

(1997) 09 BOM CK 0056
In the Bombay High Court
Case No : S.A. No. 65 of 1983

Uttam Sambha Deshmukh and others APPELLANT
Vs
Yamunabai Bhoyar and others RESPONDENT

Date of Decision : 24-09-1997

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 120A, 124, 125, 85
Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1, Order 6 Rule 2

Citation : (1998) 3 ALLMR 625 : (1998) 4 BomCR 441 : (1998) 3 BOMLR 625 : (1998) 2 MhLj 144

Hon'ble Judges : S.B. Mhase, J

Bench : Single Bench

Advocate : A.M. Bapat, for the Appellant; Ramesh Darda, for the Respondent

Judgement

S.B. Mhase, J.—This second appeal is directed against the judgment and decree passed in Regular Civil Appeal No. 88 of 1981 decided on 18-6-1982 by the District Judge, Yavatmal confirming the judgment and decree passed in Regular Civil Suit No. 132/80 decided on 18th April, 1981 by the 2nd Joint Civil Judge, Junior Division, Yavatmal whereby 3/8th share has been declared of the respondents in suit land. So far as genealogy of the parties is concerned, there is no dispute. Nathuji was a main repository who expired in 1968 leaving behind son Sambhaji and three daughters, viz. Yamuna, defendant No. 1/respondent No. 1, Kamal, respondent No. 2 and Anusuyabai, respondent No. 3. The only son of Nathuji, viz. Sambhaji expired on 7-8-1977 leaving behind his wife Manabai, appellant No. 2; son Uttam, appellant No. 1 and son Zolba, appellant No. 3 and three daughters, viz. Baby, Kusum and Sakhu who are not parties to the suit. The dispute is pertaining to Survey No. 52 measuring 23 acres and 8 cent of village Karli. This land was purchased by Nathu and his son Sambhaji by registered sale deed dated 20th April, 1959. After the death of Nathu, respondent No. 1 filed a suit claiming his share being heir of deceased Nathu and claimed that each of the respondents is having 1/8th and respondents together

are having 3/8th share in the suit land. The trial Court decreed the suit which was confirmed by the Appellate Court.

2. The only point which is raised by Mr. Bapat, the learned Counsel appearing for the appellants is that in view of the plea of the appellants that the land in question was being cultivated by Sambhaji as a tenant, the sale deed in favour of Nathuji to the extent of 1/2 share was invalid in view of the provisions of section 120-A of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 and this issue as to whether acquisition in favour of Nathuji was invalid or not and whether Sambhaji was tenant on the said land were the questions arising in the suit and, therefore, the learned Counsel submitted that issues to that effect should have been referred under sections 124 and 125 of the Tenancy Act to the Tenancy Authorities.

3. This contention, as raised, is without any merit. I have perused the Written Statement filed by the appellants. In para 10 of the said Written Statement (Exhibit 12), the appellants have stated that, "Sambha alone was the tenant of the land in suit previous to sale deed dated 20-4-1959 and hence sale deed in favour of Nathuji is invalid and he gets no right in the said sale deed. This issue is, therefore, required to be referred to the Tenancy Court and until the said issue is replied, the suit is required to be stayed." Except this, no other specific pleading has been made in the Written Statement. Order 6, Rule 2 of the CPC requires that the material facts should be pleaded by the parties. However, a bald statement that Sambha was tenant of the suit land previous to sale deed dated 20-4-1959, has been made. However, material facts constituting the plea of tenancy, have not been pleaded, viz. as to when the tenancy commenced; who was the landlord; what were the terms and conditions of the tenancy; what was the rent fixed etc. are absent in the pleading. Apart from this, it will be evident that no documentary evidence viz. revenue record and/or rent receipts have been produced on record to show the relationship of the deceased Sambha as the tenant of the said land. On the contrary, the Lower Court has rightly examined the document at exhibit 25 i.e. Crop Statement of the relevant year and it will be seen that earlier in the year 1957-58 name of Nago Mahadeo appears as cultivator of the land belonging to Vatsalabai Dattatraya. However, from the next year, names of Nathu and Sambha appears as occupant of the said land and they themselves have been shown as cultivators of the land. The same position continues in the Records of Right till 1968 when Nathu expired and thereafter name of Sambha appears as cultivator. All these documents, therefore, point out that there is not a single document on record which can, prima facie, point out that Sambha was cultivating the land as tenant. I am making reference to all this, because the reference u/s 124 read with section 125 of the Tenancy Act of the Vidarbha Region and/or sections 85 and 85-A of the Tenancy Act of Bombay region has a consequence of keeping the suit pending on the dormant file of the Court till reference of the issues referred to the Tenancy Authorities are answered finally by the superior Court upto the Apex Court and, therefore, such a plea should not be allowed to be raised on bald pleading and/or

shall not be allowed to be raised on frivolous plea to prolong the life of the litigation and, therefore, it becomes the bounden duty of the Court while framing issue to ascertain on the basis of the pleadings, viz. plaint and written statement and other material placed on record which can be considered for the purposes of framing of the issue under Order 14 as to whether issue arises and/or whether the parties are at issue on particular point. As earlier pointed out, the plea in para 10 of the Written Statement (Exhibit 12) does not contain material facts and further material particulars constituting the plea of tenancy and the documents on record do not support the said bald contention of tenancy. In the result, the issue does not arise between the parties and rightly the Court has not framed it. The Trial Court framed the issue. "Does the defendant prove that suit filed was acquired by Sambha, as pleaded?". This was also attempted by the appellants to be referred to the Tenancy Court on the basis of application (Exhibit 51) dated 17-2-1981 and the same was rejected after hearing the parties and thus, in the result, it is found that neither the issue was arising nor the issue was necessary for the purposes of adjudication of the controversy between the parties. I am supported in this view by the Division Bench judgment of this Court reported in 1981 M.L.J. 321, in the matter of Fulmati Shyamlal Mishra v. Ramkrishna Gangaprasad Bajpai, wherein it has been observed that the Civil Court u/s 85-A of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 is not under an obligation to frame and remit the issue of tenancy mechanically merely on the same being raised in the Written Statement without judicial satisfaction of its necessity and justification. The cases can be conceived when tenancy plea may appear to be patently frivolous, fraudulent and part of dilatory strategy and not by itself attract sections 85 and 85-A of the Bombay Tenancy and Agricultural Lands Act. In this view of the matter, I find that the point raised by the learned Counsel is without any merit.

4. Except this, no other point was raised.

5. Appeal is without any substance and it is accordingly dismissed with costs.

6. Appeal dismissed.