

(1983) 04 BOM CK 0032

In the Bombay High Court

Case No : Second Appeal No. 432 of 1980

Sitaram Balwant Patil and Others

APPELLANT

Vs

Madhukar Gopal Kulkarni and Others

RESPONDENT

Date of Decision : 21-04-1983

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 12, 32, 88C

Citation : (1983) 2 BomCR 577

Hon'ble Judges : Sujata Manohar, J

Bench : Single Bench

Advocate : P.S. Warke, for the Appellant;

Final Decision : Allowed

Judgement

Sujata Manohar, J.—The appellants were the original defendants in Regular Civil Suit No. 59 of 1961 which was filed by the respondents-original plaintiffs, for recovery of arrears of agricultural rent for three years from 1st April, 1957 till 31st March, 1960. The appellants were the tenants of the respondents prior to 1st April, 1957. It is the case of the appellants that by virtue of the provisions of section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948 they are deemed to have purchased the lands which are the subject matter of the present litigation from the respondents on and from 1st April, 1957 and have thus ceased to be tenants of the respondents from the said date. As such, they are not liable to pay any rent for the period from 1st April, 1957 till 31st March, 1960 to the respondents as claimed by them.

2. Regular Civil Suit No. 59 of 1961 which was filed by the respondents against the appellants was dismissed by the Civil Judge, Junior Division Islampur. The respondents filed an appeal being Civil Appeal No. 62 of 1978. The Extra Assistant Judge, Sangli, by his judgment and Order date 27th June, 1979 allowed the appeal with costs. The present second appeal is filed from the judgment and Order of the Extra Assistant Judge, Sangli dated 27th July, 1979.

3. According to the respondents and application had been made by them u/s 88-C of the Bombay Tenancy and Agricultural Lands Act, 1948, sometime after 1st April, 1947 which was numbered as Tenancy Case No. 492 of 1958. The application was ultimately rejected in appeal on 27th March, 1962. According to the respondents, by virtue of the pendency of the application u/s 88-C, the appellants did not become the owners of the lands in question until after the rejection of the said appeal filed in the application u/s 88-C i.e. till 27th March, 1962. The appellants, therefore, were their tenants during the three years 1957-58, 1958-59 and 1959-60. The appellants are, therefore, liable, according to the respondents to pay to the respondents the rent claimed herein. This contention of the respondents does not appear to be correct. u/s 32 of the Bombay Tenancy and Agricultural Lands Act, on 1st April, 1957 every tenant shall be deemed to have purchased from his landlord the land held by him as tenant if he satisfies the requirements of that section. u/s 88-C(1) nothing in section 32 to 32-R shall apply to the land leased by any person if such land does not exceed an economic holding and the total annual income of such person including the rent of such land does not exceed Rs. 1500/-. u/s 88-C(2) a person eligible for such exemption is required to make an application as provided therein. For the present purpose, the proviso to section 88-C(1) and other provisions of section 88-C are not material. There are certain provisions in section 32 as a result of which the date of the deemed purchase by the tenant from the landlord is postponed. We are not concerned with the details of the provisions relating to the postponement of this date except to note that in these provisions there is no mention of the date of deemed purchase getting postponed as a result of any application being made u/s 88-C. As pointed out by the Supreme Court in the case of Sri Ram Ram Narain Madho v. The State of Bombay, reported in 61 Bom.L.R. 811 at page 824, the title of the landlord to the land passes immediately to the tenant on the tiller's day i.e. 1st of April, 1957 and there is a completed purchase or sale thereof as between the landlord and the tenant on that date. The inter-relationship between section 32 and section 88-C was examined by a Full Bench of this High Court in the case of Anna Balgonda Patil v. Vasant Raghunath Kulkarni, reported in 64 Bom.L.R. 591. The Full Bench, at page 596, was observed that there is no provision in section 88-C or in any other part of the Act whereunder the tenant shall not be deemed to have purchased the land until the application u/s 88-C has been disposed of. The landlord is divested of the land on the tiller's day viz. 1st April, 1957. If the landlord however, subsequently obtains a certificate u/s 88-C, the tenant will be divested of the right of ownership which he had previously acquired u/s 32. In the present case the respondent's application u/s 88-C has been rejected. There can, therefore, be no question of the appellants being divested of the ownership of the land at any time after 1st April, 1957. The respondents, therefore, were divested of their rights as landlords on 1st of April, 1957 and they cannot claim any rent from the applicants for the period subsequent thereto.

4. The respondents have also contended that prior to the Tiller's day on 24th

July, 1956 they had made an application being Tenancy Case No. 848/56 for reasonable rent under the provisions of section 12 of the Bombay Tenancy and Agricultural Lands Act, 1948 then in force, which section is now deemed to be repealed with retrospective effect as from 1-4-1956. Ultimately on 22nd April, 1975 a reasonable rent was fixed in respect of these lands at Rs. 387.10 annas and 8 pies. The respondents, claim that they are entitled to recover the rent so fixed from the appellants. The right however, to claim reasonable rent can arise only during the period when the appellants were the tenants of the respondents. Since the appellants have ceased to be the tenants of the respondents from 1st of April, 1957, the respondents in any event cannot recover any rent from the appellants after the 1st day of April, 1957.

5. In these circumstance, the appeal is allowed, Judgment and Order of the learned Extra Assistant Judge, Sangli dated 27th July, 1979 is set aside and the claim in Suit No. 59 of 1961 is dismissed. The respondents will pay to the appellants costs of the appeal.