdrawn on 11-2-88. The appellant did not react or take any steps in this behalf even though the present respondent No. 6 who claimed to be co-lessee along with the appellant of the suit property, had categorically stated that neither be nor the present appellant had any right or claim to the suit property.

11. In view of the above discussion, I am of the opinion, no interference is called for in the impugned order dismissing the application for temporary injunction of the appellant.

12. Accordingly, the appeal is liable to be rejected and is hereby dismissed with costs. Status quo order dated 3-9-88 stands vacated.

13. Appeal dismissed.