

(2010) 10 GUJ CK 0107
In the Gujarat High Court

Case No : Special Civil Application No. 9833 of 2002

Taraben through P.O.A.

APPELLANT

Vs

Manubhai Harinarayan Pandya and Another

RESPONDENT

Date of Decision : 25-10-2010

Acts Referred:

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 5(3), 7, 9

Citation : (2010) 10 GUJ CK 0107

Hon'ble Judges : K.S. Jhaveri, J

Bench : Single Bench

Advocate : Jitendra M. Patel, for the Appellant; Trusha K. Patel, for Respondent
Nos. 1, 1.2.2, 1.2.3, 1.2.4, 1.2.5 and 1.2.6, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—The challenge in this petition is to the order dated 29th July 2002 passed by Gujarat Revenue Tribunal in Revision Application No. TEN. Ba.121 of 1998, whereby the revision was allowed by quashing and setting aside the order of the Deputy Collector passed in Tenancy Appeal No. 64 of 1996 and Tenancy Appeal No. 65 of 1996 dated 5th January 1998.

2. The facts as emerging from the record are as under:

2.1 The petitioner is daughter of deceased Dhanlaxmiben Shivshanker, who was the owner and occupant of number of agricultural lands situated in the sim of village Arera, Taluka Nadiad, District Kheda. The said lands were cultivated by her through supervision of her family members i.e. the respondents deceased Harinarayan Vishwanath and deceased Chandrakant Vishwanath, who were nephew of deceased Dhanlaxmiben.

2.2 According to the petitioner the lands bearing Survey Nos. 153/2, 273/2, 308/2 and 310/1 are fragment lands. The provisions of the Fragmentation Act were made applicable in the year 1951 and the said lands were notified in the

revenue record as fragments by mutation entry No. 1899 dated 29th October 1951. It is also the case of the petitioner that the deceased respondents Harinarayan Vishwanath and deceased Chandrashekhhar Vishwanath were never tenants of the suit land and there was no valid or legal order nor any proceedings were initiated by them showing that they were declared as tenants of the suit land.

2.3 By mutation entry No. 2080 dated 30th November 1954 the names of the above persons were included as tenants. They were cultivating the lands in question.

2.4 The Mamlatdar issued letter dated 7th May 1976 to Harinarayan Vishwanath stating that since he is nephew of Dhanlaxmiben, he is not cultivating the land as a tenant and he would not get any tenancy right over the aforesaid land and he was asked to submit his reply. Reply has been filed stating that there was compromise between them and since the said persons are tenants under the Act, they have fixed the purchase price at Rs. 6018/- and the same has been received by Dhanlaxmiben and certificate u/s 32-M may be issued in their favour. The reply has contained the thumb impression of Dhanlaxmiben. A statement of Dhanlaxmiben was also recorded by Mamlatdar in which she has admitted the say of the said Harinarayan Vishwanath. He had produced statement of one Chandrasheker and also produced receipt for the amount of Rs. 6018/-.

2.5 The said case was numbered as Tenancy Case No. 12 to 18 of 1976. The Mamlatdar, by common Judgment and order dated 29th May 1976 declared the deceased respondents as tenants and he also fixed the purchase price of the said lands. The Mamlatdar also ordered that the certificate u/s 32-M of the Tenancy Act be issued in favour of the deceased respondents. Similar order was passed in respect of Survey No. 153/2 in Case No. 133 of 1976.

2.6 Petitioner's mother Dhanlaxmiben expired in the year 1993. According to the petitioner later on she came to know that fraud has been committed and the respondents have become tenants by committing a fraud and by misleading the revenue authorities. The petitioner therefore filed Tenancy Appeal No. 64 of 1996 challenging the order passed by the Mamlatdar dated 29th May 1976. The petitioner also preferred Tenancy Appeal No. 65 of 1996 challenging the order of the Mamlatdar dated 21st January 1976. The Deputy Collector by Judgment and order dated 5th January 1998 allowed both the aforesaid appeals and quashed and set aside the orders of the Mamlatdar dated 29th May 1976 and 21st January 1976.

2.7 Revision Application No. TEN.BA.121 of 1998 was therefore preferred challenging the common Judgment and order dated 5th January 1998 passed by the Deputy Collector in Tenancy Appeal Nos. 64 and 65 of 1996 before the Gujarat Revenue Tribunal.

2.8 The Gujarat Revenue Tribunal by Judgment and order dated 29th July 2002 allowed the said revision application and quashed and set aside the order of the

Deputy Collector passed in Tenancy Appeal Nos. 64 and 65 of 1996 dated 5th January 1998. The Tribunal held that though the respondents were the nephew, they were not joint in estate or residence with deceased Dhanlaxmiben and therefore there is no bar or their becoming tenants of the lands. It is against the said order that the present petition came to be filed.

3. Mr. J.M. Patel, learned Advocate appearing for the petitioner submitted that the respondents are the nephew and they are related by blood and therefore they are members of the family of deceased land owner Bai Dhanlaxmi and therefore they cannot be declared tenant in view of Section 4 of the Tenancy Act.

3.1 According to him even the respondent Harinarayan has clearly stated that he along with his brother and land owner Dhanlaxmi has got 40 acres of land in their joint name and he has also admitted that she is their aunt by second generation.

3.2 He submitted that respondent Harinarayan in another case has deposed in favour of the land owner that he is cultivating the land as member of joint family and he and his aunt were residing in the joint family.

3.3 Mr. Patel submitted that in another suo motu proceedings in Tenancy Case No. 205 of 2003, statement of son of Harinarayan i.e. Devendrabhai was recorded, in which he has admitted before the Mamlatdar on 15th June 2004 in his cross-examination that Dhanlaxmiben was aunt of his father. In that view of the matter the Mamlatdar and ALT by his order dated 27th July 2004 held that heirs of Harinarayan are not tenants.

3.4 Mr. Patel submitted that as respondents were family members, they cannot be held to be tenants in view of Section 4 of the Tenancy Act. He submitted that four survey numbers, which are admittedly fragment, no lawful tenancy can be created as lands are fragments in view of Sections 7 and 9 of the Fragmentation Act.

4. Mr. Patel has raised a contention that even though two different orders were passed by Mamlatdar, only one revision application has been filed, which is not maintainable. In this regard he has relied upon a decision in the case of Darayas Bamanshah Medhora v. Nariman Bamansha Medhora reported in AIR 2002 Gujarat 1966 wherein it is held that when two decrees are passed an appeal against only one decree is not maintainable.

4.1 He submitted that the orders of the Mamlatdar were obtained by fraud, coercion and undue influence as the old lady had never approached Mamlatdar and evidences have been concocted and created.

4.2 He lastly submitted that the name of respondent Harinarayan was entered by mutation entry No. 2086 dated 30th November 1954 and it was a general entry and not based on any adjudication between the parties. He, therefore submitted that the petition deserves to be allowed.

4.3 Mr. Patel has relied upon a decision in the case of S.N. Sundalaimuthu Chettiar Vs. Palaniyandavan, wherein it is held that a son-in-law can be regarded as a member of the family because the word "family" is not to be construed in a narrow sense or meaning only a member of a Hindu joint family because the Act applies to all tenants irrespective of the personal laws which govern them. A person can, therefore, be properly regarded as being a member of his wife's family and not merely of his father's family.

4.4 He has next relied upon a decision in the case of Ram Charan Das Vs. Girjanandini Devi and Others, wherein it is held as under:

The transaction of a family settlement entered into by the parties who are members of a family bona fide to put an end to the dispute among themselves, is not a transfer. it is not also the creation of an interest. For, in a family settlement each party takes a share in the property by virtue of the independent title which is admitted to that extent by the other parties. Every party who takes benefit under it need not necessarily be shown to have, under the law, a claim to a share in the property. All that is necessary to show is that the parties are related to each other in some way and have a possible claim to the property or a claim or even a semblance of a claim on some other ground as, say, affection.

4.5 In the case of Smt. Amthabhai, widow of Jesangbhai Nathubhai v. Patel Shankerbhai Purshottamdas reported in 24(1) GLR 170 wherein it is held that relative of a landlord cannot get the benefit of deemed tenancy u/s 4.

4.6 He has relied upon a decision in the case of Saiyad Nasiruddin Saiyadali v. Kubrabegum, wife of Saiyad Ajimuddin Kamalduddin reported in ` , wherein it is held that if a person cultivating the land is a member of the owner's family, the person shall not be deemed to be a tenant.

4.7 He has next relied upon a decision in the case of Rohitkumar Bhavanishanker Dave v. Jayshanker Chhotashanker Dave reported in (2003)1 GHJ 410 wherein it is held that co-owners cannot claim the tenancy rights against each other.

5. Ms Trisha Patel, learned Advocate appearing for the respondent submitted that since the year 1954 the name of Harinarayan is mentioned in column of Cultivator in village Form Nos. 7 and 12; that mutation entry was made on 30th November 1954 wherein Harinarayan was declared as "Tenant"; that in Tanancy case, land owner Dhanlaxmiben's statement and deposition were recorded wherein she admitted that Harinarayan was/is her tenant and that she used to get half crop share and that the lands were irrigated and that she had received the purchase price as mutually agreed; that considering the aforesaid facts the Mamlatdar declared Harinarayan to be the tenant; pursuant to passing of order by Mamlatdar, certificate u/s 32M was issued on 7th May 1976 and such certificate is a conclusive proof of teancy; that on 25th February 1985 mutation entry No. 137 was made pursuant to the order passed by Mamlatdar and that Dhanlaxmiben expired on 10th August 1993 and during her life time she never challenged the order of Mamlatdar or Certificate issued u/s 32M or the fact of

Harinarayan being a tenant.

5.1 She further submitted that the orders of the Mamlatdar dated 21st January 1976 and 29th May 1976 were challenged by the daughter of Dhanlaxmiben by filing appeals which are grossly time barred. According to her, Dhanlaxmiben had not challenged the orders during her lifetime and on her death her heirs do not get a fresh cause of action to challenge the same.

5.2 According to her, even otherwise, there is no evidence to show that the land owner Dhanlaxmiben gave her statement and deposition before Mamlatdar under duress or coercion. She has never, during her life time, contended so before any authority.

6. As a result of hearing and perusal of the record certain aspects are not in dispute. The village form Nos. 7/12 are produced on record. They show that since the year 1954, the name of Harinarayan is mentioned in the column of Cultivator in the said village forms. A mutation entry was made on 30th November 1954. It speaks that said Harinarayan was declared as "Tenant".

6.1 It is required to be noted that there were tenancy proceedings. In the said proceedings statement and deposition were recorded. In her statement and deposition Dhanlaxmiben has clearly admitted that Harinarayan is her tenant and that she used to get half share of crops and that the lands were irrigated. She had also stated that she had received the purchase price as mutually agreed. All these facts were brought before the Mamlatdar and after considering the entire evidence on record the Mamlatdar declared said Harinarayan to be the tenant. It is required to be noted that Dhanlaxmiben had accepted the price of the land and no share was given thereafter which was known to her and her family members.

6.2 It is also required to be noted that pursuant to the passing of the order by Mamlatdar, a certificate u/s 32-M was also issued on 7th May 1976, copy of which is produced at page 37 of the petition. Admittedly such certificate is a conclusive proof of tenancy as held in the case of Shankerbhai Kanjibhai (Decd.) through his Legal Heirs Vedubhai Shankerbhai Patel and Another Vs. Dagdubhai Govindbhai and Others, In the said case it is held that a certificate issued u/s 32M is conclusive as against a landlord, but not as against a tenant and members of his family.

6.3 Another important aspect of the matter is that Dhanlaxmiben expired on 10th August 1993 and during her life time she never challenged the order of the Mamlatdar, the mutation entry and the certificate issued u/s 32M of the Act or the fact of Harinarayan being the Tenant. It is only after 20 years, that the orders of the Mamlatdar dated 21st January 1976 and 29th May 1976 were challenged by the daughter of Dhanlaxmiben by way of appeals. Even an application for condonation of delay was not filed explaining the delay. By catena of decisions it is settled that application for condonation of delay is necessary under such circumstances.

6.4 Be that as it may, the fact remains that Dhanlaxmiben had not challenged the orders of Mamlatdar during her lifetime. Therefore on her death, her heirs do not get a fresh cause of action to challenge the same especially when Dhanlaxmiben herself had not challenged the orders of Mamlatdar.

6.5 A contention has been raised that even though two different orders were passed by Mamlatdar, only one revision application has been filed, which is not maintainable. However, this contention was not raised before the appropriate authority and at this stage it is not open for the petitioner to take up such contention especially when both the orders are considered by the revisional authorities.

6.6 Another contention raised by the petitioner is that the respondents are the nephews and they are related by blood and therefore they are members of the family of deceased land owner Bai Dhanlaxmi and therefore they cannot be declared tenant in view of Section 4 of the Tenancy Act. Learned Advocate for the petitioner has also relied upon various decisions as pointed out hereinabove. The pedigree is given at page 76 of the petition and the parties are relatives by 5th generation. It is also a settled law that every kith and kin is not a family member and cousins can't be considered as family members. In the case of M.K. Valand and Anr. v. Heirs of V.M. Valand reported in 1993 GLT 315 it is held as under:

... The word "family" has to be construed in consonance with the object of the said Act. The object of the said Act was to avoid the neglect of the land-holder or dispute between the land-holder and his tenants and to see that the cultivation of the land is not seriously suffered or for the purpose of meeting the economic and social conditions of peasants and for ensuring the full efficient use of the land for agricultural purpose. In the facts of this case, the respondent is not shown to be the owner of the land in question and that Mohanbhai Motibhai was residing outside the village Vatav and that he did not cultivate the land at any time. Therefore keeping in view the object of the Act, it would be hazardous to give wider interpretation of the term "family" so as to include every kith and kin of the individual as his family members....

Therefore the contention of the petitioner as stated above cannot be accepted.

6.7 Another contention raised on behalf of the petitioner is that four lands are allegedly fragments and hence the order declaring Harinarayan to be the Tenant qua those survey numbers be quashed. However, it is required to be noted that Harinarayan was the tenant since prior to 1st April 1957, which is evident from village form 7/12 and mutation entry No. 2080. As per the provisions of Section 32D of the Tenancy Act, in case of tenancy created before 1st April 1957, the provisions of Fragmentation Act is not a bar and therefore I do not find any substance in the said contention.

6.8 Apart from that Dhanlaxmiben herself admitted in her deposition that the lands were irrigated lands. Further as per notification dated 12th April 1956 issued u/s 5(3) of the Act, if land admeasures 20 gunthas or more and is

irrigated, the same cannot be said to be fragment. In the present case all the lands included in the tenancy case No. 12/76 admeausre more than 20 gunthas. Therefore there is no merit even in this contention.

6.9 A contention was also raised with regard to partition of the land in dispute. In this regard it is specifically mentioned in the memo of revision that partition was effected before the year 1941 and the said fact was mentioned by the petitioner in paragraphs 1 and 2 in the plaint filed by the petitioner.

6.10 Lastly the petitioner has placed reliance on document produced vide Annexure-X-3. However, I am of the view that no reliance can be placed upon the same as the same was not produced before the authorities below and even at the time of filing of the present petition. Further, the said document relates to different lands and even in the said document, it is not mentioned that the lands in dispute were not partitioned.

7. Even otherwise, the revisional authority allowed the revision application and quashed and set aside the order of the Deputy Collector passed in Tenancy Appeal Nos. 64 and 65 of 1996 dated 5th January 1998 and held that though the respondents were the nephew, they were not joint in estate or residence with deceased Dhanlaxmiben and therefore there is no bar or their becoming tenants of the lands. Nothing is pointed out from the record that there is any bar for the respondents becoming tenants of the lands.

8. In view of the overall facts and circumstances of the case I am of the view that the petitioner has not made out any case in the present petition. The petition is, therefore, dismissed. Rule is discharged with no order as to costs.

9. After the Judgment was pronounced, learned Advocate Mr. Patel requested for extension of interim relief for a reasonable period. However, in my view, since the petitioners are not in possession, the interim relief does not deserve to be extended. Hence the request is rejected.