

(1962) 08 BOM CK 0005

In the Bombay High Court

Case No : Civil Revision Application No. 382 of 1962

Sriram Ranglal and Another

APPELLANT

Vs

Baburao Bhandoba Itkar and Another

RESPONDENT

Date of Decision : 13-08-1962

Acts Referred:

Citation : AIR 1963 Bom 235 : (1962) 64 BOMLR 763 : (1962) ILR (Bom) 703

Hon'ble Judges : Patel, J

Bench : Single Bench

Advocate : V.S. Deshpande, for the Appellant; V.H. Gumasta, Addl. Govt. Pleader, for the Respondent

Judgement

1. This is an application in revision against the order of the Taxing Officer. The respondent filed a suit against the petitioners for redemption of a mortgage executed by him on 16th January 1956 for a sum of Rs. 5000/-. According to the petitioner-defendants, they were tenants on the suit property from 17th October 1952 and one of the defences was that even though the plaintiff may be entitled to redeem as they were tenants in the property they were entitled to remain in possession as tenants. The Trial Court made a decree in redemption and the Appellate Court confirmed it. Against that decree the defendants come in appeal.

2. In the appeal, the Taxing Officer called upon the defendant to pay Court-fee on the full amount of Rs. 5000/-being the consideration for the mortgage-deed. It is this order that is sought to be revised by the petitioners.

3. It is clear from the prayers, which the petitioners make, that they are not challenging the redemption decrees as such; they are only challenging the right of the plaintiff to possession based on a tenancy in their favour. The Court fee therefore on a Memo of Appeal would be on the value of the subject-matter in difference between the decree granted by lower Court and the claim made in the appeal. This difference is to be arrived at in this way:

4. The plaintiff is entitled to possession only as a landlord and not physical

possession of the property. The defendants are entitled to remain in possession of the property as tenants and by his obtaining possession the landlord will be getting only the right to the payment of rent. It is clear, therefore, that the present case would fall u/s 8(xii)(d) of the Bombay Court-fees Act as if the landlord had filed a suit for recovery of possession and the defendant was defending that suit, since the fight to redeem is not in dispute in appeal.

5. The learned Additional Government Pleader relies on Section 6(iv)(d) of the Act and argues that what the defendants want is in effect a declaration of the nature of tenancy or title in which case one fourth of "ad valorem" fee leviable in a suit for possession must be paid. It is impossible to accept this contention. In the first place, it applies to suits for declaration, and secondly declaration of not a mere tenancy but of the nature of tenancy. Evidently there are several kinds of tenancies which more or less give substantial rights to the tenants such as, permanent tenancy, occupancy tenancy or protected tenancy, the last being under the Bombay Tenancy and Agricultural Lands Act. It is only in such cases where a suit is filed for a declaration of the nature of tenancy or any relief founded on it, that Clause (d) of Sub-section (iv) of Section 6 may come into operation. In the present case the relief that the applicants want is Mining but a relief against an order of eviction on the basis that they are not even the tenants and that is the only portion of the order that is sought to be challenged. This contention therefore must be rejected.

6. On the other hand, Mr. Deshpande argues that Article 23 in the II Schedule which is the residuary article must apply. He has relied upon Jagannath v. Laxmibai, 36 Bom LR 1220: AIR 1935 Bom 111, Gyasiram Kanhairam Vaishya Vs. Brijbhushandas Narayandas Vaishya and Another, and Mt. Muniran Vs. Mt. Mukhtar Begam and Another, . The first case instead of helping Mr. Deshpande is clearly against him, since it requires the valuation of the actual right in dispute. The learned Chief Justice there observed:

"In some cases, say where the value of the property in the defendants' hands as heirs is small, it is obvious that the appeal would be against the difference between their liability under the decree and such value; but where it is sufficient to meet the amount of the decree, it would come to the value of the extra remedy available to a decree-holder in the case of a decree which can be executed personally against the judgment-debtors."

The decision in Gyasiram Kanhairam Vaishya Vs. Brijbhushandas Narayandas Vaishya and Another, has no application to the facts of the case at all. It was an appeal made only with a prayer that the time for redemption should be extended. Clearly therefore the residuary Article applied and has no analogy to the present case. The decision in Mt. Muniran Vs. Mt. Mukhtar Begam and Another, concerns an appeal filed by a widow in a suit for partition against a partition decree. Her defence was that she was entitled to retain possession of the property since it was given to her by way of dower. One cannot forget that this case was decided under the Court-fee's Act as it then existed. In the present

Act, as amended in this State vast changes have been made and several mailers which were not included in the India Act have been brought under specific heads and if a case falls under a particular specific head, there is no scope for the application of the residuary Article. There is, therefore, no substance in the contention of Mr. Deshpande either.

7. In the result, I hold that the appellants must pay court-fees u/s 6(xii)(d) of the Bombay Court-fees Act i.e. court-fees on the amount of one year's annual rent. There will be no order as to costs.

8. Order accordingly.