

(2012) 03 GUJ CK 0051

In the Gujarat High Court

Case No : Letters Patent Appeal No. 84 of 2011 in Special Civil Application No. 9833 of 2002 and Civil Application No. 459 of 2011 in Letters Patent Appeal No. 84 of 2011

Taraben Through P.O.A.

APPELLANT

Vs

Manubhai Harinarayan Pandya and Others

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32F, 32M, 4, 4(1)(a), 4(A)
Transfer of Property Act, 1882 — Section 105

Citation : (2012) 2 GLH 179 : (2012) 2 GLR 1482

Hon'ble Judges : V.M. Sahai, J;A.J. Desai, J

Bench : Division Bench

Advocate : Jitendra M. Patel, for the Appellant; M.P. Prajapati, Respondents
1.2.2, 1.2.3, 1.2.6, 1.3.1, 1.3.2, 1.3.5 - 2, 2.2.3, for the Respondent

Final Decision : Dismissed

Judgement

Mr. A.J. Desai, J.—By way of present Appeal under Clause 15 of the Letters Patent, the appellant-original petitioner has: challenged the oral judgment dated 25.10.2010 passed by learned Single Judge in above-referred Special Civil Application by which the petition was dismissed, confirming the judgment and order dated 29.7.2002 passed by the Gujarat Revenue Tribunal by which the tribunal has held that the order passed by the Agricultural Lands Tribunal dated 29.5.1976 declaring the: present respondents No. 1 and 2 as tenants under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 was correct one and the decision dated 5.1.1998 passed by the Deputy Collector in appeal filed by the appellant was not a legal one. The brief facts arising from the record of the case are as under:

1.1. That the Agricultural Lands Tribunal at Nadiad initiated proceedings u/s 32F of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Act") for the disputed land. After issuing notice to the ancestral of the

appellant and respondents, by a detailed order and by recording oral evidence of the parties, came to the conclusion that the fathers of the present respondents No. 1 and 2 were cultivating the land and the mother of the appellant had agreed to accept a sum of Rs. 6,018/- towards the value of the land, and accordingly, the amount was paid to the mother of the appellant, and declared him as a "tenant" under the provisions of the Act, and certificate was issued in favour of fathers of the respondents u/s 32M of the Act.

1.2. The mother of the appellant i.e. Dhanlaxmiben was examined by the Agricultural Lands Tribunal in which she has categorically stated that she was widow since last 40 years and the fathers of the respondents No. 1 and 2 i.e. Harinarayan and Chandrashankar were cultivating the land and she has no objection if the land is sold to them since they were cultivating the land and they were in possession of the land. She has categorically stated that she has not claimed any right as a widow of the original land owner i.e. Shivshanker Nathalal Pandya. Harinarayan and Chandrashankar, fathers of the respondent Nos. 1 and 2, were also examined by the Agricultural Lands Tribunal in which it has been categorically stated that they were cultivating the land since last twenty five years and they were in possession of the land in question. They had also shown willingness to purchase the land at a price which may be determined by the Authority. Neither of these two witnesses were cross-examined and, therefore, by orders dated 21.1.1976 and 29.5.1976 the tribunal declared that Harinarayan and Chandrashankar were entitled to purchase the land, and accordingly, order was passed declaring that Harinarayan and Chandrashankar were entitled to purchase the land subject to restriction u/s 43(1) of the Act.

1.3 As per the orders and since the amount was paid by Harinarayan and Chandrashankar, an Entry No. 137 was mutated in the revenue record showing the details of the orders and the price of the land which was paid by Harinarayan and Chandrashankar to the mother of the appellant.

2. To appreciate the contentions raised by the appellant, the pedigree of the entire family is required to be reproduced which is herein below :-

3. The present appellant Taraben is daughter of Dhanlaxmiben and Shivshanker. It can be seen from the chart that Taraben and Harinarayan are related at 4th Generation which goes upto one Kevalram. Dhanlaxmiben, wife of Shivshanker, through her lifetime had never challenged the orders passed by the Agricultural Lands Tribunal till she died on 10.8.1993. Taraben who got married in 1954, filed appeal after about 20 years, u/s 74 of the Act before the Deputy Collector by way of Tenancy Appeal Nos. 64/96 and 65/96 and challenged the orders passed by the Agricultural Lands Tribunal in 1976.

4. The main contention raised by the appellant in appeal was that Dhanlaxmiben i.e. mother of the appellant had never appeared before the Agricultural Lands Tribunal and the orders were passed behind the back of Dhanlaxmiben. The Deputy Collector by his order dated 5.1.1998 came to the conclusion that the

orders passed in 1976, by the Agricultural Lands Tribunal were illegal from its inception and, therefore, the same were required to be quashed even though it was hopelessly barred by delay and laches.

5. By way of Revision Application No. 121 of 1998, the present respondents No. 1 and 2 challenged the said decision and raised several contentions. By a reasoned order dated 29.7.2002, the revision application was allowed and the orders passed by the Deputy Collector in Appeal Nos. 64/96 and 65/96 were quashed and set aside and the orders passed by Mamlatdar dated 29.5.1976 and 21.1.1976 in Tenancy Case Nos. 12/76 to 18/76 were restored. This decision of revenue tribunal was challenged by the appellant by way of captioned Special Civil Application which was dismissed by the learned Single Judge by a detailed judgment dated 25.10.2010. Being aggrieved with this judgment, appellant has preferred present appeal.

6. Heard learned Advocate Mr. J.M. Patel for the appellant and learned Advocate Mr. M.P. Prajapati for the respondents.

7. The main contention raised by learned Advocate Mr. J.M. Patel appearing for the appellant is with regard to the provisions of Section 4 of the Act which provides exception for treating a person to be treated as deemed tenant. Section 4 of the Act reads as under:

Sec. 4 Persons to be deemed tenants :- A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not -

(a) a member of the owner's family, or

(b) a servant on wages payable in cash or kind but not in crop share or a hired labourer cultivating the land under the personal supervision of the owner or any member of the owner's family, or

(c) a mortgagee in possession.

Explanation (I) :- A person shall not be deemed to be tenant under this Section if such person has been on an application made by the owner of the land as provided u/s 2A of the Bombay Tenancy Act, 1939, declared by a competent Authority not to be a tenant.

Explanation (II) :- Where any land is cultivated by a widow or a minor or a person who is subject to physical or mental disability or a serving member of the armed forces though a tenant then notwithstanding anything contained in Explanation I to clause (6) of Section 2, such tenant shall be deemed to be a tenant within the meaning of this Section.

8.1. As per his submission, the appellant and the respondents are family members and, therefore, the Agricultural Lands Tribunal as well as Gujarat Revenue Tribunal have erred in accepting the father of the respondents as a tenant under the provisions of Section 4 of the said Act. In support of his

submission, he has relied upon the judgment in the case of SAIYAD NASIRUDDIN SAIYADALI v. KUBRABEGUM W/O. SAIYAD AJIMUDDIN KAMALVDDIN AND OTHERS reported in 2000(4) GLR 3612. He has also relied upon para 12: of the judgment by which the learned Single Judge has dealt with word "family" which is part of Section 4(A) of the Act. Para 12 of the said judgment is reproduced herein below:-

12. The word "family" has not been defined under the Act and, therefore, one has to look at the general meaning of the word family". The word "family" has been defined differently in different dictionaries. "The Universal Dictionary of the English Language" by Wordsworth Editions, edited by Henry Cecil Wyld, has defined family" as under:

1. Group of persons living under same roof including both those actually related by blood, and all the others, dependents, friends & c., forming the household. 2 a. Group of persons consisting of two parents and all their children; b. all of the children of the same parents: to have a large family; the eldest of the family. Phr. in the family way, pregnant. 3 a. All that group of persons, living or dead, descended from a common ancestor.

The Reader's Digest Great Encyclopaedic Dictionary, Vol. I, published by the Reader's Digest Association has defined "family" as follows:

Members of household, parents, children, servants, etc.; set of parents and children, or of relations, whether living together or not; person's children; all descendants of common ancestor, house, lineage; race, group of peoples from common stock.

The word family" has been interpreted by Black's Law Dictionary, Sixth Edition, to read as under :-

The meaning of word "family" necessarily depends on field of law in which word is used, purpose intended to be accomplished by its use, and facts and circumstances of each case. LeRoux v. Edmundson, 276 Minn. 120, 148 N.W. 2d 812, 814. Most commonly refers to group of persons consisting of parents and children; father, mother and their children; immediate kindred, constituting fundamental social unit in civilized society. People v. Hasse, 57 Misc. 2d 59, 291 N.Y.S. 2d 53, 55. A collective body of persons who live in one house and under one head or management. A group of blood-relatives; all the relations who descend from a common ancestor, or who spring from a common root. A group of kindred persons. Hartley v. Bohrer, 52 Idaho 72, 11 p. 2d 616, 618. Husband and wife and their children, wherever they may reside, and whether they dwell together or not. Franklin Fire Ins. Co. v. Shadid, Tex. Com. App., 68 S.W. 2d 1030, 1032.

"Family" has been defined by "Oxford Dictionary of Law", New Edition, to mean, A group of people connected by a close relationship. For legal purposes a family is usually limited to relationships by blood, marriage, or adoption.

The "Concise Oxford Dictionary", Ninth Edition, describes "family" in the following words:-

1. a set of parents and children, or of relations, living together or not. 2a. the members of a household, esp. parents and their children. b. a person's children. c. serving the needs of families. 3a. all the descendants of a common ancestor; a house, a lineage. b. a race or group of peoples from a common stock.

8.2 The other judgment relied by learned Counsel appearing for the appellant is in the case of S.N. Sundalaimuthu Chettiar Vs. Palaniyandavan, . He has also relied upon another judgment in the case of SMT. AMTHIBAI WD/O. JESANGBHAI NATHUBHAI v. PATEL SHANKERBHAI PURSHOTTAM-DAS reported in 24(1) GLR 170.

8.3. In case of Sudalaimuthu (supra), the Hon'ble Apex Court has held that the word "family" is not to be construed in a narrow sense or meaning only a member of a Hindu joint family because the Tenancy Act applies to all tenants irrespective of the personal laws which govern them.

In case of Smt. Amthibai (supra), the learned Single Judge of this Court by relying upon a decision in Special Civil Application No. 1199 of 1966 has held that the word "family" to mean all persons who are related by blood or marriage, relatives, to mean members of the family and that definition must be applied in the context of the enactment which also deals with question of tenancy in respect of agricultural lands.

8.4 By citing three judgments, learned Counsel Mr. Patel has submitted that though the appellant and the respondents are related at 4th/5th Generation, they should be treated as member of owner's family as defined u/s 4(1)(a) of the Act.

9. The learned Single Judge has; relied upon a judgment in the case of M.K. VALAND AND ANOTHER v. HEIRS OF V.M. VALAND reported in 1993 Gujarat Law Times 315 by which this High Court has 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 Vatva 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 very kith and kin of the individual as his family members.

10. As per the definition of Black's Law Dictionary, 9th Edition, the word "family" is defined as under:

(1) A group of persons connected by blood, by affinity, or by law, esp. within two or three generations. (2) A group consisting of parents and their children. (3) A group of persons who live together and have a shared commitment to a domestic relationship,"

10.1 As per the definition, it appears that the family can be defined to the extent that the persons who are connected by blood, by affinity or by law especially within two or three generations only. Even a group consisting of parents and their children can be defined as a family. As per the said definition, a group of persons who live together and have a shared commitment to a domestic relationship can be treated as a family. In case of S.N. Sudalaimuthu (supra), the relation was of a father-in-law and son-in-law and, therefore, the Hon''ble Apex Court has treated him as a member of owner's family. In case of Saiyad Nasiruddin Saiyadali (supra), the dispute between brother and sister and mother-in-law who were treated as close relatives. In case of Smt. Amthibai (supra), the relationship between the parties were of uncle-in-law and a widowed landlady. In case of Kailasbhai Shukaram Tiwari Vs. Jostna Laxmidas Pujara and Another, , the Hon''ble Apex Court, while dealing with the case under the provisions of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 has held that, in absence of definition of a family, the question whether a person is a member of family or not must be decided on the facts and circumstances of each case. It is also held in the said judgment that the question as to whether a person is a member of a family of the tenant must be decided on the facts of a case. Apart from this, parents, spouse, brothers, sisters, sons and daughters, if any other relatives claimed to be member of tenant's family, some more evidence is necessary to prove that they have always resided together as members of one family over a period of time. In the present case, similarly, family is not defined and the case is required to be looked into on its own facts which we have dealt with hereinabove and had come to the conclusion that the fathers of the respondents cannot be treated as a family member.

11. As stated hereinabove, in the present case, the relationship is at 4th/ 5th generation which would not fall within the definition of family as per Black's Law Dictionary. We are also in agreement with the observations made by the learned Single Judge in case of M.K. Valand and another (supra) that the word "family" has to be construed in consonance with the object of the Tenancy Act. The object of Tenancy Act is to avoid the neglect of the land-holder or dispute between the landholder 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 present case, Dhanlaxmiben in her deposition on oath before the Agricultural Lands Tribunal had stated that the fathers of the respondents was cultivating the land since 25 years and she has accepted the respondent as tenant of the land.

12. Another question we would like to deal with herein below, though not raised

by any of the parties is with regard to the fact that the owner had agreed to sell his property to the tenant would be covered under the provisions of Transfer of Property Act or not. u/s 32F of the Tenancy Act, the tenant shall have a right to purchase the land if the landlord is a minor or a widow or a person subject to any mental or physical disability under certain conditions which are mentioned in the Section itself. It is also provided that, where a person of such category is a member of joint family, the provisions; of such Section will not apply if at least one person of the joint family outside the category mentioned in this Section etc. It is an undisputed fact that the appellant has not contended that the respondents are the members of a joint family and, therefore, the order passed u/s 32F of the Act is nullity. Here the main contention is with regard to Section 4 of the Tenancy Act which debar a person to become a tenant if he is a owner's family member. In case of Gnyandeo Pirange Vs. Pandurang Jyoti Pirange, , the Division Bench of Bombay High Court had an occasion to deal with a case under the Hyderabad Tenancy and Agricultural Lands Act, 1950 with regard to tenancy right, and particularly between the family members. The provisions of Sections 4A and 5 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 are pari materia with the provisions of Sections 3 and 4 of the Bombay Tenancy Act. In the said case, though the land was cultivated by close relative i.e. nephew of the owner, the Division Bench, after perusing the documents, came to the conclusion that there was written agreement between t the landowner and the tenant and that the land was to be cultivated on sharing basis. A document was entered into between the parties about the same.

In view of the factual aspect, it was held by Division Bench in paras 14 and 15 as under:

14. In our judgment, the decisions in Nilavabai's case and Syd. Ashraf's case do not govern the situation. As already observed, the question that is required to be considered in this petition is the application of Section 4-A of the said Act. This is because there is a written document of lease dated February 17, 1969. Section 4A of the Act clearly enacts that the provisions of Chapter V dealing with lease under the Transfer of Property Act, 1882, shall apply insofar as the said provisions are not inconsistent with the provisions of Hyderabad Tenancy and Agricultural Lands Act, 1950, to tenancies and leases of land to which the Agricultural Tenancy Act applies. Under the Transfer of Property Act, a transfer means an act conveying property by a living person to another living person. Chapter V of the said Act defines a lease to be a transfer of a right to enjoy property in consideration of price paid or promised either in terms of money, a share of crops, service or any other thing of value to be rendered periodically or on specified occasions to the transferor by the transferee who accepts the transfer on such terms. What is required to be considered is as to whether there is a property conveyed under the document for consideration. Consideration may be of a kind as defined in Section 105 of the Transfer of Property Act. It is essentially an agreement as in this petition there is a document dated February 17, 1969. In regard to this document, what is required to be considered is as to

whether the said document is inconsistent with any of the provisions of the Hyderabad Tenancy and Agricultural Lands, Act, 1950. If such an agreement is not inconsistent then it would be a document valid in law creating relationship under the said document of lease.

15. Illustratively, but not exhaustively, occasions can be contemplated where under in spite of relationship connecting the parties to the lease even to the extent of they being the members of a family either a continuing Hindu joint family or a separated; one, there are factors and occasions which would necessitate on clear understanding the formation of such relationship. The landlord may be unable to exercise his rights of ownership either he being at a far distance from the land in question, or he being unable to do agricultural jobs by reasons of his old age, infirmity or difficulties of similar character. It cannot be ignored that the relationship is a basic factor for the genesis of an implicit faith and if for conveying property, a relation is chosen with full open eyes, it will have to be accepted for its legal consequences. It would be a transfer by the transferor in favour of the transferee. What is required to be considered is not the relationship but satisfaction of the conditions of the relationship as emerged in Section 105 of the Transfer of Property Act and a further satisfaction that such relationship is not inconsistent with the provisions of this Act.

13. In the present case, Dhanlaxmiben, the landlady had on oath, specifically deposed before the: Agricultural Lands Tribunal that she is the landlady of the disputed property and Harinarayan and Chandrashanker, fathers of the respondents are tenants and the land is being cultivated by them. She has further stated that she was ready and willing to sell the property to her tenants at the price fixed by the Authorities. Evidence, on record shows that the landlady Dhanlaxmiben had accepted, the fathers of respondents as tenants, and after receiving the price of the land, she has transferred the land in favour of the tenants at the price which was fixed under the provisions of the Bombay Tenancy Act. As discussed and concluded hereinabove, the fathers of the respondents cannot be treated as family members of owner, the transaction, took place between the parties, shall be covered under the provisions of Transfer of Property Act, 1882, which governs sales etc. of immovable property. In the present case also, the act of landlady in selling the property is not inconsistent with the provisions of Tenancy Act and, therefore, the relation between the parties would be of a transferor and transferee and would not be covered under the provisions of Section 4 of the Act which prohibits a person to be declared as tenant being a member of the owner's family.

It is also clear from the deposition of the parties which has come on record that the sale price of the land, which was decided by the competent Authority was accepted by Dhanlaxmiben without any protest and she did not raise any objection till she was alive i.e. upto 1993. Even the entries which were made in the revenue record were never challenged by widowed Dhanlaxmiben.

The reason best known to the daughter of Dhanlaxmiben, who got married way

back in 1954 and had settled with her family at Nadiad, after 3 years of death of her mother and after 20 years of the orders which were passed by the Tribunal in 1976, preferred the appeal before the Collector, which ultimately reached upto this stage.

14. The other contentions which are raised before the learned Single Judge are properly dealt with by the learned Single Judge, We are, therefore, of the opinion that there is no infirmity

in the impugned judgment and order passed by the learned Single Judge which would call for interference by this Court. This appeal is, therefore, dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs. In view of the aforesaid order passed in Appeal, Civil Application No. 459 of 2011 does not survive and accordingly stands dismissed with no order as to costs.