Sita Ram Bhau Patil

Vs

Ramchandra Nago Patil (Dead) By L. Rs. and Another

Civil Appeal No. 1997 of 1968

(CJI A.N. Ray, P.S. Kailasam, M.H. Beg JJ)

20.01.1977

JUDGMENT

RAY, C.J. –

1. This appeal by special leave is from the judgment dated February 13, 1968 of the High Court of Bombay.

2. The appellant was owner of land covered by Survey Nos. 201/2, 194/13, 200/29 and 194/15. The appellant's wife sold this land to respondent 1 on June 14, 1946.

3. On April 12, 1952 the appellant made an application under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act. (hereinafter referred to as the Bombay Act) for a declaration that he was a tenant of two of the four plots of land namely, Survey Nos. 194/15 and 200/29. This dispute between the appellant and the respondent in regard to alleged tenancy claim for these two survey numbers went up to the Maharashtra Revenue Tribunal. The Tribunal by order dated March 19, 1954 rejected the claim of the appellant to tenancy in respect of the land covered by Survey Nos. 200/29 and 194/15.

4. Thereafter the respondent filed an application on January 24, 1963 under Section 70(b) of the Bombay Act for a declaration that the appellant was not tenant of the remaining two Survey Nos. 201/2 and 194/13. The respondent alleged that he never leased the land to the appellant. The respondent further said that the came to know about entry in the record of rights for the years 1955-56 on the strength of mutation alleged to have been made on January 30, 1956 and sanctioned on November 13, 1956. This application of the respondent was resisted by the appellant on the ground that he was tenant of these two Survey Nos. 201/2 and 194/13.

5. The matter was heard by the Mamlatdar. By an order dated July 31, 1963 the Mamlatdar rejected the claim of the appellant to be a tenant. Thereafter the matter was taken up to the District Deputy Collector. The Deputy Collector by his order dated June 27, 1966 upheld the Mamlatdar's order. Before the Mamlatdar and the Deputy Collector the respondent examined himself. He was cross-examined and his attention was drawn in cross-examination towards an alleged admission about the appellant being his tenant in the deposition recorded by the Tenancy Aval Karkun in an earlier case on September 10, 1962. The respondent denied that he made any admission. The previous deposition was not shown to him on that day.

6. On July 9, 1963 a certified copy of the deposition in the earlier proceedings was placed on record. On that very day the appellant examined himself, saying that he was a tenant of the land and he had

no other evidence to show in support of his case except the certified copy of the statement which was produced on that day.

7. The appellant also relied on the extracts of the record of rights showing that the respondent was shown as 'Kabjedar' of Survey No. 201/2 and the appellant was shown as tenant of the same. In regard to Survey No. 194/13 it also appeared from the record of rights that the respondent was shows as 'Kabjedar' and the appellant as a tenant.

8. On this evidence the Mamlatdar held that the appellant was not cultivating the lands as a tenant of the respondent and he declared that the appellant was not a tenant. The Deputy Collector affirmed the order of the Mamlatdar.

9. The Maharashtra Revenue Tribunal however by its order dated January 19, 1967 held that the appellant was proved to be a tenant of the land. The respondent thereupon took the matter to the High Court under Article 227. The High Court set aside the order of the Revenue Tribunal. The appellant obtained special leave from this Court.

10. On behalf of the appellant three contentions were advanced. First, that the respondent was bound by his admission that the appellant is a tenant. Second, there is a presumption of the correctness of the record of rights under Section 135-J of the Bombay Land Revenue Code, 1879. Third, the Maharashtra Revenue Tribunal was justified in setting aside the findings of fact of the Mamlatdar and the Deputy Collector because or error of law.

11. The admission on which reliance has been placed counsel for the appellant suffers from three infirmities. In the deposition of the respondent in Tenancy Case 6/61-62 dated September 10, 1962, the respondent gave evidence in regard to dispute between the respondent and the appellant in relation to Survey Nos. 200/29 and 194/15. The respondent said that he never kept the appellant as a tenant on the land. In cross-examination it was suggested to the respondent that the land bearing Survey No. 201/2 belonged to the respondent and that the appellant is a tenant in the land. The respondent said as follows :

> The land Survey No. 201/2 situate in Balkum belongs to me in Balkum. The applicant is a tenant in the said land. I do not take the rent in respect of the said land. . . . I have prior to 15-20 years purchased this land from Sitaram Bhau. Even the land bearing Survey No. 201/2 was purchased right from him. I have never cultivated the land bearing Survey No. 201/2. It was barren at that time. When this land was to be acquired I learnt whether Sitaram Bhau was cultivating this land. . . or whether his name has been entered as a tenant against this land (?) I cannot say as to whose land is around the land bearing Survey No. 201/2 or other Land.

12. This evidence read in its entirety is not an admission at all. A person who says that 'I have taken no rent' obviously says that there is no relationship of landlord or tenant.

13. The first infirmity in regard to this admission is that whatever was said by the respondent in regard to Survey No. 201/2 is irrelevant and inadmissible in the deposition of the respondent in that case. Section 17 of the Indian Evidence Act states that 'An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned'. In regard to dispute between the appellant and the respondent arising out of Survey Nos. 194/15 and 200/29,

Surveys Nos. 201/2 and 194/13 were neither issues in fact nor relevant fact.

14. The second infirmity against this admission being used against the respondent is that as long as the respondent was under cross-examination, it was not brought to his notice. It is said by Counsel for the appellant relying on the decision of this Court in Bharat Singh v. Bhagirathi ([1966] 1 SCR 606 : AIR 1966 SC 405 : (1966) 2 SCJ, 53) that this admission was proved by the appellant and this admission on the ruling of the decision of this Court (supra) is substantive evidence and is therefore admissible against the respondent.

15. The decision of this Court in Bharat Singh's case is that :

> Admissions have to be clear if they are to be used against the person making them. Admissions are substantive evidence by themselves, in view of Sections 17 and 21 of the Indian Evidence Act, though they are not conclusive proof of the matters admitted.
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> Admissions proved are said in the decision to be admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether the party when appearing as witness was confronted with those statements in case it made a statement contrary to those admissions.

16. Counsel for the appellant submitted that the respondent even though not confronted with the admission would be bound by his admissions and the appellant would be entitled to rely on the admissions as admissible. There is the observation in the very next sentence in the aforesaid decision of this Court that "the purpose of contradicting the witness under Section 145 of the Evidence Act is very much different from the purpose of proving the admission". It, therefore, follows that admission is relevant and it has to be proved before it becomes evidence.

17. If admissions is proved and if it is thereafter to be used against the party who has made it the question comes within the provisions of Section 145 of the Evidence Act. The provisions in the Indian Evidence Act that 'admission is not conclusive proof' are to be considered in regard to two features of evidence. First, what weight is to be attached to an admission ? In order to attach weight it has to be found out whether the admission is clear, unambiguous and is a relevant piece of evidence. Second, even if the admission is proved in accordance with the provisions of the Evidence Act and if it is to be used against the party who has made it, "it is sound that if a witness is under cross-examination on oath, he should be given an opportunity, if the documents are to be used against him, to tender his explanation and to clear up the point of ambiguity or dispute. This is a general salutary and intelligible rule" (see Bal Gangadhar Tilak v. Shrinivas Pandit (42 IA 135, 147)). The Judicial Committee in that case said, "it has to be observed with regret and with surprise that the general principle and the specific statutory provisions have not been followed". The general principle is that before any person is to be faced with any statement he should be given an opportunity to see that statement and to answer the same. The specific statutory provision is contained in Section 145 of the Indian Evidence Act that "A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shows to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him". Therefore, a mere proof of admission, after the person whose admission it is alleged to be has concluded his evidence, will be of no avail and cannot be utilised against him.

18. The third infirmity with regard to this admission is whether this is a clear and unequivocal admission. The High Court said that "a certified copy of the deposition was placed on record on July 9, 1973, on which day against it does not appear that the contents of the deposition were read out to the respondent or that any attempt was made to obtain leave of the Court to further cross-examine the witness". The contents of the alleged admission to which reference has been made are not unambiguous and cannot be accepted as an admission. The contents are that he was not receiving any rent and the land was fallow. Therefore, the High Court was right in rejecting the contentions advanced by the appellants that there was any admission and in setting aside the decision of the Revenue Tribunal.

19. The second contention on behalf of the appellant is that the certain record of rights relied on by the appellant would establish that the appellant was a tenant. The High Court rightly accepted the contention of the respondent that after a careful consideration of the evidence on record the fact finding courts, i.e. the Mamlatdar and the Special Deputy Collector recorded a finding that the appellant had not cultivated the land in dispute as the tenant of the respondent. Therefore the Revenue Tribunal had no jurisdiction to interfere and set aside the finding of fact.

20. As to the record of rights it appears that the High Court referred to two important features. It is true that the record of rights relate to Survey Nos. 201/2 and 194/13 and there is mention of the appellant as tenant. There is also a reference to the mutation proceedings. The name of the respondent is shown as Kabjedar. Two of the important heads in the record are 'Mode' and 'Crops and Fallows'. The Mode is shown as "I" and under Crops and Fallows entry 'Paddy' is shown. The High Court referred to this feature of the record of rights. Mode "I" means that the respondent cultivated as owner of the land that was never even the case of the appellant. The High Court rightly said that the irresistible conclusion therefore is that the extracts from the record of rights contain entries which do not have any relation to true facts. If that is the position with regard to these extracts, these cannot be relied on for inference that actually the land was cultivated and paddy crops were grown on the said land.

21. With regard to the record of rights Counsel for the appellant said that presumption arises with regard to its correctness. There is no abstract principle that whatever will appear in the record of rights will be presumed to be correct when it is shown by evidence that the entries are not correct. Apart from the intrinsic evidence in the record of rights that they refer to facts which are untrue it also appears that the record of rights have reference to the mutation entry that was made by the Circle Officer on January 30, 1956. Counsel for the respondent rightly contended that no presumption could arise for two principal reasons. First, the oral evidence in this case nullified the entries in the record of rights as showing a state of affairs opposed to the real state of affairs and, second, no notice was ever given to the respondent with regard to mutation proceedings. Therefore the respondent is right in contending that no presumption can validly arise from the record of rights.

22. The third contention on behalf of the appellant that the tribunal was justified to interfere because of error of law is also unacceptable. The provisions contained in Section 76 of the Bombay Act enumerate the grounds on which there can be revisions by the Revenue Tribunal. One of the grounds is that there is 'error of law'. In the present case the manner in which the Maharashtra Revenue Tribunal entertained the revision was by holding, as follows :

> There is evidence that the applicant (meaning thereby the appellant) has been in actual possession of land since 1956-57 onwards.

However, the authorities below have rejected the entries as well as the opponents' (meaning thereby the respondent) admission on the ground that the applicant did not support the entries by producing the rent receipts. According to the authorities below the burden was on the applicant to prove his case by producing evidence to corroborate the entries. The appellate authority has also observed that the alleged admission of the opponent, made in the other case was rejected by the Revenue Tribunal. The authorities below arrived at the conclusion that the applicant's possession was otherwise than lawful. This concurrent finding of the authorities below is being challenged by the application in this revision application.

23. The Revenue Tribunal seemed to consider the approach of the Mamlatdar and the Deputy Collector to be erroneous because according to the Revenue Tribunal the burden was shifted to the respondent to rebut the entry in the record of rights and that the respondent failed to discharge that burden. When the entire evidence is before the Court, it is well settled that the burden of proof becomes immaterial.

24. Further the Revenue Tribunal fell into error of entertaining the Revision when there was no error of law on the face of the record. The presumption which was said to arise in the record of rights was before the Deputy Collector as well as the Mamlatdar. If the authority entrusted with adjudication goes into the question and assesses the same, the decision may be right or wrong but that will not go to show that there is any error of law on the face of the record.

25. All the three contentions advanced by the appellant fail. The appeal is for the foregoing reasons dismissed with costs.

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