

(1996) 01 BOM CK 0005

In the Bombay High Court

Case No : Writ Petition No. 1523 of 1989

Smt. Basantibai (since deceased by her L.R.)

APPELLANT

Vs

Narayan Kisan Khadasane, (since deceased by his L.Rs.)

RESPONDENT

Date of Decision : 16-01-1996

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 54(1)
Constitution of India, 1950 — Article 226

Citation : (1996) 4 BomCR 267 : (1996) 1 MhLj 598

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : V.R. Chaudhari, for the Appellant;

Final Decision : Allowed

Judgement

R.M. Lodha, J.—By this writ petition filed under Article 226 of the Constitution of India, the order passed by Maharashtra Revenue Tribunal, Nagpur, on 27-7-1988, upsetting the order passed by the Sub-Divisional Officer, Jalgaon Jamod dated 28-1-1987, is challenged.

2. One Basantibai, original petitioner, now deceased and represented by the present petitioner (for short "the landlady") admittedly owned field Survey No. 6 admeasuring 13 acres 13 gunthas of land at village Pimpri Adgaon, Tahsil Sangrampur. One Smt. Manjulabai was the tenant in the said land on behalf of the landlady and for the years 1981-82, 1982-83 and 1983-84, the tenant did not pay any lease amount and, therefore, the landlady sent a notice to Manjulabai, but the said notice was returned with endorsement that Smt. Manjulabai was dead. One Narayan Kisan Khadsane, the original respondent (since deceased and now represented by respondent Nos. 1-A, 1-B & 1-C) claiming his rights as tenant on the basis of the will executed by Manjulabai, sent the amount by way of money order to the landlady, which the landlady accepted under protest. An application was filed by the landlady u/s 120 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (for short "the

Tenancy Act of 1958"), seeking eviction of Narayan, on the ground that he was unauthorisedly occupying and wrongfully in possession of the land owned by the landlady. The application filed by the landlady u/s 120 of the Tenancy Act of 1958 was contested by Narayan. Inter alia, plea was set out by Narayan in the additional pleas that by the registered Will dated 15-1-1981, which was the last Will of Manjulabai, the rights of tenancy in the said land have been bequeathed to him and, therefore, his possession was neither unauthorised nor he was occupying the said land illegally. Thus, Narayan submitted in the written statement that the application filed by the landlady u/s 120 of the Tenancy Act of 1958 deserved to be dismissed.

3 After holding the inquiry, the Sub Divisional Officer, Jalgaon Jamod, by an order dated 28-1-1987 held that Narayan was in wrongful possession of the aforesaid agricultural land owned by the landlady and the landlady was entitled to eviction order and consequently directed that Narayan be evicted from the aforesaid field and the landlady be put in possession. The order passed by the Sub-Divisional Officer, Jalgaon Jamod, on 28-1-1987 was challenged by way of revision by Narayan before the Maharashtra Revenue Tribunal, Nagpur, and the Maharashtra Revenue Tribunal by an order dated 27-7-1988 allowed the revision and set aside the order passed by the Sub-Divisional Officer, Jalgaon Jamod, on 28-1-1987. The only reason given by the Maharashtra Revenue Tribunal, Nagpur, upsetting the order of the Sub-Divisional Officer was that the original tenant Manjulabai had executed Will in favour of Narayan, who was the son of the real brother of Manjulabai, and since Manjulabai was a widow and had no male issue, according to the will, Narayan had succeeded Manjulabai u/s 54 of the Tenancy Act of 1958, and all the tenancy rights of Manjulabai had been inherited by Narayan.

4. Shri V.R. Chaudhari, the learned Counsel for the petitioner, submits that on the basis of the Will dated 15-1-1981, the tenancy rights of Manjulabai could not be inherited by Narayan since u/s 54 of the Tenancy Act of 1958 when a tenant dies, the tenancy continues only to the extent it is made heritable in that section and not otherwise. The contention of Shri Chaudhari is that section 54 of the Tenancy Act of 1958 does not make the tenancy heritable on the basis of the will executed by the tenant and, therefore, the order passed by the Maharashtra Revenue Tribunal on its face is bad in law and liable to be set aside.

5. The Sub-Divisional Officer while considering the question as to whether by the registered will dated 15-1-1981 Narayan could have inherited the tenancy of Manjulabai, observed as under:---

"This issue also more or less deals with law point. From the evidence on record it is not in dispute that a registered Will deed dated 15th January 1981 Smt. Manjulabai willed away the suit field in favour of the N.A. Narayan. But the fact is that the N.A. is not a legal heir. There is evidence that he is the nephew of the deceased Manjulabai more particularly a son of her younger brother. Evidence is also that Smt. Majulabai has two daughters. Where a tenant dies his rights are heritable only u/s 54 of the Tenancy Act. In the instant case, the N.A. is a person

who is not a legal heir. It is thus clear that under the Tenancy Act deceased Manjulabai could not will away her tenancy rights to a person who is not a legal heir."

6. The Maharashtra Revenue Tribunal, however, in its order reversed the finding of the Sub-Divisional Officer, observing thus:---

"6. As regards the merits of the case, I find that the learned S.D.O., has not properly taken into consideration the material on record. The landlady has not filed any document on record in support of her contention. The N.A. Ex. 3 at record page 13 is a copy of the notice sent by the landlady Basantibai to Manjulabai which was returned as Manjulabai was reported to be dead. The notice was sent through lawyer of the landlady, in which she stated that she has received the money order for Rs. 132/- from Narayan but she was not aware of the capacity in which Narayan had send the said money order whether as a tenant or otherwise. As regards this notice, there is no other document on record except the testimony of one Ku. Rajunwarbai Chitlange d/o the landlady. She submitted that Manjulabai was the tenant but she was not aware of the death of Manjulabai. She was deposing on behalf of Basantibai because she was not able to attend the Court because of her old age. Except this evidence, the landlady has not led any other evidence in support of her application u/s 120/c. From the copy of the notice, N.A. Ex. 3 and deposition of said Rajunwarbai at record page 37, it is clear that Manjulabai was admittedly the tenant of the suit land from the evidence on record vide N.A. Ex. 1 which is a Will executed by Manjulabai in favour of Narayan who is the son of real brother of said Manjulabai. The Will is registered Will and Manjulabai was widow and had no male issue. Therefore, according to the will, Narayan legally succeeded to the said field of Manjulabai in the capacity of heir because u/s 54 of the Tenancy Act, rights of tenants are inheritable, and the landlord shall be deemed to have the tenancy. In my opinion, the learned S.D.O. has neither considered the facts of the case nor the law properly. Hence the order is not sustainable."

7. From the available material it is clearly revealed that though Manjulabai had no son and was widow, but at the time of execution of the Will dated 15-1-1981 as well as at the time of her death, she had two married daughters. Narayan was claiming inheritance of tenancy rights on the basis of the Will dated 15-1-1981 and, therefore, the question that needs to be decided is whether Narayan could have inherited the tenancy rights on the basis of the Will dated 15-1-1981 executed by Manjulabai.

8. The tenancy rights under the Tenancy Act of 1958 have been made heritable in accordance with section 54 of the Tenancy Act of 1958, and, therefore, after the death of the statutory tenant, the tenancy could be inherited only in accordance with section 54 of the Tenancy Act of 1958, and not otherwise.

9. Section 54 of the Tenancy Act of 1958 reads as under:---

"54(1) Where a tenant dies, the landlords shall be deemed to have continued the

tenancy-

(a) if such tenant was member of an undivided Hindu family to the surviving member of the said family, and

(b) if such tenant was not a member of an undivided Hindu family, to his heirs, on the same terms and conditions on which such tenant was holding at the time of his death.

(2) Where the tenancy is inherited by heirs other than the widow of the deceased tenant, such widow shall have a charge for maintenance on the profit of such land.

(3) The interest of an occupancy tenant in his holding shall on his death pass by inheritance or survivorship in accordance with his personal law."

10. A plain reading of sub-section (1) of section 54 of the Tenancy Act, 1958 would show that on the death of the tenant, the tenancy continues-

(i) if the tenant was the member of an undivided Hindu family and he was survived by a member of such undivided Hindu family; and

(ii) if such tenant was not a member of such undivided Hindu family, then to his heirs at the time of his death.

11. It is thus clear that the rights of the tenant under the Tenancy Act of 1958 after his death continues either to the surviving member of the undivided Hindu family, if such tenant was a member of such undivided Hindu family, or to his heirs at the time of his death, if such tenant was not a member of an undivided Hindu family. Section 54 does not contemplate continuation of tenancy rights after the death of the tenant by testamentary instrument executed by the tenant prior to his death. The tenancy rights under the Tenancy Act of 1958 are statutory and on his death could only devolve upon the heirs in accordance with section 54 of the Tenancy Act of 1958 and not otherwise and to that extent, the rights of the tenant under the Tenancy Act of 1958 are different from the rights of an ordinary tenant.

12. Sub-section (2) of section 54 of Tenancy Act of 1958 deals with tenancy rights inherited by heirs other than the widow of the deceased tenant, and sub-section (3) deals with the interest of occupancy tenant in his holding, which, according to the said sub-section, on his death, passes by inheritance or survivorship in accordance with the personal law. Neither sub-section (1) nor sub-section (2) or sub-section (3) of section 54 of the Tenancy Act of 1958 makes the rights of tenancy heritable on the basis of Will. The right of tenancy under the Tenancy Act of 1958 being statutory and therefore personal, extinguishes on the death of the tenant unless inherited in accordance with section 54 of the Tenancy Act of 1958.

13. In Bai Jamna Vs. Bai Dhani, , the Division Bench of this Court while considering the Bombay Tenancy and Agricultural Lands Act, 1948 (as it stood

before the amending Act XIII of 1956 came into force) held that the tenancy rights of statutory tenant were not heritable. The Division Bench judgment of this Court in Bai Jamna's case (cited supra) was followed in Niwruddi v. Smt. Renukaba, Spl. Civil Application No. 320/69 decided on 20-1-1970 1970 MH LJ 29, and this Court held thus:---

"Held, that the rights of a statutory tenant are purely personal rights and he remains in possession of the land and enjoys it so long as he complies with the provisions of the Tenancy Act and he has no estate or interest in the land as an ordinary tenant has. Unless the statute expressly authorises a tenant to pass on that right to another person, the right must cease the moment the statutory tenant dies. The statutory tenancy under the Tenancy Act does not create a right in property and it becomes heritable only because of the provisions of section 54 of the Tenancy Act. The rights of the tenant after his death were governed exclusively by the provisions of section 54 of the Tenancy Act, and the only heirs who are entitled to inherit those rights would be the daughters of the deceased tenant and the opponent could not claim to be in possession as a tenant, as no rights could have vested in him under the Will."

14. The tenant under the Tenancy Act of 1958, is undisputedly a statutory tenant and therefore, cannot continue his tenancy right by way of inheritance otherwise than what is provided u/s 54 of the Tenancy Act of 1958. By a Will or testamentary document, the tenancy rights of a statutory tenant under the Tenancy Act of 1958 are not made heritable and, therefore, the finding recorded by the Maharashtra Revenue Tribunal that on the basis of the Will dated 15-1-1981, Narayan inherited the tenancy rights cannot be sustained, being patently erroneous in law. In the will executed by Manjulabai it is stated that two daughters of the testator were alive at the time of execution of the will. At the time of the death of Manjulabai also, her two daughters were alive, and that is revealed from the cross-examination of Narayan. The statutory tenancy rights of Manjulabai was personal and only heritable as permitted by section 54 and therefore by way of Will, Narayan could not have acquired any tenancy right in the aforesaid land and, therefore, the finding recorded by the Sub-Divisional Officer that under the Tenancy Act of 1958 deceased Manjulabai could not Will away her tenancy rights to a person who was not her legal heir, was justified and proper, and the Maharashtra Revenue Tribunal seriously erred in interfering with the proper order of the Sub-Divisional Officer.

15. Consequently, this writ petition is allowed. The order passed by the Maharashtra Revenue Tribunal, Nagpur, on 27-7-1988 is set aside. Rule is made absolute in the aforesaid terms. No costs.