

SUPREME COURT OF INDIA

Dewaji

Vs.

Ganpatlal

C.A.No.1041 of 1965

(S. M. Sikri, R. S. Bachawat and K. S. Hegde, JJ.)

06.08.1968

JUDGEMENT

SIKRI, J.:-

1. This appeal by certificate granted under Article 133 (1) (a) and (b) of the Constitution is directed against the judgment of the High Court of Judicature at Bombay Nagpur Bench in a Letters Patent appeal allowing the appeal and restoring the decree made in favour of the plaintiff Ganpatlal - respondent before us and hereinafter called the respondent - by the Trial Court as confirmed by the District Court.

2. The facts relevant for the determination of the points raised before us are as follows: The respondent, Ganpatlal, was the owner of Field Survey No. 56, measuring 25 acres 4 gunthas, in Yeotmal District. It appears that the respondent used to lease the land to the defendant Dewaji - appellant before us and hereinafter called the appellant- on yearly lease. For the year 1950-51 he gave the land to the appellant on the condition that at the end of the year the lease will stand determined and the appellant will hand over possession. On May 7, 1951, the respondent served a

notice on the appellant requiring him to vacate the land in suit. The appellant, however, continued to remain in possession. Thereupon the respondent filed a suit on September 17, 1951, praying for possession, damages and mesne profits. On November 15, 1951, the Berar Regulation of Agricultural Leases Act, 1951 (Madhya Pradesh No. XXIV of 1951) - hereinafter called the 1951 Act - came into force, Section 16 of which provides as follows:

"Except as otherwise provided in this Act, no Civil Court shall entertain any suit instituted, or application made, to obtain a decision or order on any matter which a Revenue officer is by or under this Act, empowered to determine, decide or dispose of."

3. One of the pleas which the appellant took was that he had been recorded as a 'protected tenant' under the 1951 Act and that the Civil Courts had no jurisdiction to eject him in view of Section 8 of that Act. The Trial Court held that the appellant was not a protected tenant under Section 3 (3) of the 1951 Act and the Civil Court had jurisdiction.

4. The appellant then appealed to the District Judge and the Additional District Judge held that the Civil Court had jurisdiction. He observed that "there is nothing in this Section (Section 16 of the 1951 Act) to suggest that the powers of the Civil Court were in any way curtailed in regard to the question whether a particular person was a tenant or not under Section 3 of the Act. Moreover, there is nothing in that Act to show that it was intended to apply to suits which were pending at the date when this Act came into force". By the time the appeal was heard by the Additional District Judge, Section 16 of the 1951 Act had been substituted by Sections 16, 16A and 16B by the Berar Regulation of Agricultural Leases (Amendment) Act 1953 - hereinafter called the 1953 Act. These Sections run as follows:

"16(1) Whenever any question arises whether any transaction between a landholder and a person claiming to be his lessee is a lease within the meaning of this Act, such question shall be decided by the Revenue Officer.

(2) In deciding the question referred to in sub-section (1), the Revenue Officer shall, notwithstanding anything contained in Section 92 of the Indian Evidence Act, 1872, or in Section 49 of the Indian Registration Act 1908, or in any other law for the time being in force, have power to inquire into and determine the real nature of the transaction and shall be at liberty notwithstanding anything contained in any law as aforesaid, to admit evidence of any oral agreement or a statement or unregistered document with a view to such determination.

(3) Any decision of the Revenue Officer under this Section shall be binding on the parties to the proceedings and persons claiming through them.

16-A (1) Whenever any question as is referred to in Section 16 arises before a Civil Court in any suit or proceeding, the Court shall, unless such question has already been determined by a Revenue Officer, refer the question to the Revenue Officer for decision and shall stay the suit or proceeding so far as it relates to the decision of such question.

(2) The Civil Court shall accept the decision of the Revenue Officer on the question and decide the suit or proceeding before it accordingly.

16-B. Except as otherwise provided in this Act, no Civil Court shall entertain any suit instituted, or application made, to obtain a decision or order on any matter which a Revenue Officer is by or under this Act, empowered to determine, decide or dispose of."

5. Before the Additional District Judge the appellant relied on these Sections and asserted that the determination of the question whether a person is a tenant or not was, under the 1953 Act, a matter entirely within the jurisdiction of the Revenue Courts and the jurisdiction of the Civil Courts had been ousted. The learned Additional District Judge repelled the argument and held that the 1953 Act did not affect pending proceedings. The learned Additional District Judge hereupon dismissed the appeal.

6. The appellant then appealed to the High Court. The appeal first came up for hearing before Vyas, J. By an order dated August 21, 1957, he held that in view of the amendments made by the 1953 Act, "it is not for the Civil Court to decide but for the Revenue Officer to determine whether in the year 1951-52 also the defendant was paying to his landlord every week by way of rent one-third share in the produce of the garden and was his lessee for that year also." He further observed that "if the answer to this question is in the affirmative, the defendant would be entitled to all the benefits of a protected tenancy, as observed by the learned Chief Justice in *Paika v. Rajeshwar*, 1957 Nag LJ 344= (AIR 1957 Bom 239) (FB). In the result he set aside the judgment and decree passed by the learned Additional District Judge and directed

"that the record and proceedings in this case be sent to the Revenue Officer that is, the Sub-Divisional Officer, Yeotmal, and the said Revenue Officer is directed to decide whether the defendant's averment is right or otherwise, namely, that even after the expiry of the year 1950-51, that is, even after 31st March, 1951, the defendant used to pay to his landlord, the plaintiff, every week by way of rent one-third share in the produce of the garden. The decision of the Revenue Officer shall be subject to the usual course of appeal and revision, and when the question which is referred to the Revenue Officer by this judgment is finally decided by the highest Revenue Authority, the finding shall be communicated to this Court. Until such time that this Court receives a finding upon the question mentioned above from the highest Revenue Authority, this appeal shall

stand stayed. It shall be disposed of by this Court after the finding of the highest Revenue Authority is received by it."

7. The Revenue Courts then remitted the finding. The Commissioner, which was the last Revenue Court gave a finding confirming the one as given by the Sub-Divisional Officer that the appellant was paying rent to the respondent for the year 1951-52.

8. The appeal was then heard by Badkas, J. It was argued before him that Vyas, J., should not have referred the issue to the Revenue Officer for decision under Section 16 of the 1951 Act, but Badkas, J., held that it would not be appropriate or him to sit in judgment over the decision given by Vyas, J., and that the reference made by Vyas, J., under Section 16 of the 1951 Act had to be accepted. Accepting the finding of the Revenue Courts, Badkas, J., held that the respondent was not entitled to eject the appellant. He further held that it was not necessary to decide whether the 1951 Act was retrospective or not as the 1951 Act came into force during the year in which the defendant held survey numbers in question as lessee. He accordingly allowed the appeal.

9. Having obtained leave, the respondent appealed under the Letters Patent. It was urged before the Letters Patent Bench on behalf of the appellant that the Bench could not deal with the question whether the 1953 Act applied to pending proceedings on the ground that this point had not been argued before the learned Single Judge. The Bench found no substance in this contention as the point had been raised before the learned Single Judges. The Bench further held that there was no bar to the question of application of the 1953 Act being allowed to be raised.

10. Dealing with the merits, the Bench held that "taking the scheme of the Act into account and the fact that there is no Section in the Act which makes the Act applicable to pending proceedings, it is at once clear that it was not intended to affect pending proceedings. Pending proceedings must continue unaffected by the provision of the Act and whatever questions arose in those proceedings must be decided by the Civil Courts."

11. The Bench then accepting the finding of the Civil Courts, held that there was no defence to the suit and the suit must succeed. The Bench also repelled the argument that it was not open to it to consider the entire merits of the Second Appeal as the leave had been given by Badkas, J., and not by Vyas, J. The Bench observed that there was no substance in the contention since the judgment of Vyas, J., was never open to the appeal it being an interlocutory judgment.

12. The learned Counsel for the appellant contends that Sections 16, 16A and 16B, as substituted by the 1953 Act, had clearly ousted the jurisdiction of the Civil Courts and Vyas, J., was right in sending the case to Revenue Courts for decision on the question whether the appellant was a tenant

in the year 1951-52 or not. He stresses the word "whenever appearing in Section 16 and says that this is a wide word and no limitation can be placed on it. In our view there is no substance in this contention. The first point to be noticed in this connection is that the 1953 Act came into force after the Trial Court had decreed the suit and an appeal was pending before the District Judge. It cannot be disputed that if the Legislature intends to oust the jurisdiction of Civil Courts, it must say so expressly or by necessary implication. We cannot find any words in Secs, 16, 16A and 16B which can lead to the necessary inference that these provisions were intended to apply to appeals pending when the 1953 Act came into force. It is true that the word "whenever" is wide but Section 16A uses the words "suit or proceeding" and these words do not ordinarily indicate appellate proceedings. Further, Section 16B uses the word "entertain" and not the words "entertain or try any suit" as contained in Section 15 (2) of the 1951 Act. If the intention was to affect pending proceedings, the word "try" along with the word "entertain" would have been used in Section 168 of the 1953 Act. It seems to us that the intention was not to apply the 1953 Act to pending appeals. Sections 16, 16A and 16B do not bar the jurisdiction of the Civil Courts in this case, the Letters Patent Bench was right in accepting the findings given by the Trial Court and the District Court in holding that the appellant was not a tenant for the year 1951-52.

13. The learned Counsel then contends that it was not open to the Letters Patent Bench to decide this question of the applicability of Sections 16, 16A and 16B because Vyas, J., had decided to the contrary and had not given leave to appeal against his order. It seems to us that the order of Vyas, J., was interlocutory and it was not necessary for the respondent to obtain separate leave to appeal against this order. It was open to the Letters Patent Bench to decide all points decided by Vyas, J., in the interlocutory order dated August 21, 1957. At any rate the same point was raised before Badkas, J. Further, as held by this Court in *Satyadhyan Ghosal v. Smt. Deorajin Devi*, 1960-3 SCR 590 = (AIR 1960 SC 941), "an interlocutory order which did not terminate the proceedings and which had not been appealed from either because no appeal lay or even though an appeal lay an appeal was not taken, could be challenged in an appeal from the final decree or order:" Section 105 (2), C. P. C., does not apply in this case, and, therefore, the Letters Patent Bench was entitled to go into the validity of the order passed by Vyas, J.

14. The learned Counsel then urged that this was a new point and the Letters Patent Bench should not have allowed it to be taken. But we agree with the Bench that the point had been raised before the learned Single Judges. In view of this it is not necessary to decide whether a new point can be taken up in a Letters Patent appeal or not.

15. In the result the appeal fails and is dismissed with costs.

Appeal dismissed.