
(1991) 12 BOM CK 0012
In the Bombay High Court
Case No : Writ Petition No. 825 of 1984

Sonu Punaji Alav since deceased by heirs Savitri Sonu Alav and others APPELLANT

Vs

Nilkanth Shridhar Dixit and another RESPONDENT

Date of Decision : 16-12-1991

Acts Referred:

Arbitration Act, 1940 — Section 34

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 2(16), 4, 70, 85, 85A

Citation : (1993) MhLj 213

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

Bench : Single Bench

Advocate : G.R. Rege, for the Appellant; Atul Setalwad with S.S. Pandit, for the Respondent

Final Decision : Dismissed

Judgement

M.F. Saldanha, J.—A furious dispute has been raised in this petition which has been argued with great vehemence by Mr. G. R. Rege. learned counsel appearing on behalf of the petitioners, and Mr. Atul Setalwad, learned counsel appearing on behalf of the respondents. The point at issue being one of some importance, the same deserves serious consideration. The question that falls for determination is as to whether a civil Court before which a plea of tenancy has been raised by a Defendant is duty bound to frame an issue regarding such tenancy and refer the point for decision to the revenue authorities by virtue of the provisions of sections 85 and 85A of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Tenancy Act"). That a civil Court is precluded from evaluating question relating to tenancy under the Tenancy Act and that the jurisdiction in this regard vests exclusively with the revenue authorities is well crystallized in law and the dispute in this case has narrowed down to the extent of determining whether a civil Court is entitled to sift and weigh the material placed before it for purposes of deciding whether such an issue should be framed or not. A brief narration of facts is essential before considering the legal angle.

2. The respondents filed Regular Civil Suit No. 38 of 1979 in the Court of the Civil Judge, Junior Division, Deogad on the allegations that the original petitioner before this Court, who was engaged by them in the capacity of a watchman and was entitled to half the share of the fruit and other agricultural produce, be restrained from obstructing the possession of the plaintiffs. Admittedly, the land is owned by the plaintiffs. As far as the small piece of land that is the subject-matter of this dispute is concerned, it is their case that the present original petitioner (since deceased) was engaged in his capacity as a watchman and that he was entitled as and by way of remuneration for the services rendered by him to half the share of the fruit produced. It was contended by the present petitioner, who was the original defendant, that he was a tenant in respect of the disputed land and, therefore, the Trial Court framed Issue No. 3, which reads as follows :-

Whether defendant proves that suit lands are with him as tenant since the time of his father?"

3. During the pendency of the suit, the respondents made an application dated 21-10-1983 wherein they relied on the A.L.T. proceeding in which the original petitioner had made a statement that except for half guntha he was a watchman of the suit land and on this ground the respondents prayed that the issue already raised be withdrawn and deleted. The respondents contested the position on the ground that there were enough averments in the written statement itself which would indicate ample evidence regarding the possession of the petitioner and, consequently, that the Court should not delete issue No. 3 which would have the effect of revoking or recalling the reference that had been made to the tenancy authorities. The learned trial Judge, after hearing the parties, passed an order dated 27-1-1984 deleting Issue No. 3. It is against this order that the present petition has been filed.

4. Mr. Rege, learned counsel appearing on behalf of the petitioners, submitted that the law is virtually concluded with regard to the main issue, namely, that a Civil Court has no jurisdiction to examine issues relating to tenancy and that, consequently, the learned Judge has erred in examine that question. Mr. Rege placed strong reliance on a decision of the Supreme Court in the case of Gundaji Satwaji Shinde Vs. Ramchandra Bhikaji Joshi, , wherein the law on the point has been very clearly enunciated to the extent that the Court has, in no uncertain terms, held that the jurisdiction of the Civil Court is ousted. The Supreme Court observed as follows :-

?The combined effect of sections 70, 85 and 85-A of the Act is that where in a suit properly constituted and cognizable by the Civil Court upon a context an issue arises which is required to be settled, decided or dealt with by a competent authority under the Tenancy Act, the jurisdiction of the Civil Court to settle, decide or deal with the same is not only ousted but the Civil Court is under a statutory obligation to refer the issue to the competent authority under the Tenancy Act to decide the same and upon the reference being answered back to

dispose of the suit in accordance with the decision of the competent authority under the Tenancy Act."

5. It must be stated at this stage itself that Mr. Setalwad. learned counsel appearing on behalf of the respondents, does not dispute this position in law. He states that if under the provisions of Order 15 of the Code of Civil Procedure. 1988, a genuine, bona fide and triable issue with regard to tenancy is raised that the Court is obliged to frame such an issue and refer it to the Tenancy Court. It is his contention that the trial Court possessed the legal authority to delete an issue that was wrongly framed and the present dispute is confined to whether such deletion was valid or not. In this view of the matter, it is quite clear that if the trial Court wrongly deleted the issue, reference to the tenancy authorities would have to be revived. I am, therefore, required to examine the validity or otherwise of the impugned order to this limited extent. Mr. Rege then placed reliance on a Division Bench decision in the case of Bhagawanrao vs. Ganpatrao, 1987 (3) BCR 258, wherein pursuant to a dispute having arisen, the plaintiff sought an injunction against the defendant .who raised an issue of tenancy. It was sought to be argued that since an issue of tenancy had to be framed and since a reference had to be made to the tenancy authorities for decision on that issue, the Civil Court was precluded from passing a temporary injunction and that it has no jurisdiction to do so. The Division Bench has considered the law in considerable detail and has come to the conclusion that the Civil Court would be within its rights to issue a temporary injunction order if the facts so disclose and that as far as the final relief was concerned, the matter was governed by the decision of the tenancy authorities. Mr. Rege placed strong reliance on the observations of the Court in paragraph 27 wherein the Court has observed that when a plea of tenancy is raised that the matter requires investigation and to this extent the question of tenancy rights can only be determined by the tenancy authorities. This decision, to my mind, cannot advance Mr. Rege's case because the trial Court has relied on the wording of the entries in the record of rights which very clearly show that the original Petitioner is entitled to only half the share of the "fruits". The original petitioner is not shown as being the person who is cultivating the land. Mr. Rege's reliance on section 4 of the Tenancy Act is of no consequence because the facts of this case do not bring him within the definition of persons who are deemed to be tenants under this section. Again, Mr. Rege's endeavour to rely on section 2(16) of the Tenancy Act which defines the term "rent" is also misconceived because the tenant in this case is the recipient of half produce and there is nothing on record to show that he is paying any rent. The receipt by the original Petitioner of the half share of the produce supports the contention that he was inducted as a watchman and in lieu of his services, he was entitled to such receipt.

6. For purposes of substantiating his contention that the original Issue No. 3 was correctly framed, Mr. Rege sought to rely on certain parts of the record, such as a statement of the respondent's father dated 6-12-1962 indicating the circumstances under which the original Petitioner was inducted. For purposes of

arriving at a fair decision in this case, I have looked at the said statement which unfortunately does not bear out Mr. Rege's argument that the original Petitioner was inducted as a tenant in respect of the disputed land.

7. The principal ground on which the learned Judge has deleted Issue No. 3 is that the original petitioner has in no unequivocal terms admitted before the A.L.T. at the time of the section 328 proceedings that he was a tenant in respect of 1.5 Gunthas only and, furthermore, that he was a watchman of the suit land. Mr. Rege seeks to get over this difficulty by pointing out that there is considerable ambiguity with regard to the exact description of the land in respect of which the statements were made and, furthermore, that the matter is not concluded and requires fresh determination. This position is seriously disputed by Mr. Setalwad, who supports the order of the trial Court and further contends that the original Petitioner is estopped from seeking to re-open this issue which has been concluded in the earlier proceedings. Mr. Setalwad further points out to me that a perusal of the present petition will indicate that even before this Court the finding of the learned Judge in paragraph (8) of his order has not been disputed. That sentence reads as follows :-

"It is an admitted fact that the defendant was appointed as a guard (Rakhvali) and for which he might have made a compound to his land and also to the suit land and therefore it cannot be said that though there is a compound surrounded by both lands, the suit land is in the possession of defendant as a tenant."

Though Mr. Rege tries to state that in ground No. (9) there is a general attack with regard to the evidence on record and the non-consideration thereof, it is quite significant that this finding has virtually not been challenged. That apart, to my mind, on the special facts of this case, the Civil Court was justified in deleting Issue No. 3 in the light of the admission made by the original Petitioner himself before the tenancy authorities whereby there could be no question of once again raising any such plea of tenancy in the present proceedings.

8. Mr. Setalwad had relied on a decision of this Court in the case of Pulmati vs. Ramkrishna, 1981 Mh.L.J. 321, wherein the Division Bench of this Court had occasion to consider precisely the very dispute that has arisen in the present proceedings. The Division Bench observed that a Civil Court is not obliged to mechanically frame an issue regarding tenancy merely because it is pleaded and that it was necessary for the Civil Court to evaluate as to whether there was any material before the Court on the basis of which the plea of tenancy has been canvassed. The Division Bench has quite clearly stated that it is the duty of the Court to nip in the bud a frivolous or untenable plea of tenancy and that it is open to the Court to refuse to frame such an issue in appropriate cases. There is a long line of decisions of this Court wherein repeatedly observations have been made to the effect that if a defendant frivolously pleads a case of tenancy in the hope that it would result in a reference to the Tenancy Court with subsequent appeals, revisions, writ petitions and special leave petitions, all of which could drag on co-extensively with the lifetime of the litigant that it is essential for the

trial Court to observe the mandate of Order 14 of the CPC before framing such an issue. This, to my mind, does not at all conflict with the provisions of sections 85 and 85A of the Tenancy Act as also the law laid down by the Supreme Court in Gundaji Satwaji Shinde Vs. Ramchandra Bhikaji Joshi, because the trial Court has not evaluated the plea of tenancy on merits. One needs to bear in mind the fact that these provisions of law are similar to section 34 of the Arbitration Act whereby a Court is required to refer the dispute to the legally designated authority for adjudication and to stay its hands in the meanwhile. Though a Court would not decide a dispute which requires to be sent to an arbitrator, the Court will still examine the question as to whether there is a valid arbitration clause and the Court will still go into the question as to whether the dispute requires to be referred to an arbitrator or not. Similarly, in this proceeding a preliminary investigation with regard to the question as to whether an issue relating to tenancy arises or not is an exercise which the law enjoins upon the Civil Court to discharge and to that extent the Court is required to consider the respective pleas and to decide whether that issue genuinely and bona fide falls for determination. Once an affirmative conclusion is reached, the Court has to leave the decision on the question to the tenancy authorities. To this extent, therefore, Mr. Setalwad is justified in pointing out that the trial Court acted within its jurisdiction and that no interference is called for.

9. As regards the factual aspect, Mr. Setalwad pointed out that Mr. Rege is not justified in his submission that an issue of tenancy arises because the consistent stand of the original petitioner himself was that he possessed the status of a "watchman". By no stretch of imagination, therefore, can a watchman seek alteration of his status to that of a tenant. In this view of the matter, Mr. Setalwad is justified in his contention that no triable issue relating to tenancy has, in fact, arisen for determination before the trial Court.

10. In this view of the matter, the order of the trial Court is liable to be upheld. The petition accordingly fails and is dismissed. The rule is discharged with no order as to costs.