

(2010) 03 BOM CK 0010

In the Bombay High Court

Case No : Second Appeal No. 465 of 1989

Sou. Sitabai Narayanrao Deshmukh (since deceased, through
L.Rs. Mrs. Saujanyaadevi Fatesinhrao Deshmukh and Others) **APPELLANT**

Vs

The State of Maharashtra, Govardhanhari Devasthan Trust **RESPONDENT**
and Raje Narayanrao Vatabjatrai Deshmukh (since deceased
through Legal representatives as Pratapsingh Naraynrao
Raje, Achyut Naraynrao Raje and Chandrasen Narayanrao
Raje)

Date of Decision : 29-03-2010

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 85(2)
Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, Order 23 Rule 3A
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 14, 15, 16,
17, 18

Citation : (2010) 3 ALLMR 658 : (2010) 112 BOMLR 1595

Hon'ble Judges : P.R. Borkar, J

Bench : Single Bench

**Advocate : S.D. Kulkarni, for the Appellant; B.V. Wagh, A.G.P. for Respondent
No. 1 and C.V. Korhalkar, for the Respondent**

Judgement

P.R. Borkar, J.—This is an appeal preferred by original plaintiff Sitabai (since deceased, represented by her legal heirs-appellant Nos. A-1 to A-5) whose suit bearing R.C.S. No. 645 of 1978 for declaration and permanent injunction to restrain Defendant No. 1-State of Maharashtra from taking possession of the suit land was dismissed by the Joint Civil Judge, Senior Division, Ahmednagar on 18.12.1982 which judgment and decree was further confirmed by the learned II Additional District Judge, Ahmednagar in Regular Civil Appeal No. 33 of 1983 decided on 23.1.1987.

2. Briefly stated, the facts giving rise to this second appeal are that the original plaintiff Sitabai-appellant herein was the wife of original Defendant No. 3 Narayanrao Deshmukh who is Respondent No. 3 in the second appeal. Northern half portion of the suit land Gat No. 197/1 admeasuring 6 hector 88 Ares situated

at village Mahegaon Deshmukh is the trust property owned by Respondent No. 2 Trust, namely, Goverdhanhari Devasthan Trust, Kopergaon. It is stated that the appellant Sitabai had been in occupation and cultivation of the land in her capacity as tenant. After the provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act 1961 (hereinafter referred to as "the Ceiling Act") came into force, Respondent No. 1-State instituted an enquiry for determining ceiling of lands in respect of Respondent No. 3. The Special Deputy Collector, Kopergaon in Ceiling Proceedings bearing No. 4/64 decided on 26.4.1965 held that Respondent No. 3 was holding surplus land consisted of suit land. However, it is averred by the plaintiff-appellant that the suit land was exempted from the provisions of the Ceiling Act.

3. The plaintiff-appellant Sitabai further averred that in the year 1955-56, there was oral family arrangement/partition in which the suit land was allotted to her share. In 1964, she filed suit bearing R.C.S. No. 205 of 1964 for reopening the said partition and for effecting fresh partition and for possession of the suit property. The said suit was against her husband-present Respondent No. 3 and her five sons. It is also the case of the plaintiff-appellant that due to family partition of 1956, joint family status had come to an end and Respondent No. 3 had no authority to declare surplus land consisting of the suit land. No notice was given to the plaintiff-appellant. Consequently, the suit filed by the appellant-plaintiff bearing R.C.S. No. 205 of 1964 was decreed and the suit land was allotted to her share in the partition. In the present suit, the appellant-plaintiff's contention is that she was not party to the ceiling proceedings and so, she sought declaration that the findings recorded by the Special Deputy Collector, Kopergaon in the said Ceiling Proceedings bearing No. 4/1964 are not binding on her. She also sought permanent injunction restraining Respondent No. 1-State from disturbing her possession over the suit land.

4. Respondent No. 1 State is the main contesting party. Respondent No. 3 has not filed written statement and therefore the suit proceeded ex-parte against him

5. Respondent No. 2-Trust through Chief Trustee Vishnu filed written statement at Exhibit 25 and stated that the suit land being the trust property, Respondent No. 1-State had no authority to decide the Ceiling Proceedings and declare the suit land to be surplus land of Respondent No. 3. Thus, Respondent No. 2 supported the case of the plaintiff-appellant.

6. On the basis of rival contentions as above, the trial court has come to the conclusion that the suit property was not belonging to the plaintiff; the suit property was not exempted under the provisions of the Bombay Public Trusts Act; R.C.S. No. 205 of 1964 filed by plaintiff Sitabai was not filed by her in collusion with husband-Respondent No. 3. It is held by the trial court that the decision of the Special Deputy Collector and superior courts in ceiling proceedings are binding on the plaintiff. The plaintiff is not entitled to any relief claimed and, therefore, the suit was dismissed.

7. The First Appellate Court, in appeal, framed following two points for determination and answered those in the negative.

(1) Whether the Appellant proves that the findings of the Special Deputy Collector, Kopergaon, passed in Ceiling Case No. 4 of 1964 and confirmed upto the Supreme Court of India are not binding on her ?

(2) Whether the civil court has jurisdiction to entertain and try this suit ?

The first appellate court categorically held in its judgment that the suit RCS No. 205 of 1964 was a collusive suit filed by plaintiff-appellant with her husband Respondent No. 3 Narayanrao. There is clear finding in paragraphs 20 and 21 of the judgment.

8. This Second Appeal is admitted by order dated 7.12.1989 on the substantial questions of law stated in ground Nos. 3,9, 12, 15 and 20 of the appeal memo and said grounds are as follows:

(3) Whether in the facts of the present case the jurisdiction of the civil court is barred u/s 41 or any other provision of the un-amended Ceiling Act of 1961 ?

(9) Whether the order dated 26th April 1965 and the decision of the Superior Courts are binding on the Appellant/Plaintiff in view of a decree for partition passed in her suit.

(12) It ought to have been considered that already there was a partition in the year 1955-56 and in partition the Appellant was given 1/7th share, however, the Appellant was aggrieved by that partition and hence the Appellant filed a suit for partition in 1964 and hence the proceedings under the Ceiling Act ought to have been subject to the decision in the suit, under the provisions of the Ceiling Act.

(15) It ought to have been considered that even if it is presumed that the Appellant had knowledge about the earlier proceedings, unless it is proved that the Appellant was served with the notice of hearing and that she was given hearing and opportunity, it cannot be said that the order in the proceedings under the Ceiling Act in which the holding of the Respondent No. 3 was considered are binding on the Appellant.

(20) It ought to have been considered that when the learned Trial Judge has taken the view that the suit filed by the Appellant is not collusive it ought to have been held that the earlier orders in ceiling proceedings were not binding upon her and they were nullity so far as the Appellant is concerned.

9. It may be noted that the first appellate court held that the appellant failed to prove that the suit land was allotted to her share during family partition of 1955-56. It is also observed in paragraph 19 that in such case she would have obtained possession immediately or in any case before ceiling proceedings commenced in 1962. It is held by the first appellate court that the decree in R.C.S. No. 205 of 1964 for re-opening earlier partition of 1955-56 and for fresh partition in which suit land was allotted to the share of the appellant-plaintiff,

was obtained by collusion between present appellant-plaintiff and Respondent No. 3 and, therefore, the said decree will have to be ignored. The findings recorded by the authority under the Ceiling Act which were confirmed upto the Supreme Court are binding on the plaintiff-appellant. It is also held in para. 17 of the judgment that the appellant-plaintiff had knowledge of the ceiling proceedings and she deliberately stayed away from those proceedings. It is held that Respondent No. 3 had represented entire family as Karta of the family of which plaintiff-appellant was a member.

10. In the case of Nagubai Ammal and Others Vs. B. Shama Rao and Others, , it is observed:

Collusion in judicial proceeding is a secret arrangement between two persons that the one should institute a suit against the other in order to obtain the decision of a judicial tribunal for some sinister purpose. (Wharton's law Lexicon, 14th Edn., p.212). In such a proceeding, the claim put forward is fictitious, the contest over it is unreal, and the decree passed therein is a mere mask having the similitude of a judicial determination and worn by the parties with the object of confounding third parties.

11. In Kondi Ravji Fadtare Vs. Chunilal Rupchand Marwadi, , Division Bench of this Court observed that the collusion in connexion with judicial proceedings mean a secret agreement between two persons that the one should institute suit against the other, in order to obtain the decision of a judicial tribunal for some sinister purpose, or even in the wider sense of a deceitful agreement or compact between two or more persons to do some act in order to prejudice a third person or for some improper purpose.

12. The courts have always equated collusion with reference to judicial proceedings as nothing less than a fraud on the judicial system and refused to attach any sanctity to it. I may refer to paragraph 20 in the case of Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers, , wherein it is observed that fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. As has been observed in V.S. Rahi and Another Vs. Ram Chambeli, , collusion, if any, does not give sanctity to the transaction in question.

13. Various circumstances were considered by the first appellate court for holding that earlier suit i.e. R.C.S. No. 205 of 1964 was a suit filed by appellant-plaintiff in collusion with Respondent No. 3 herein and the decree therein cannot be taken into consideration as the same is nothing, but fraud committed by present appellant and Respondent No. 3 to overcome the orders expected in the ceiling proceedings. The first circumstance relied upon was that the present appellant herself did not enter into witness box. Her husband respondent No. 3 did not appear in present suit (RCS No. 645/78) and thus allowed the suit to be decided without his written statement and exparte. Thus, both avoided to enter into the witness box. The witness examined on behalf of the plaintiff-Sitabai is Pratap who is son of Plaintiff and Respondent No. 3. Pratap was 2 6 years of age when

his deposition was recorded on 2.12.1982. He wanted the court to believe his testimony regarding family arrangement/oral partition allegedly took place in the year 1955-56. If Pratap was 26 years of age in 1982, then he was born sometime in or about 1956 itself and thus could not have been competent to depose about oral partition which is said to have taken place just before or after his birth. In the year 1964 when R.C.S. No. 205 of 1964 was filed, he was hardly of 8 years of age. So, his deposition regarding oral partition of 1956 or the circumstances in which said R.C.S. No. 205 of 1964 was filed by appellant herein (plaintiff in present R.C.S. No. 645 of 1978) cannot be believed. The very circumstance that Pratap was examined, in stead of the plaintiff Sitabai, clearly indicates that there was much to hide from the court and if either plaintiff Sitabai or Respondent No. 3 Narayanrao had been examined, they would have spilled the beans and the truth would have come out. The Statement of Pratap that plaintiff-appellant had no notice of ceiling proceedings can not be accepted, since he was hardly 8 years of age in 1964 when the said proceedings were filed. Therefore, examination of the plaintiff Sitabai or her husband Respondent No. 3 Narayanrao was necessary to show that she was not having any knowledge or notice of the ceiling proceedings contested by her husband (Respondent No. 3) not only before the Special Deputy Collector, but right upto the Supreme Court. Plaintiff-appellant Sitabai never tried to intervene at any stage of the said ceiling proceedings. Before it could be held that Plaintiff had no knowledge of the said proceedings or that suit RCS No. 205 of 1964 was not collusive, it was necessary for plaintiff Sitabai to enter into the witness box. Thus, the first appellate court rightly drew adverse inference against the plaintiff-appellant who deliberately stayed away from the witness box and avoided the testing of truth of her case. What is produced on record is simply a decree in RCS No. 205 of 1964 at Exh.38. At least certified copy of the judgment could have been produced to show that there was real contest.

14. There is nothing on record to show that relations between appellant Sitabai and her husband Respondent No. 3 Narayanrao were not cordial/normal during the period 1955-56 to 1964-65 so as to hold she could not have knowledge of the ceiling proceedings contested by her husband upto the Supreme Court. It is not explained what was the reason for the plaintiff-appellant Sitabai not to question the partition effected in 1955-56 for about 8 years i.e. till 19 64 when the ceiling proceedings had been initiated by her husband. Moreover, their son Pratap in his deposition admitted that the plaintiff-appellant had not informed the ceiling authorities that the suit land was allotted to her share. It may be noted that the ceiling proceedings were initiated in 1962. It is admitted that the notice u/s 22 of the Ceiling Act was issued on 26.1.1962. So, the ceiling proceedings were there since prior to file of suit in 1964. Pratap does not say whether his father had informed the ceiling authorities about allotment of the suit land to the share of the plaintiff-appellant.

15. After carefully considering the judgment of the trial court, so also of the first appellate court, I am not satisfied that the appellant-plaintiff Sitabai came before

the court with true case that the suit land was allotted to her during partition of 1955-56 or that she was cultivating the same as a tenant.

16. Admittedly, Respondent No. 3 filed appeal against the order of the Special Deputy Collector, Kopargaon, before the Maharashtra Revenue Tribunal, Pune. It was tenancy appeal bearing No. MRT.AH.14/65 TEN.P.380/65 which was dismissed on 23.7.1965. The copy of the said order is at 33-A. Being aggrieved by the said dismissal, present Respondent No. 3 had filed Special Civil Application in High Court bearing No. 2056 of 1965 under Article 227 of the Constitution of India. However, that application was also dismissed on 19.12.1967 by the High Court, the copy of which is at Exhibit 33 in trial court record. Present Respondent No. 3 took further exception to the said order of the High Court, before the Supreme Court by filing Petition for Special Leave to Appeal which also came to be dismissed.

17. In the circumstances, there is no reason to believe that Respondent No. 3, had there really been oral partition or family arrangement in 1955-56, would not have disclosed that fact either to the ceiling authorities or in the challenges which he made upto the Supreme Court. Explanation to Section 4 of the Ceiling Act defines the "family unit". It includes a person, his spouse and minor sons and minor unmarried daughters. The family members amongst whom suit (RCS No. 205/64) was filed for reopening earlier partition and for fresh partition were the present appellant-plaintiff, her husband present Respondent No. 3 and their five children. The State Government was not a party to the said suit.

18. Learned Counsel for the appellant-plaintiff pointed out Section 8 of the Ceiling Act and submitted that as per said Section, as it prevailed prior to 1975 amendment, there was no prohibition to partition through Court. So, partition could have been effected by Court decree. However, in this case the first appellate court has come to the conclusion that the so-called partition of 1955-56 and the decree obtained in R.C.S. No. 205/1964 were nothing, but concoction and the said decree was simply a result of collusive suit filed with a view to avoid the orders in the proceedings under the Ceiling Act and, therefore, the said partition and decree could be ignored. Law does not recognise collusive decrees obtained to avoid rigour of statute like the Ceiling Act.

19. It is also noted by the first appellate court that there was nothing on record to show that as per the partition of 1955-56, the plaintiff had taken possession of her separate share in the lands. It is noted by the District Court in paragraph 21 of its judgment that present Respondent No. 3 while filing returns before the Special Deputy Collector, Kopargaon in Ceiling Case No. 4 of 1964 has not taken plea that the suit land was allotted to the share of his wife Sitabai-present appellant. On the contrary, it was his case that in the said partition of 1955-56, certain lands were allotted to his sons. In other words, suit land was found to be in possession the family unit consisting of Respondent No. 3, his wife, unmarried daughters and minor sons.

20. Section 41 of the Ceiling Act prohibits Civil Court from settling, deciding or dealing with any question which is by or under the said Act required to be settled, decided or dealt with by the Commissioner, Collector or Tribunal, the officer authorised u/s 27 of the Maharashtra Revenue Tribunal or the State Government. It may be noted that it was within the powers of the Special Deputy Collector under the Ceiling Act to decide which lands constituted the holding of Respondent No. 3 and which land did not form such holding, whether holding amounted to surplus holding and if so, which land/s should be declared as surplus, considering the choice given by the holder. Here, I refer to Sections 14 to 18 of the Ceiling Act. Section 17(1) of the Ceiling Act lays down issuance of public notice in the village/villages in which lands are situated, giving all details and calling for objections of persons interested. The Collector u/s 17(2) also to give notice to all persons known or believed to be interested to appear. It is not say of the plaintiff-appellant Sitabai that provisions of Section 17(1) were not followed. Considering the material before him, the Special Deputy Collector declared the suit land as surplus land. So, civil court does not have jurisdiction to hold that the suit land was not a part of the surplus holding of Respondent No. 3.

21. Since there are findings of facts that the suit i.e. R.C.S. No. 205 of 1964 filed by the present appellant-plaintiff was a collusive suit, the decree passed therein will have to be simply ignored. It was a decree obtained for practicing fraud upon the authorities under the Ceiling Act and with a view to save the suit land from the clutches of the Ceiling Act which would have been available as surplus land for the public benefit. It was not necessary for the ceiling authorities to issue notice to the plaintiff-appellant as she was very much part of the family unit of Respondent No. 3 who was contesting the said ceiling proceedings. It was not necessary to give separate notice or opportunity to present appellant-plaintiff of being heard in the said proceedings as there is no material to hold that plaintiff-appellant Sitabai was known interested party or there was any revenue record or other material before the Special Deputy Collector to believe that she was interested person. It is not averred that Respondent No. 3 ever disclosed that plaintiff-appellant Sitabai was interested party to the Special Deputy Collector holding the enquiry. The express bar u/s 41 of the Ceiling Act is very much applicable in the present case. The order passed by the Special Deputy Collector dated 26.4.1965 is binding on the appellant-plaintiff as in the ceiling proceedings she was represented by her husband-present respondent No. 3 who was head and Karta of the joint family. Under the circumstances, it is also difficult to believe that the plaintiff-appellant was unaware of the said ceiling proceedings. In fact, earlier collusive suit filed by her and theory of partition of 1955-56 propounded by her are nothing, but device to circumvent the provisions of the Ceiling Act.

22. Having regard to the facts and circumstances on record of the case, I agree with the conclusions drawn by the first appellate court.

23. Before parting, I may refer to various authorities relied upon by the parties.

24. On behalf of the appellant, reliance is placed on the cases of (i) Manoharrao v. State of Maharashtra 1977 Mh.L.J. 335, (ii) Sadashiv v. State of Maharashtra 1977 Mh.L.J. 783 and (iii) Biharilal v. State of Maharashtra 1984 Mh.L.J. 729. In these cases, there were genuine transactions of partitions and other bonafide transfers. Those were not the cases of collusive suit and fraud to circumvent the provisions of the Ceiling Act. Therefore, ratio in the said cases is not applicable to the facts of the present case.

25. Learned Counsel for the appellants also relied upon a Division Bench judgment of the Bombay High Court in Husein Miya Dosumiya Vs. Chandubhai Jethabhai and Another, , wherein it is held that the jurisdiction of the Civil Court has been ousted u/s 85(2) of the Bombay Tenancy and Agricultural Lands Act as a valid order was passed by the Mamlatdar. If the order by the Mamlatdar was not for the purposes of the Act, then it would be "ultra vires" and the order could be challenged in the Civil Court. In the present matter, it is not the case of the appellant-plaintiff that the orders passed by the Special Deputy Collector under the Ceiling Act as confirmed by Maharashtra Revenue Tribunal, High Court and the Supreme Court were in any way ultra vires. The case of the present appellant-plaintiff is that she was not heard in the ceiling proceedings even though she had obtained decree of the civil court for partition in R.C.S. No. 205 of 19 64. However, as stated earlier, this Court agrees with the findings of the District Court that the said suit was filed by appellant-plaintiff therein in collusion with present Respondent No. 3 and, therefore, the decree obtained in that suit being collusive is vitiated.

26. Learned A.G.P. Shri Wagh for Respondent No. 1 relied upon para. 9 of the judgment of the Supreme Court in the case of Shri Hafazat Hussain Vs. Abdul Majeed and Others, , wherein it is observed that the conclusion that the property in dispute was acquired from money earned as a prostitute and could not therefore be subject matter of valid Wakf was held to have been reached by placing reliance on the claims made in the proceedings held to be collusive and illegal and by disregarding the fact that the owner of the property also had other source of income. It was held that it was proper interference by the High Court with concurrent findings of fact. So, it is clear that the court refused to rely upon the claims based on collusive proceedings.

27. Another case which is relied upon by-learned A.G.P. Shri Wagh is A.A. Gopalakrishnan Vs. Cochin Devaswom Board and Others, . In paragraph 11 of the judgment, it has been observed thus;

11. It is further submitted that a decree having been made in terms of the compromise and such decree having attained finality, it cannot be questioned, interfered or set aside at the instance of a third party in a writ proceeding. Order 23, Rule 3 of CPC deals with compromise of suits. Rule 3A provides that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. We are of the considered view that the bar contained in Rule 3A will not come in the way of the High Court examining the

validity of a compromise decree, when allegations of fraud/collusion are made against a statutory authority which entered into such compromise. While, it is true that decrees of civil courts which have attained finality should not be interfered lightly, challenge to such compromise decrees by an aggrieved devotee, who was not a party to the suit, cannot be rejected, where fraud/collusion on the part of officers of a Statutory Board is made out.

In the facts of that case, the court refused to rely upon the compromise decree which was obtained by collusion.

28. Learned Counsel for the appellant relied upon paragraphs 28, 32, 58 and 61 of *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, for proposition that even the authorities holding quasi-judicial enquiries should avoid arbitrary-exercise of powers or the authority and an individual must be given reasonable opportunity to be heard before any order is passed to his prejudice. In my respectful opinion, said observations are not applicable to the facts of the present case.

29. I may refer to the case of *Gram Panchayat of Village Naulakha Vs. Ujagar Singh and Others*, . It is held therein that fraudulent or collusive judgment can be challenged in a later suit or proceedings and it is not necessary to file an independent suit for declaration or for setting aside such collusive or fraudulent decree or judgment. In para 8, "collusion" is explained.

30. In the case of *Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education and Others*, , it is held that once fraud is proved, it will deprive the person of all advantages or benefits obtained thereby. Delay in detection of or in taking action will raise no equities.

31. Learned A.G.P. for Respondent No. 1 also relied upon para. 5 and 7 in the case of *Smt. Sooraj and others Vs. S.D.O., Rchli and others*, and submitted that the suit filed by the present appellant is not maintainable and jurisdiction of Civil Court has been barred to impugn any question settled or decision made or matter dealt with by the competent authority under the Act. The Plaintiff / appellant ought to have filed appeal/revision under the Ceiling Act.

32. In the present case, I agree with the finding of fact that the suit filed by the plaintiff-appellant was nothing, but an action in collusion with husband-Respondent No. 3. The decisions in the ceiling proceedings are binding on the appellant and Respondent Nos. 2 and 3. Plaintiff-appellant is not entitled to any relief.

33. In the circumstances, this is not a case wherein any interference in the judgments and decrees of the trial court and the first appellate court is required.

34. Consequently, Second Appeal stands dismissed.