
(2001) 02 BOM CK 0076
In the Bombay High Court
Case No : Second appeal No. 279 of 1990

Yeshwant Ramchandra Dhumal deceased by L.Rs. APPELLANT
Vs
Shri Shankar Maruti Dhumal and Another RESPONDENT

Date of Decision : 01-02-2001

Acts Referred:

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 21(3), 36A
Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 2001 Bom 384 : (2001) 3 ALLMR 128 : (2001) 2 MhLj 576

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : R.A. Thorat and J.P. Majumdar, for the Appellant; Asha Bhambwani, for the Respondent

Final Decision : Dismissed

Judgement

S.A. Bobde, J.—This Second Appeal is preferred by the original plaintiffs whose suit for possession of the suit land from the respondent No. 1 has been dismissed by the learned Second Additional District Judge, Satara on the ground that the Civil Courts have no jurisdiction to entertain the dispute in view of the bar contained in Section 36-A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. Earlier, the trial Court had decreed the suit.

2, The facts in brief are as follows :

Consolidation proceedings were initiated in village Sonake, Taluka Koregaon under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, hereinafter referred to as "the Act". Two blocks known as Gats were formed by consolidating the lands of the appellants viz. Shankar, the respondent No. 2 Sarjerao Laxman Dhumal and some other persons. It is an admitted position that the two blocks bearing Gat No. 1428 and 1429 were formed as follows :

(A) Block No. 1428 was formed from Survey No. 199/68 which originally belonged to the respondent No. 2 Sarjerao Dhumal and Survey No. 199/6C which originally belonged to the appellant Yeshwant Dhumal. It is undisputed that respondent No. 1 Shankar Dhumal has been conferred with half ownership of the total area of this Block No. 1428, the ownership of the other half being conferred on Yeshwant Dhumal, the father of the appellants, since deceased.

(B) Block No. 1429 was formed from Survey No. 190/48 plus 5. This is Property No. 1A in the plaint, originally belonging to the respondent No. 2 plus some portion of Survey No. 199/6E (Property No. IC in the plaint).

3. The appellants filed the present suit claiming that they had given possession of land Survey No. 199/48 plus 5 to the respondent No. 1 only for a period of three years from 1972 to 1975 in consideration for a loan taken from the respondent No. 1. This land is described in the plaint as Property No. 1A. According to the plaintiff, after the expiry of the period of three years the possession of the respondent No. 1 became unauthorised and unlawful. He, therefore, sought possession of these lands. This suit was filed in the year 1979.

4. Consolidation proceedings were initiated and resulted in the formation of the two blocks; as stated earlier. It is undisputed that certificates u/s 24 of the Consolidation Act have been issued to the respective parties in 1979. Section 24 of the Act reads as follows :

"24. (1) The Consolidation Officer shall grant to every owner to whom a holding has been allotted in pursuance of a scheme of consolidation and to every person to whom a right is allotted under Sub-section (6) of Section 21, a certificate in the prescribed form duly registered under the Indian Registration Act, 1908, to the effect that the holding has been transferred to him in pursuance of the scheme.

(2) Notwithstanding anything contained in any law for the time being in force no stamp or registration fee shall be payable in respect of such certificate."

These certificates under that section are certificates of rights and are granted to every owner to whom a holding has been allotted in pursuance of a scheme of consolidation. There is no dispute that all the parties to this appeal have been granted the certificates. The dispute is however as to possession.

5. The facts about possession are as follows :

The respondent No. 1, who has been granted certificate of ownership in Gat No. 1428 has not handed over possession of Survey No. 199/48 phase 5 which now forms part of the Block No. 1429. This survey number originally belonged to the appellants and they claim its possession from the respondent No. 1, who according to them has wrongfully retained possession. This Plot No. 1429 has been allotted to the respondent No. 2 Sarjerao. Since the respondent No. 1 has not handed over possession of land Survey No. 199/48, the respondent No. 2 has been deprived of it. As a result, the respondent No. 2, who was supposed to

have handed over his possession of Survey No. 199/68 which has gone into the formation of Gat No. 1428, has not handed over possession. The result is that though the blocks have been consolidated and certificates for rights have been issued to the respective person in respect of the said blocks. The possession has not been handed over to the persons who are entitled to have possession of the blocks. As a result, in Block No. 1428, the new owners, that is the appellant and the respondent No. 1 who have been granted fifty-fifty share have not got possession of their property and, in respect of Block No. 1429 respondent No. 2 has not got possession of the block which is allotted to him.

6. As stated earlier, the appellant filed the present suit for possession of Survey No. 199/48 plus 5, which is now part of Block No. 1429 in respect of which certificates have been issued u/s 24 of the Act to the respondent No. 2. His case in brief is that he had borrowed some money from the respondent No. 1 and had granted rights to the occupant of Survey No. 199/48 plus 5 to the respondent No. 1. This period expired in 1975. It is important to note that the suit is not one for redemption of mortgage but is merely one for possession. The trial Court decreed the suit and granted possession of the land at Survey No. 199/48 plus five to the appellants.

7. The respondent No. 1 preferred an appeal against the said judgment in the Court of the IInd Additional District Judge, Satara who allowed the appeal. The learned IInd Additional District Judge, Satara has, in brief, held that since the consolidation scheme has been implemented and the blocks have already been formed, the jurisdiction of the Civil Court is barred. The learned IInd Additional District Judge has allowed the appeal and dismissed the suit.

8. This Second Appeal has been admitted for a decision on several substantial questions of law. It is, however, clear that if the substantial question of law regard the jurisdiction of the Civil Court is held against the appellants, the suit will have to be dismissed. Therefore, that question needs to be considered first. Section 36-A of the Act which reads as follows :

"(1) No Civil Court or Mamlatdar's Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the State Government or any officer or authority.

(2) No order of the State Government or any such officer or authority made under this Act shall be questioned in any Civil, Criminal or Mamlatdar's Court."

The question therefore is whether the relief of possession sought by the appellants is required to be settled, decided or dealt with by the State-Government or any officer or authority.

9. A reading of the scheme of the Act shows that the Act is a complete code in itself for the appellants under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. It provides for the determination of local and standard areas and treatment of fragmentation, the procedure for

consolidation, the effect of consolidation proceedings and of consolidation of hoardings and the powers and procedure of consolidation. The Act also confers a revisional power on the State Government and Section 36-A thereof, reproduced supra bars the jurisdiction of Civil Courts. Section 368 provides :

"If any suit instituted in any Civil Court or Mamlatdar's Court involves any issues which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues under this Act, the Civil Court or Mamlatdar's Court shall stay the suit and refer such issues to such competent authority for determination."

Now, the only question which requires examination in the present case is whether under the Act, where an owner is entitled to be in possession of the holding, to which he is entitled under the scheme, a suit for possession of such holding would be tenable in a civil Court?

10. From the facts of the present case, the suit filed by the appellants is for possession of Survey No. 199/48 which is in the possession of the respondent No. 1. It is clear that in view of the fact that this holding forms part of Gat No. 1429 and has been allotted to the respondent No. 2, who would naturally be entitled to be in possession of the said land. The appellant No. 1, who is an allottee of 50% of Gat No. 1428 would therefore not be entitled to possession of the suit land. In any case, it is clear that the appellants and the respondent Nos. 1 and 2 are all allottees of lands governed by the consolidation scheme, though, they ought to be in possession of, under the scheme. In fact, because the respondent No. 1 has not handed over possession of the land which respectively belonged to the appellants. In the respondent No. 2, the respondent No. 2, in turn, has not handed over possession of his land for formation of Block No. 1428 as a result of which the appellants and the respondent No. 1, who are half owners of Block No. 1428 are not in possession of their rooms. I am of opinion, that the power to put the owners, in possession of the holding, to which they are entitled under the scheme is a power which is exclusively conferred on the consolidation officer u/s 21 of Sub-section (3) of the Act, which reads as follows :

"24(3) The Consolidation Officer shall, from the commencement of the agricultural year next following the date of publication of the notification in the Official Gazette, under Sub-section (1) and in the prescribed manner, put the owners in possession of the holding to which they are entitled under the scheme and for doing so may, in the prescribed manner, evict any person from any land which he is not entitled to occupy under the scheme :

Provided that, if two-thirds or more of the owners affected by the scheme agree to enter into possession of the holdings to which they are entitled under the scheme, the Consolidation Officer may put them in possession of such holdings from such earlier date as may be decided upon by such owners."

It is clear from the section that the Consolidation Officer puts the owners in possession from the commencing of the agricultural year next following the date

of publication of the notification in the Official Gazette, it is not disputed before me that it is being under Sub-section (1) published long ago having regard to the facts of the case. I am therefore of view that since the appellants and the respondents are both allottees under the Consolidation Scheme, the question as to who should be in possession of any portion of land which is covered by the Consolidation Scheme is a question, that can only be decided by the Consolidation Officer u/s 31(3) of the Act.

11. It is settled law that the question of jurisdiction of a Civil Court must not be readily inferred unless it is expressly excluded or must be taken to be so excluded by necessary implication. Having regard to the scheme of the present Act, the relevant provisions of which have been reproduced above, I am of view that the Jurisdiction of Civil Courts is barred by Section 36-A of the Act where the question is one relating to putting a owner in possession of the holding to which he is entitled under the scheme.

12. In fact, the mortgage in the present case has not been considered as admissible in evidence on the ground that it is not registered. Both the learned counsel agree that the question of mortgage is not relevant and is not pressed. It might be noted that Appellate Court has held the mortgage inadmissible in evidence.

13. In the result, this Second Appeal No. 279 of 1990 is dismissed. There shall be no order as to cost.

14. Certified copy expedited.