

(1956) 10 BOM CK 0006

In the Bombay High Court

Case No : Special Civil Application No. 732 of 1956

Vithal Sakharam Kodre

APPELLANT

Vs

Gopala Gangaram Dawkhar

RESPONDENT

Date of Decision : 08-10-1956

Acts Referred:

Constitution of India, 1950 — Article 227
Transfer of Property Act, 1882 — Section 111, 117, 3

Citation : (1957) 59 BOMLR 59

Hon'ble Judges : Gokhale, J;Bavdekar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Gokhale, J.—This is a Special Application under Article 227 of the Constitution by the landlord against the decision of the Revenue Tribunal confirming the order of the District Deputy Collector remanding the case to the Mamlatdar for disposing of the tenant's application for determination of reasonable rent.

2. It appears that survey No. 10 of Shrirampur was originally owned by the present opponent, the tenant. The tenant sold it to the landlord on February 28, 1925, but the landlord put his original vendor in possession of the land as his tenant in 1939. Then the landlord, while the tenant was in possession, mortgaged the land to the tenant under a simple mortgage of May 25, 1943, for Rs. 2000. It seems that there was some dispute between the landlord and the tenant, and the latter took two agreements to purchase the land from the separated brother of the landlord. On February 23, 1949, in reply to a landlord's notice the tenant contested the nature of his own sale-deed of 1925 and asserted that it was not a sale out and out, but was a mortgage, and that he was in possession of the land by virtue of the satekhats taken from the landlord's brother. The landlord himself applied to the Bombay Agricultural Debtors Relief Court for taking of accounts of his simple mortgage of 1943, and the Bombay Agriculture Debtors Relief Court held on December 20, 1952, that that mortgage

was satisfied. The landlord was directed to secure possession through the civil court, and accordingly a suit was filed at Ahmednagar.

3. On January 5, 1954, the present opponent applied to the Mamlatdar for fixing reasonable rent claiming to be cultivating the land as a tenant from 1939 to the date of the application. The petitioner resisted the tenant's application on the ground that the opponent was not a tenant. He contended that the tenant had surrendered possession in April 1943, and had gone into possession again in August 1943 under the mortgage of May 25, 1943, which was a simple mortgage. According to the landlord, the possession of the opponent was that of a mortgagee, and, therefore he was not a tenant; and consequently the question of determining reasonable rent did not arise. The Mamlatdar accepted this contention of the landlord. He referred to the fact that the Bombay Agricultural Debtors Relief Court held the mortgage to be satisfied, and he also referred to the reply of the tenant to the petitioner's notice denying the title of the landlord. The Mamlatdar, therefore, held that the present opponent was not in possession as a tenant, and the question of fixing reasonable rent did not arise for consideration. The District Deputy Collector reversed the decision of the Mamlatdar. He held that the opponent was in possession even prior to the mortgage as a tenant. The mortgage itself was a simple mortgage, and the opponent was not cultivating it as a mortgagee, but was cultivating it in the capacity of a tenant, and his status as a tenant did not change. The District Deputy Collector consequently remanded the case to the Mamlatdar for fixing reasonable rent. The landlord went in revision to the Revenue Tribunal. It confirmed the decision of the District Deputy Collector that the opponent, being a simple mortgagee, did not cease to be a tenant. The landlord, however, contended that the opponent's tenancy had come to be forfeited, because of his disclaimer of the landlord's title in reply to the notice of the landlord on February 23, 1949. That contention was negated by the Revenue Tribunal, on the ground that Section 111(g) of the Transfer of Property Act could not apply to this tenancy, and Section 14 of the Tenancy Act of 1948 provided for cases in which the landlord was entitled to terminate the tenancy, and forfeiture incurred by disclaimer was not included therein. Accordingly the Revenue Tribunal confirmed the decision of the appellate authority, and dismissed the landlord's application.

4. Now, Mr. Tarkunde on behalf of the landlord has not challenged the finding of the Revenue Tribunal that the opponent is a tenant. He has fairly, and, in our opinion, rightly conceded that that would be a question of fact. But Mr. Tarkunde challenges the correctness of the view of the Revenue Tribunal that there could be no forfeiture of the opponent's tenancy owing to the disclaimer by him of the landlord's title, and he contends that the Revenue Tribunal's view that Section 111(g) of the Transfer of Property Act was not applicable is erroneous. Now, according to Mr. Tarkunde, Section 14 of the Tenancy Act deals, with cases in which the landlord is given the right to terminate the tenancy, and he admits that under the provisions of Section 14 the tenancy of any land held by a tenant cannot be terminated, unless it falls within the cases mentioned in Section 14.

But Mr. Tarkunde relies on the non-obstante clause with which the section commences. That clause is to the following effect:-

Notwithstanding any agreement, usage, decree or order of a Court of law, the tenancy of any land held by a tenant shall not be terminated unless such tenant.

Now, Mr. Tarkunde emphasises that this clause, unlike the usual non-obstante clauses does not refer to "any other law". Therefore, says Mr. Tarkunde, if any other law provides, as the Transfer of Property Act undoubtedly does provide, for forfeiture of tenancy on the ground of disclaimer of landlord's title, then that is not excluded by the provisions of Section 14. We cannot accept this argument. Undoubtedly, the purpose of a non-obstante clause is to provide for full effect being given to the main provisions of the section, in spite of any conflict that may arise between the provisions of the section and anything that is referred to in such a clause. In this case, the Legislature contemplated the possibility of a conflict arising, owing to any provision in an agreement, usage, decree or order of a Court. Even if the landlord had a right to terminate the tenancy under any agreement, usage, decree or order of a Court of law, Section 14 placed an embargo on the landlord's right to terminate it. But the omission of the words "any other law" does not mean that this clause is to control the interpretation of the rest of the provisions of the section. The section clearly says that the tenancy of any land held by a tenant shall not be terminated, unless his case falls within Clauses (a) to (c) of that section. A further exception is also provided in the Tenancy Act u/s 34, where a landlord has got the right to terminate the tenancy of a protected tenant for certain reasons subject to certain conditions and restrictions. Prima facie, therefore, the view of the Revenue Tribunal that in cases of tenancies governed by the provisions of the Tenancy Act the landlord cannot terminate the tenancy on the ground of forfeiture by disclaimer of landlord's title seems to be correct. An examination of the provisions of Section 111(g) the Transfer of Property Act as well as the provisions of Section 3 of the Tenancy Act would also fortify this view. u/s 117 of the Transfer of Property Act,

None of the provisions of this Chapter [Chap. V] apply to lease for agricultural purposes, except in so far as the State Government may, by notification... declare all or any of such provisions to be so applicable....

It is because of the provisions of Section 117 that agricultural leases were excluded from the operation of Chap. V of the Transfer of Property Act. When the Tenancy Act was amended in 1948, the Legislature inserted Section 3 to provide for the application of Chap. V of the Transfer of Property Act to agricultural leases governed by the Tenancy Act. But that section provided that the provisions of Chap. V shall apply to the tenancies and leases of lands to which the Tenancy Act applied, but only in so far as they are not inconsistent with the provisions of this Act. Mr. Tarkunde contends that the provisions of Section 111(g) are not in conflict with the provisions of Section 14. That argument cannot be accepted. u/s 111 of the Transfer of Property Act the Legislature has enumerated the cases where a lease of Immovable property determines on account of certain reasons.

Under Clause (g)(2) of Section 111, the lease would determine by forfeiture "in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself." But in such a case the lessor or his transferee must give notice in writing to the lessee of his intention to determine the lease. Therefore, an option is given to the landlord to determine the lease by giving a notice to the tenant on the ground of forfeiture by virtue of a disclaimer of title on the part of the tenant. Section 14 as well as Section 34 of the Tenancy Act also entitle the landlord to terminate the tenancy of the tenant in certain circumstances. But Section 14 in clear terms restricts the right of the landlord to terminate the tenancy, except in cases mentioned by that section, and as I have already stated, a further exception is provided by Section 34, under which a landlord may terminate the tenancy of a protected tenant in certain circumstances. But in our opinion Sections 14 and 34 of the Tenancy Act between them cover the cases in which the landlord can terminate the tenancy of a tenant under the Tenancy Act. That being our view, we must hold that there is a clear conflict between the provisions of Section 111(g) of the Transfer of Property Act and Section 14 of the Tenancy Act. Section 3 of the Tenancy Act would consequently prevent the application of Section 111(g) to this tenancy. We must, therefore, uphold the decision of the Revenue Tribunal that the landlord in this case cannot terminate the tenancy of the opponent on the ground of disclaimer of his title by the tenant in the reply given by the latter on February 23, 1949.

5. That being our view, we must dismiss this special application. Rule will be discharged with costs.