Vithal Vasudeo Kulkarni & Ors.

Vs

Maruti Rama Nagane & Ors.

Civil Appeal No. 31 of 1965

(J. C. Shah, S. M. Sikri, J. M. Shelat JJ)

14.09.1967

JUDGMENT

SHELAT, J. -

The appellants are the landlords and respondent 1 the tenant in respect of Survey Nos. 1517/2, 1500/2 and 1500/4 situate in village Nangalwedha, District Sholapur. Under the tenancy the agreed rent was Rs. 95 Per year. As the tenant made default in paying the rent the appellants served him with a notice terminating the tenancy. On March 12, 1957 they filed an application under section 29 of the Bombay Tenancy and Agricultural Lands Act LXVII of 1948 before the Mamlatdar for eviction and possession on the ground that the tenant had failed to pay rent on the due dates, that is, March the 20th of each of the years 1951-52 to 1954-55 and that therefore they were entitled to an order of ejectment 25(2) of the Act. The Act applicable to the said application is Act LXVII of 1948 before its amendment in 1956. The position as regards the rent was that for the year 1951-52 the landlords had filed a suit for recovery of the rent and the tenant had paid Rs. 142 after his appeal against the decree passed against him was disposed of on June 8, 1956. The amount of Rs. 142 comprised of Rs. 95 for 1951-52 and Rs. 47/8/- being half the rent for 1952-53. For the year 1952-53 half of the amount of rent due from him was paid in April 1956. For the year 1953-54 the landlords filed an assistance suit and the tenant paid the rent on May 5, 1955. For the year 1954-55 the tenant paid and the landlord received the rent on April 12, 1955. The Mamlatdar dismissed the appellants application on the ground that the tenant having paid up the rent due by him and there being no arrears at the date of the institution of the application of appellants were not entitled to an order of ejectment. In the appeal filed by the appellants before the District Deputy Collector, it was held that though the tenant had failed to pay the rent on the due date, the appellants having admittedly accepted all the rents due to them before the institution of their application the defaulter were not wilful and the Deputy Collect had therefore the discretion not to order eviction. The appellants took the matter to the Revenue Tribunal. The Tribunal dismissed the appeal on the same ground. Having failed before the Revenue Authorities the appellants filed a Special Civil Application in the High Court under Art. 227 of the Constitution challenging the correctness of the Tribunal's order. The High Court dismissed the application observing that as it was an admitted position that the landlords had received all the rent due by the tenant and there were no arrears due by him at the date of the said application, there was no ground for interfering with the Tribunal's order. The appellants obtained special leave from this Court against the High Court's order and that is how this appeal has come up before us.

Counsel for the appellants contended that the High Court was in error in refusing to set aside the Tribunal's order, that under s. 25(2) of the Act once the tenant made three defaults in payment of rent on the due dates, the landlord because entitled to terminate the tenancy and to an order of

eviction against him, that there would be no question of the defaults being wilful or otherwise, that the mere fact of the tenant having failed to pay rent on the due dates was sufficient and there was no room for any principle of equity relieving the tenant against forfeiture. According to Counsel, section 25(2) is mandatory and the revenue authorities were bound to order eviction even though the tenant had paid up the rent and the landlord had accepted it before the filing of the application. In support of these contentions he relied strongly on the decision of this Court in Raja Ram Mahadev Paranjipe & Ors. v. Aba Maruti Mali & Ors. ([1962] Supp. 1 S.C.R. 739).

The question raised by Counsel mainly depends upon the construction and true meaning of section 25 of the Act. By its sub-section (1) the section provides that where any tenancy held by a tenant is terminated for non-payment of rent and the landlord files any proceeding to eject the tenant, the Mamlatdar has to call upon the tenant to tender to the landlord the rent in arrears together with the cost of the proceeding within 15 days from the date of the order and if the tenant complies with such order, the Mamlatdar shall pass an order directing that the tenancy had not been terminated and thereupon the tenant shall hold the land as if the tenancy had not been terminated. Sub-section (2) provides that sub-section (1) shall not apply to a tenant whose tenancy is terminated for non-payment of rent if he has failed for any three years to pay rent within the period specified in s. 14. It is clear that under sub-section (1) if the tenant has failed to pay and the tenancy is terminated on that ground, the Mamlatdar has the power to direct the tenant to pay up the arrears and on payment of such arrears by the tenant the Mamlatdar has to pass an order directing that the tenancy had not been terminated. Sub-section (1) thus pre-supposes that there are arrears at the date of the application which the Mamlatdar can direct the tenant to pay and that on such arrears being paid the Mamlatdar has to order notwithstanding the termination of the tenancy by the landlord that such tenancy had not been terminated and no order of eviction can be passed against such tenant. Sub-section (2) on the other hand, deals with a case where there is persistent default by the tenant for three years and provides that to such a case the provisions of sub-section (1) would not apply. The Mamlatdar in such a case has not the power to order payment of arrears as he would do under sub-section (1) and on payment of such arrears to direct as he would do under sub-section (1) that the tenancy shall be treated as not having been terminated. Sub-section (2) therefore also pre-supposes (i) that the tenant has made defaults for more than two years and (ii) that the tenant was in arrears at the date of the application which arrears in this case the Mamlatdar cannot order the tenant to pay up. Sub-section (2) is in contra-distinction of sub-section (1), that is to say, where as in the case of less than 3 defaults the Mamlatdar can call upon the tenant to pay the arrears and can on payment of such arrears direct that the tenancy was not terminated, he cannot do so under sub-section (2) where there are more than two defaults and direct that the tenancy had not been terminated. If this was not the correct construction of sub-section (2) and if the appellants' construction were to be accepted it would lead to a very astonishing result, viz., that even where the tenant has paid up all the arrears and the landlord has accepted them, he would still have the right to evict the tenant, thought his reason for terminating the tenancy and his cause of action for an action for eviction have disappeared by his acceptance of the arrears due to him. The legislature could never have intended such a result which also would be contrary to all principles governing the relationship between landlords and tenants. The legislature on the contrary has been careful to provide expressly by section 30 of the Act that except as otherwise provided in s. 6(3) and s. 27(1) (with which we are not concerned) no other provision contained in the Act shall be construed to limit or abridge the rights or privileges or any tenant under any usage or law for the time being in force or arising out of any contract, grant, decree or order of a count or otherwise howsoever. The Act therefore does not rule out the payment by the tenant and acceptance by the landlord of arrears of rent before a suit for eviction is instituted resulting in waiver by the landlord of the termination of tenancy by him.

In Raja Ram Mahadev Pranjype's Case ([1962] Supp. 1 S.C.R. 739) this Court, no doubt held that on default in payment of rest for three years a statutory right accursed to a landlord under s. 25(2) to terminate the tenancy and to obtain possession, that the Act contained no provision for granting relief against forfeiture in such a case and that no relief against forfeiture could be granted to the tenant on equitable grounds, such relief being allowable only in cases of contractual rights and not in cases of statutory rights. It also held that relief under s. 114 of the Transfer of Property Act also would not be available as that section was inconsistent with the provisions of the Act and was therefore, inapplicable by reason of section 3 of the Act and that the Act merely empowered the Mamlatdar to grant relief where the tenant was not in arrears for more than two years. It will, however, be noticed that this Court did not hold that even where there are no arrears at the date of the application for ejectment and the landlord has prior thereto received and accepted the arrears which entitled him to terminate the tenancy, he would still have the right obtain eviction against such a tenant. A careful perusal of that decision shows that it rested on the footing that the tenant had committed defaults for more than two years and there were arrears of rent when the landlord's application for eviction was filed. The observation that the Act empowered the Mamlatdar to grant relief where the tenant was not in arrears for more than 2 years clearly pre-supposes that if the tenant were to be in arrears for more than 2 years sub-section (2) took away the power of the Mamlatdar to give relief which he can give under sub-section (1) viz., to call upon the tenant to pay the arrears and on such payment to direct that the tenancy had not been terminated. It is this power which is denied to the Mamlatdar by sub-section (2), if the conditions there contemplated exist, that is, the tenant is in arrears of rent for more than two years on the dare when the application for ejectment is filed. In this vies, the High Court's refusal to interfere with the Tribunal's order was justified.

The appeal fails and is dismissed with costs.

G.C.

Appeal dismissed.

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