

Dhan Singh Ramkrishna Chaudhari and Others

Vs

Laxminarayan Ramkishan and Another

Civil Appeal No. 697 of 1971

(M. H. Beg, R. S. Sarkaria JJ)

16.04.1974

JUDGMENT

SARKARIA, J. -

1. This appeal is directed against the judgment and order, dated August 10, 1970, of the High Court of Judicature at Bombay.
2. Appellants are heirs of one Ramkrishna Khandu Chaudhari who was a protected tenant of the suit lands belonging to Respondent No. 1. The landlord made an application against the tenant in the Court of Extra Aval Karkun for possession of the suit lands under Section 29 read with Section 14 and 25(2) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter called the Act) on the ground that the tenant had committed defaults in payment of the rents for the years 1953-54, 1954-55 and 1955-56. The Aval Karkun who tried the application found that the annual rent of the lands payable by the tenant was Rs. 685, and that, in all, the tenant had paid Rs. 1045/12/- towards the rent of these three years. He held that the appellants were not willful defaulters and granted them under Section 25(1) three months' time to pay the arrears of rent. He however, refused to pass any order for payment of the subsequent rent. The tenant did not appeal against this order. But the landlord preferred an appeal to the District Deputy Collector, Jalgaon who on September 30, 1961, allowed the appeal, set aside the order of the Aval Karkun and remanded the case for finding out the exact amount of the arrears up to the date of the order and decreeing the claim accordingly. The landlord preferred a Revision to the Maharashtra Revenue Tribunal which allowed the same by its order, dated September 4, 1962, and remanded the case to be examined in the light of the law laid down by this Court in Raja Ram Mahadev Paranjyape v. Aba Maruti Mali ((1962) Supp 1 SCR 739 : AIR 1962 SC 753) and in some high Court judgments. It further directed that the District Deputy Collector might allow the parties to lead additional evidence, if he thought it necessary.
3. On remand, the Deputy Collector allowed the parties to lead evidence and redecided the case. He held that the rent fixed was Rs. 500 per year, and that only one default, and not three default, had been proved and consequently, the landlord was not entitled to the possession of the suit lands. He remitted the case to the Extra Aval Karkun for passing an order under Section 25(1) of the Act. The landlord again went in revision before the Tribunal against this order, dated April 23, 1964. The Tribunal held that the Deputy Collector had no jurisdiction to reopen the issue relating to the amount of agreed rent between the parties. It also examined the law laid down by this Court in Raja Ram Mahadev's case (supra). It set aside the order of the Deputy Collector and directed delivery of possession of the suit lands to the landlord.
4. For impugning this order, dated April 13, 1967, of the Tribunal, the tenants moved the High

Court by a writ petition under Article 227 of the Constitution. The writ petition came up for hearing before a learned Single Judge of the High Court, who by his order, dated November 14, 1969, referred this question to the Division Bench :

Can the tenant be said not to have failed for any three years to pay rent within the meaning of Section 25(2) of the Bombay Tenancy Act, when as a result of part payments made by him, total amount of arrears do not exceed rent equivalent to two years.

5. The Division Bench decided this question against the tenants and dismissed their writ petition. The High Court granted a certificate under Art. 133(1)(b) of the Constitution that the case was fit for appeal to this Court.

6. This case is admittedly governed by the Act as it stood before the amendment of August 1, 1956. The material provisions of the Act relevant for decision of this appeal may now be set out.

7. The Preamble inter alia states that the Act is enacted for the purpose of improving the economic and social conditions of peasants Section 2(15) defines 'reasonable rent' to mean the rent determined under Section 12.

8. Sub-section (1) of Section 6 lays down that notwithstanding any agreement, usage, decree or order of a court or any law, the maximum rent payable by a tenant for the lease of any land, in the case of an irrigated land, shall not exceed 1/4th and in the case of any other land exceed 1/3rd of the crop of such land or its value. Sub-section (2) thereof enables the State Government to fix by notification in the official gazette a lower rate of the maximum rent payable by the tenants. Such a notification was issued in this case.

Section 7 defines 'rent' to mean :

The rent payable by a tenant shall subject to the maximum rate fixed under Section 6, be the rent agreed upon between such tenant and his landlord or in the absence of any such agreement, the rent payable according to the usage of the locality or if there is no such agreement or usage, or where there is a dispute as regards the reasonableness of the rent payable according to such agreement or usage, the reasonable rent.

9. Section 14, in so far it is material for our purpose, read :

14. (1) 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 -

(a)(i) has failed to pay in any year within fifteen days from the day fixed for the payment of the last instalment of land revenue in accordance with the rules made under the Bombay Land Revenue Code, 1879, for that year, the rent of such land for that year, or

10. The crucial provisions, the interpretation of which is involved, are in Section 25 which runs :

(1) Where any tenancy of any land held by any tenant is terminated for non-payment of rent and the landlord files any proceedings to eject the tenant, the Mamlatdar shall call upon the tenant to tender to the landlord the rent in arrears together with the cost of the proceeding, within fifteen days from the date of order, and if the tenant

complies with such order, the Mamlatdar shall in lieu of making an order for ejection, 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 . . .  
..

(2) Nothing in this section shall apply to any 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 Section 14.

11. Section 25 lays down that in the absence of an express intimation in writing to the contrary by a tenant, every payment made by a tenant to the landlord shall be presumed to be a payment on account of rent due by such tenant for the year in which the payment is made.

12. Mr. Bhandare, learned Counsel for the appellants, has canvassed the following points :

(i) that there was no failure to pay rent by the tenant as the agreed rent had not been established and the tenant has been paying the rent every year at the rate of Rs. 500 which, according to him, was the agreed rent;

(ii) Section 25(2) is attracted only if the amount of arrears exceeds the aggregate of two years rent. This is not the case here.

13. Reliance has been placed on this Court's decision in *Vithal Vasudeo Kulkarni v. Maruti Ram Nagane* ((1968) 1 SCR 541 : AIR 1968 SC 461 : (1968) 2 SCJ 215) wherein the earlier decision of this Court in *Raja Ram Mahadev's case* (supra) was distinguished.

14. The first question to be considered is : Did the Court of Extra Aval Karkun determine the agreed rent payable by the tenant within the meaning of Section 7 of the Act ?

15. An Analysis of the definition of Section 7 would show that the rent payable by a tenant (subject to the maximum rate fixed under Section 6 is (a) the rent agreed upon between such tenant and landlord or (b) in the absence of any agreement, the rent according to usage of the locality of (c) where there is dispute as regards the reasonableness of the rent payable according to such agreement or usage, the reason able rent.

16. The case before us, fell under clause (a). The landlord alleged that the agreed rent was Rs. 850. Since the rent fixed under the Government Notification was less than the agreed rent, the landlord actually claimed an amount as rent calculated on the basis of the lower rate i.e. Rs. 685/5/- per annum. However the tenant contended that the agreed rent was Rs. 500 per annum. The Extra Aval Karkun reduced this point of controversy into an issue to this effect :

No. 4 what was the rent fixed between the parties in respect of the suit lands.

He answered this point, as Rs. 685/5/-

17. His reasoning in arriving at this finding was that

. . . in the absence of any written document or sufficient oral evidence, the mere statements (of the parties) cannot be relied upon. It will have therefore rent of the suit lands was fixed according to Government dated September 1, 1952 as five times the assessment.

18. It is to be noted that the suit land was assessed to Rs. 137/1/- and five times of that assessment works out to Rs. 685/5/-. Though the language employed by the Aval Karkun with regard to the reliability and sufficiency of the statement of the landlord was inapt and unhappy, yet there is no doubt that in substance, he accepted the landlord's stand that the agreed rent which was Rs. 850 would be presumed to have been scaled down by the parties to Rs. 685/5/- in accordance with the Government notification. The fact remains that he found that the rent fixed between the parties was Rs. 685/5/-

19. It is important to bear in mind that the tenant did not appeal against this determination whereby the Aval Karkun had rejected his contention regarding the rent being Rs. 500. This determination therefor that the agreed rent as scaled down was Rs. 685/5/- has become final, so far as the tenant was concerned.

20. The landlord felt aggrieved against that part of the order by which the Aval Karkun had granted relief to the tenant against forfeiture. He therefore, carried an appeal against the order of the Karkun to the District Deputy Collector. The Deputy Collector, who was the final tribunal of fact, in his order dated September 30, 1961, noted "that the rent of the suit land was fixed at Rs. 850, as could be seen from the entry of V.F. VII-XII of S. Nos. 12 of Bhokani village". But in view of the fact that under the Government Notification of September 1, 1952, the maximum rent chargeable in respect of the land in dispute could not exceed Rs. 685/3/- he upheld, the carrying over and adjustment of a part of the rent paid for the year 1952-52, in excess of the maximum notified rate, allowed by the Aval Karkun, towards the rent for the year 1953-54. It is noteworthy that the contractual rent for the years 1950-51 and 1951-52 was Rs. 850 per annum. The tenant had defaulted to pay the rent of those years. The landlord instituted proceedings for the tenant's eviction. Those proceedings ended in a compromise on February 24, 1952, according to which, the tenant was to pay the arrears at the rate of Rs. 850 per year within a stipulated time failing which the landlord could enforce forfeiture counting the previous defaults for 1950-51 and 1951-52. The tenant paid Rs. 1700 towards the two years rent at the agreed rate, but beyond the stipulated time. Before the Deputy Collector, the landlord contended that the previous defaults should also be taken into account so that the tenant was not entitled to any relief against forfeiture. The Collector did not accept this contention for the reason that "there has been a compromise between the parties and so the force of wilfulness of default does not remain". The Deputy Collector decreed the landlord's claim to rent presumably at the rate of Rs. 685/3/- per annum, but somewhat inconsistently remanded the case to the Karkun for calculating the exact amount of arrears up to the date of the order.

21. The tenant did not challenge this order by way of revision or otherwise. It is therefore too late in the day for the appellants to urge that the agreed rent for the years in question was not Rs. 685/3/- but Rs. 500 per annum. Rs. 685/3/- per annum being the rent payable, there could be no manner of doubt that the tenant had defaulted for the three years in question in payment of that rent in two ways. Firstly, he did not pay the full rent due for any particular year; he made only part-payments. Secondly, he did not pay within the period specified according to Section 14. As admitted before us, the rent was payable by the 25th February of the year for which it was due. In 1953-54, he paid Rs. 350, but credit was given to him later by the authorities for Rs. 164/11/- by adjusting that amount out of Rs. 850 which he had paid as agreed rent for the year 1952-53. Thus he paid Rs. 514/11/- only and Rs. 170/10/- remained outstanding for the year 1953-54. He paid nothing for the year 1954-55. His claim that he had paid Rs. 500 in that year was found to be false. He made a part-payment of Rs. 394/3/- only towards the rent for the year 1955-56, on February 29, 1956 i.e. after the expiry of the period indicated in Section 14. In this defaulting manner, the total amount paid by the tenant for these three years was Rs. 1045/12/- and the total balance of rent in arrears due from

him, was Rs. 1010/3/- made up as below :

#Arrears for the year 1953-54 .. . . Rs. 170-10-0  
Arrears for the year 1954-55 .. . .  
Rs. 685-5-0  
Arrears for the year 1955-56 .. . . Rs. 154-4-0  
Rs. 1010-3-0##

22. The question that fell for decision was : Whether on the above facts, the tenant could be held to have failed within the contemplation of sub-section (2) of Section 25, as it stood before 1956, "for any three years to pay rent within the period specified in Section 14" ? If the answer to this question was in the affirmative, then the Aval Karkun Mamlatdar would have no discretion to grant the tenant time to pay up the arrears and thus afford relief against forfeiture.

23. From a plain reading of sub-section (2) of Section 25, it is manifest that the failure or the defaults in payment for any three years, envisaged by it may be either with regard to the amount of rent or the period specified for payment, or both. Failure and default are synonymous terms. "Failure" in the dictionary sense, means 'a falling short', 'a deficiency' or 'lack'. Default means omission of that which a man ought to do. Therefore a partial default or failure to pay the whole of the rent due for the year will also be a failure within the meaning of this sub-section, more so, if these part payments had been made beyond the specified period. If the tenant makes only part payments of rent for any three years, he would be a persistent defaulter even if the aggregate of the amount in arrears does not exceed the total rent of two years for the purpose of the sub-section.

24. The language of sub-section (2) is unambiguous, clear and unequivocal. It is not susceptible of two interpretations. There is therefore, no scope - even with the aid of any rule of beneficent interpretation - for construing this sub-section in a manner contrary to its plain ordinary meaning. Moreover, the point is covered by the decision of this Court in Raja Ram's case (supra) and we are bound by the same.

25. In Raja Ram's case (supra) the tenants were in default in paying rent for three years and due notices had been served by the landlords terminating the tenancies. They applied to Mamlatdar under Section 29 of the Act for possession of the lands. The Mamlatdar refused to make an order for possession on the ground that the tenants were entitled to relief against forfeiture on equitable principles. In the 'fourth' appeal before the Court in respect of the default in the first year, the tenant had been granted relief against forfeiture under Section 25(1) of the Act. The tenant contended that the default in the first year had merged in the order under Section 25(1) and could not be relied upon for holding that he had defaulted for three years. It was held by this Court that, the landlords were entitled to orders for possession because upon default in payment of rent for three years a statutory right accrued to the landlords under Section 25(2) to terminate the tenancy and to obtain possession. There was no provision in the Act for granting relief against forfeiture in such a case; the provision in Section 29(3) that the Mamlatdar "shall pass such orders as he deems fit" did not give him such a power. The Act merely empowered him to grant relief where the tenant was not in arrears for more than two years. No relief against forfeiture could be granted to a tenant who fails to pay rent for any three years within the period specified in Section 14, either on equitable grounds or under Section 114 of the Transfer of Property Act.

26. This decision does not support the appellants' contention that in order that sub-section (2) of Section 25 may be attracted the total amount of arrears must exceed the aggregate rent of two years. Rather the finding that in the "fourth appeal" the default in the first year could also be taken into consideration in computing of three years in spite of the tenant having been relieved against forfeiture for that year, and that the order granting the relief did not wipe out the default, gives an

indication to the contrary.

27. Vithal's case (supra) does not advance the appellants case. It does not lay down a principle in conflict with the ratio of Raja Ram's case (supra). In Vithal's case the rent was payable by March 20 every year. The rent for the year 1951-52, 1952-53, 1953-54 and 1954-55 was paid by the tenant and accepted by the landlord though it was not paid on due dates. Thus, on the date on which the landlord filed the application under Section 29 of the Act for eviction of the tenant on the ground that the rent had not been paid for the aforesaid years by the due dates no arrears of rent were outstanding against the tenant. Dismissing the landlord's appeal which he had filed by special leave, this Court speaking through Shelat, J., construed Section 25 of the Act thus : (at p. 544)

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 default 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 contradiction of sub-section (1), that is to say, whereas in the case 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 though his reason for terminating the tenancy his cause of action for an action for eviction have disappeared by his acceptance of the arrears due to him.

28. It will be seen that in Vithal's case this Court was dealing with an entirely different situation. No arrears were in existence or subsisting on the date of the landlord's application, whereas in the present case, a sum to the tune of Rs. 1010/3/- being the total of short payments for the three years in question, was still outstanding against the tenant. In fact, if the tenant offers and the landlord accept the full amount of rent in arrears, the cause of action for ejection on the ground of nonpayment of rent disappears. The acceptance of rent may amount to waiver of the landlord's right to evict. By no stretch of imagination the decision in Vithal's case can be understood as laying down that if the amount of rent due from the tenant at the date of the landlord's application for eviction does not exceed the total of two years rent, sub-section (2) of Section 25 cannot apply. "Arrears" mean money unpaid at the due time : as rent behind (see Earl Jowitt's Dictionary of English Law)

29. Sub-section (2) of Section 25 lays down in clearest peremptory terms that if the tenant fails to pay the rent for any three years within the period specified in Section 14, the authority concerned will be left with no discretion under sub-Section (1) to allow the tenant to pay up the arrears, and on

such payment to direct that the tenancy had not been terminated. The words : the tenant has made defaults for more than two years" and "arrears" in the underlined portion of the above-quoted passage convey nothing more or different from what is explicit in the words "if he has failed for any three years to pay rent within the period specified in Section 14" occurring in sub-Section (2) of Section 25. All that was intended to emphasise was that even if the tenant defaults in payment of rent for any three years, but the arrears relatable to these defaults are cleared as a result of the tender of full amount due by the tenant and its acceptance by the landlord, this sub-Section (2) will not come into operation and the landlord's application for eviction, when no arrears are outstanding would not be maintainable.

30. It will bear repetition that "failure to pay rent for any three years" is not the same thing as failure to pay rent equivalent to more than two years rent. Even if the tenant fails to pay part of the rent due in any year within the period specified, in Section 14, he defaults to pay rent for that year. Such partial defaults are also defaults within the contemplation of sub-Section (2) of Section 25. Any other construction would lead to strange results, and even a persistently defaulting tenant would be able to stave of eviction by paying only a part of the rent due every year so that the unpaid arrears remain, in the aggregate, less than the total rent of two years.

31. In the light of the above discussion, we negative the contentions canvassed on behalf of the appellants uphold the decision of the High Court and dismiss this appeal. In the circumstances of the case, we leave the parties to bear their own costs.

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