

(1959) 04 BOM CK 0024

In the Bombay High Court

Case No : Special Civil Application No. 3278 of 1958

Waman Ganesh Joshi

APPELLANT

Vs

Ganu Guna Khapre

RESPONDENT

Date of Decision : 07-04-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 65
Constitution of India, 1950 — Article 227
Transfer of Property Act, 1882 — Section 109

Citation : (1959) 61 BOMLR 1267

Hon'ble Judges : Tambe, J;Datar, J

Bench : Division Bench

Judgement

Datar, J.—Survey No. 60 and Hissa No. 1 of survey No. 31 situate at Mouje Rai, originally belonged to one person, whose name does not appear in the record, but, who, in some execution proceedings, was the judgment-debtor. It appears that the judgment-debtor had leased the two survey numbers to opponent No. 1. In execution of a decree obtained against the judgment-debtor the two survey numbers were put up for sale and were purchased by the present petitioner in court auction on November 28, 1955. As the opponent-tenant was on the lands at the time of court auction, symbolical possession was delivered to the auction purchaser on June 15, 1956, under the provisions of Order XXI, Rule 96, Civil Procedure Code.

2. On December 13, 1956, the petitioner gave a notice to opponent No. 1 for terminating his tenancy under the provisions of Sub-section (2) of Section 31 of the Bombay Tenancy and Agricultural Lands Act, on the ground that he required the lands for his own personal cultivation. On March 26, 1957, the petitioner applied for possession of the lands from opponent No. 1 under the provisions of Section 29 read with Section 31(i) of the Act. The Tenancy Awal Karkun, before whom the application came up for hearing on the preliminary issues, held that the said lands were not owned by the petitioner on the date mentioned in Clause (d) of Section 31A of the Act. The Tenancy Awal Karkun, when he referred to the

date mentioned in Clause (d) referred to the 1st day of January 1952. Accordingly, he rejected the application on December 16, 1957. The petitioner thereafter preferred tenancy appeal No. 4 of 1958 in the Court of the District Deputy Collector, Ratnagiri. The District Deputy Collector agreed with the view of the Tenancy Awal Karkun and dismissed the appeal on February 24, 1958. Thereafter, the petitioner approached the Bombay Revenue Tribunal u/s 76 of the Act, in revision, against the order passed in appeal by the District Deputy Collector. The Tribunal agreed with the view taken by both the Tenancy Awal Karkun and the District Deputy Collector and summarily dismissed the revision application on June 16, 1958. It is against the summary dismissal of the revision application that the petitioner has come to this Court under the provisions of Article 227 of the Constitution.

3. Mr. Kangnekar, who appears for the petitioner, has contended that under the provisions of Clause (d) of Section 31A, it is not necessary that the name of the petitioner himself should stand in the record of rights on the 1st day of January 1952, and thereafter during the period between the said date and the appointed day. It is enough if the petitioner is able to show that his predecessor-in-title, who, in this case, was the judgment-debtor as mentioned above, had got his name entered in the record of rights on the 1st day of January 1952 and thereafter during the period between the said date and the appointed day. The appointed day, it may be noted, is June 15, 1955. It is not disputed that since before the 1st day of January 1952 till the appointed day, June 15, 1955, the name of the judgment-debtor stood in the record of rights as the kabjedar or the occupant of the said lands. It is also not disputed that during this period and till the auction purchase, the judgment-debtor was the landlord of the present opponent No. 1. Now, Section 31A of the Act provides that the right of a landlord to terminate a tenancy for cultivating the land personally u/s 31 shall be subject to certain conditions of which we are concerned in the present case only with the one mentioned in Clause (d) thereof which states:

The land leased stands in the record of rights or in any public record or similar revenue record on the 1st day of January, 1952, and thereafter during the period between the said date and the appointed day in the name of the landlord himself, or of any of his ancestors, or if the landlord is a member of a joint family, in the name of a member of such family.

The argument of the learned Counsel on behalf of the petitioner is that by reason of Section 3 of the Act, the provisions of Chapter of the Transfer of Property Act, are made applicable to the tenancies and leases of lands to which the Tenancy Act applies in so far as those provisions are not inconsistent with the provisions of the Tenancy Act, and in view of Section 109 of the Transfer of Property Act, the petitioner himself became the landlord having possessed all the rights of the former landlord (the judgment-debtor) since the date of his auction purchase.

4. It is true that the petitioner purchased the lands in question in court auction. But at the court sale what passed to the auction purchaser was the right, title

and interest of the original judgment-debtor. It is obvious that in the present case, the right, title and interest of the original judgment-debtor was that of a landlord in regard to the said lands and as against the rights of the protected tenant, viz., opponent No. 1. The provisions of Section 65 and of Order XXI, Rule 96, CPC refer to the interest of the judgment-debtor as vested in and transferred to the auction purchaser from the time when the property is sold. It is, therefore, clear that the rights of the original judgment-debtor were transferred to the petitioner and the petitioner stepped into the shoes of the original landlord as against opponent No. 1. Now, if the petitioner's position was that of a landlord, then he would be regarded as such landlord from the time when the lands were sold in court auction.

5. Mr. Rangnekar says that if the petitioner was thus the landlord from November 28, 1955, and was entitled to apply for possession of the lands u/s 31 of the Act, the condition mentioned in Clause (d) of Section 31A would be fulfilled and he would have the right to terminate the tenancy merely on his showing that the lands stood in the record of rights on the 1st day of January 1952 and thereafter during the period between the said date and the appointed day in the name of his predecessor-in-title who alone was (and the petitioner was not) the landlord on the said date and during the said period. According to him it will not be necessary (and indeed in conceivable cases may not be possible, as in the present case when the petitioner's rights have validly come into existence after the appointed day) to show that the petitioner's own name stood in the record of rights on the date and during the period mentioned in Clause (d) of Section 31 A. In support of his contention he has relied upon a decision of this Court in *Khalilulla Hasmiya v. Yesu* (1956) 59 Bom. L.R. 201 Mr. Justice Gajendragadkar (as he then was), who delivered the judgment of the Bench in that case, was considering the corresponding clause in Section 34 as it stood before the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1955, and Bombay Act XV of 1957. It was Clause (1) of Sub-section (2A) of Section 34 of the Bombay Tenancy and Agricultural Lands Act, 1948. Sub-section (2A) and Clause (1) read as follows:

If the landlord bona fide requires the land..., then his right to terminate the tenancy shall be subject to the following conditions, namely,

(1) The land held by the protected tenant on lease stands in the record of rights in the name of the landlord on the 1st day of January, 1952 as the superior holder.

It was held that Section (2A)(i) of the said Act merely requires the claimant for possession of the land u/s 34 of the Act to show that the person who was the lessor of the tenant on January 1, 1952, had taken care to have his name entered in the record of rights as superior holder. This section does not necessarily require that it is the claimant whose name must appear in the record of rights on January 1, 1952, as superior holder. All that this section requires is that whosoever was the lessor or the landlord on January 1, 1952, must have his

name entered as a superior holder in respect of his land. Where, therefore, a claimant whose name does not stand in the record of rights on January 1, 1952, as superior holder, seeks to evict the tenant, he must show that he claims through the lessor whose name stood in the record of rights on January 1, 1952.

6. It is true that Clause (1) of Sub-section (2A) of Section 34 has now been amended and we have to deal with the amended Clause (d) of Section 31A of the present Act. But even in the amended clause, the words of the original Clause (1) of Sub-section (2A) of Section 34 are substantially retained and, with respect, we are of the view that the decision in the aforesaid case still holds good in so far as Clause (d) of Section 31A of the present Act deals with the condition that the name of the landlord must stand in the record of rights on the date and during the period specified in the clause. It is true that in the aforesaid case the learned Judges were considering the claim of persons who had inherited the (landlord's) interest from their father whose name had stood in the record of rights on the 1st day of January 1952 as superior holder. But the reasoning upon which their decision is founded applies, in our view, with equal force even to the case where the claimant, as in the present case, claims through the original landlord not by succession but by a transfer. The cases of an heir and of a member in a joint family are now expressly provided for by the introduction, of the words "of any of his ancestors, or if the landlord is a member of a joint family, in the name of a member of such family" in Clause (d) of Section 31A of the Act. In the case above-mentioned it was observed that January 1, 1952, was chosen arbitrarily as the appointed day and the provision in question seemed to require that it must clearly appear that either the claimant or his predecessor appeared in the record of rights as the superior holder, and this observation of the learned Judges applies as much to the case of a transferee from the original landlord whose name stood in the record of rights at the relevant time as it did to the case of succession which was before them. It seems to us that in view of the provisions of Section 109 of the Transfer of Property Act under which the transferee in the position of the present petitioner having possessed all the rights of the original landlord himself became the landlord, the Legislature thought it unnecessary to make an express provision in the amended Clause (d) in the case of the transferee, as in the cases of an heir and a joint family member.

7. Besides, we do not see why any distinction in principle should be made "between the case of an heir and that of a transferee. In one case the property of the original landlord is taken by succession and in the other, by transfer. But the interest in either case is the same—that of the original landlord. If in the case of a claimant who has succeeded to the property of his ancestor after the appointed day the condition mentioned in Clause (d) of Section 31A of the Act would be regarded as having been complied with by the claimant merely showing that the name of his ancestor stood in the record of rights on the date and during the period specified in the clause, we do not see why the same result should not follow in the case of a transferee similarly situated. "We have looked to the relevant provisions of the Tenancy Act and we do not see any provision where

under transfers have been absolutely prohibited. In fact, with the permission of proper revenue authorities transfers are allowed even under the provisions of the present Act. If, therefore, transfers are allowed and if an assignee or a transferee has come to possess all the rights of the original landlord after the 1st day of January 1952 or indeed after the relevant period mentioned in Clause (d) of Section 31 A, we do not think why such assignee or transferee should not stand on the same footing as an heir who has succeeded to his ancestor or as a member in a joint family.

8. It may also be noted that Clause (d) of Section 31A clearly shows that it is the name only of that person who was the landlord on the date and during the period specified in that clause that should appear in the record of rights. If such landlord is himself the claimant, all that he has to show is an entry in his name in the record of rights only on the date and during the period specified in the clause. If, however, the claimant is his successor-in-title or his transferee all that he has still to show is only an entry in the name of his predecessor-in-title on the relevant date and during the relevant period. Indeed, the Act Cannot expect such a claimant to do the impossible and call upon him to show an entry in his own name for a period during which he was not, but his predecessor-in-title was, the landlord.

9. We are, therefore, of the view that the term "landlord" occurring in Clause (d) of Section 31A of the Act includes any person from whom or through whom a landlord derives his right as such landlord and that for proper compliance with the conditions mentioned in Clause (d) of Section 31 A, it is sufficient if either the name of the claimant or that of his predecessor-in-title stands in the record of rights or any public record or similar revenue record on the 1st day of January 1952 and thereafter during the period between the said date and the appointed day.

10. In the present case, it is admitted that the name of the petitioner's predecessor-in-title stood in the record of rights on the date and during the period specified in the clause. It must, therefore, be held that the condition mentioned in the clause has been complied with by the petitioner.

11. Accordingly, we set aside the orders of the Bombay Revenue Tribunal and the lower revenue authorities and remand the case to the Tenancy Awal Karkun for disposal of the application in accordance with law. Costs of this petition will abide the result before the Tenancy Awal Karkun.