

Narayanappa

Vs

Jainarayan Chunnilal Marwadi

Civil Appeal No. 1853 of 1970

(V. D. Tulzapurkar, R. S. Pathak JJ)

19.09.1980

JUDGMENT

TULZAPURKAR, J. –

1. The only question sought to be raised by the counsel for the appellant in this appeal was whether the High Court exceeded its jurisdiction under Article 227 by merely indulging in reappraisal of evidence and interfering with the concurrent finding of fact recorded by the Special Deputy Collector and confirmed by the Maharashtra Revenue Tribunal on the question whether the surrender deed executed by the appellant on February 14, 1964 in favour of Parubai was voluntary or not ? It arises in these circumstances.

2. The appellant was a tenant of survey No. 115, being agricultural land in village Waroli, belonging to one Parubai, the predecessor-in-interest of the respondents, for about 16 or 17 years. It appears that he had great regard for Parubai as with her help he was able to acquire about 40 acres of other land for himself and his brother and therefore, on February 14, 1964 he executed a surrender deed surrendering his rights as a tenant in respect of this field survey No. 115 in favour of Parubai. The deed was signed by him and was attested by two witnesses; it recited that the cultivation of the field was unprofitable, that the appellant wanted to maintain the good relationship with Parubai with whose support and assistance he has acquired other land and that he was voluntarily surrendering his cultivation rights in that field. This deed was forwarded by registered post to the Tenancy Naib Tahsildar accompanied by a covering letter signed by the appellant. In this covering letter also, the appellant reiterated that he was voluntarily surrendering his tenancy rights by the surrender deed which should be accepted and declared as legal. On receipt of this document, a notice was issued to the appellant and March 20, 1964 was the date fixed for hearing which was adjourned from time to time and ultimately April 15, 1964 was fixed for recording statements of the parties. In the meantime Parubai had died on April 8, 1964. Presumably because of Parubai's death the appellant changed his mind and when he appeared with his counsel on the date of hearing, April 15, 1964, he made a half-hearted attempt to go back upon the surrender. In his statement recorded on solemn affirmation he categorically told the Naib Tahsildar that he had executed the surrender deed voluntarily, that no pressure had been brought upon him, but that the deed had been executed by him by mistake and he applied to the Naib Tahsildar stating that his original application for verification of surrender deed should be rejected. However, the only ground put forward in support of this latter application was that deed of surrender had been executed by him under a mistake but what was the mistake was never explained by him either in that application or in his statement recorded on April 15, 1964 though in his statement he maintained that in the matter of execution of the surrender deed no pressure or influence had been exerted on him by anyone. The Naib Tahsildar however accepted the latter application and rejected the original application given by the appellant for acceptance of

the surrender deed. Against this order an appeal was preferred by the respondents to the Special Deputy Collector who remanded that matter back on the ground that under the proviso to Rule 11 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Rules, 1959 the respondents were required to be heard before deciding upon the voluntary character of the surrender deed and that had not been done. After remand, notice was issued to the respondents and after recording the statements of the respondents as well as the appellant and appreciating the entire material the Additional Tahsildar held that the appellant had executed the deed of surrender on February 14, 1964 voluntarily. He rejected as an after thought the story of the appellant that the surrender had been brought about as a result of procedure or undue influence exerted on him by representatives of Parubai - a story put forward by the appellant in his subsequent statement recorded on October 11, 1966 after remand. The matter was carried in appeal by the appellant. In appeal, the Special Deputy Collector took the view that the surrender deed was not executed voluntarily by the appellant as it was result of undue influence exerted on him by Parubai's representatives who were present at the time of the execution. The Maharashtra Revenue Tribunal confirmed the finding of the Deputy Collector. The respondents preferred Special Civil Application 186 of 1969 under Article 227 challenging the order of Maharashtra Revenue Tribunal and the High Court has set aside the orders of the Special Deputy Collector and the Maharashtra Revenue Tribunal and restored that of the Additional Tahsildar. It is this order passed by the High Court that has been challenged by the appellant before us in the appeal.

3. Mr. Lokur appearing for the appellant has strenuously contended that after all both the Special Deputy Collector as well as the Maharashtra Revenue Tribunal and recorded a concurrent finding of fact that the deed of surrender was involuntary and it was the result of the undue influence exerted on him at the instance of Parubai and such finding of fact could not be interfered with by the High Court under Article 227 of the Constitution. If the matter had really rested with the aspect of appreciation of evidence one way or the other there would have been considerable force in the contention of Mr. Lokur. However, what we find is that approach and appreciation of evidence on the part of the Special Deputy Collector and the Tribunal are vitiated by apparent errors of law committed by them while setting aside they Additional Tahsildar's order. In the first place it was never the case of the appellant that there was any pressure or undue influence exerted on him in the matter of the execution of the deed of surrender; his initial case was it was voluntary and there was no pressure from any one and even on April 15, 1964 when he prevaricated he said it was executed by mistake, though voluntary character was not given up and it was only in October 1966 after remand that the case of undue influence was put forward - clearly an afterthought. But the Deputy Collector and Tribunal accepted the latter case by treating appellant's earlier case and statement on April 15, 1964 as a nullity which was clearly an erroneous view in law. The Deputy Collector and Tribunal found fault with Tahsildar's order by holding that he had committed a breach of Rule 11 without indication what particular provision thereof had been committed a breach of by the Additional Tahsildar. It was pointed out by Mr. Lokur on behalf of the appellant that under Rule 11 it was incumbent upon the tenancy authority to record the statement of the tenant in the absence of the landlords or his representative after taking the tenant into confidence and this procedure was not followed. It is clear that the Deputy Collector took the view, which was confirmed by the Tribunal, that the earlier statement of the appellant on April 15, 1964 was a nullity because it was recorded when Parubai was dead and in the absence of her successors and his subsequent statement dated October 11, 1966 had not been recorded in the absence of the respondents and hence there was a breach of Rule 11. In our opinion it is this erroneous view in law on the part of the Deputy Collector and the Tribunal that enabled the High Court to interfere with their orders. Parubai had died on April 8, 1964, i.e., just about a week before April 15, 1964 when the hearing was fixed and the

proceedings had not abated by then and, therefore, simply because Parubai had died, the statement on oath recorded by Naib Tahsildar on April 15, 1964 could not be regarded as nullity. More so when it was required to be recorded in the absence of the landlord. That statement affirmed the voluntary character of the surrender deed but introduced the element of mistake without explaining what was the mistake about. Regarding the subsequent statement recorded on October 11, 1966 the same was really outside the scope of the remand order, for the matter had been remanded for recording the say of the landlord before deciding upon the character of surrender deed which had not been done as required by the proviso to Rule 11. But that apart the purpose of the provision in Rule 11, that a statement of tenant should be recorded in the absence of the landlord is only to provide a safeguard against the probable influence of the landlord at the time of recording the statement of the tenant. If that be the purpose, in our view, that purpose was more than achieved inasmuch as in that statement, notwithstanding the presence of the respondents, the appellant boldly came out with a case of undue influence for the first time giving up the case of mistake. Even so, the Deputy Collector and the Tribunal erroneously harped on the breach of Rule 11. In our view the Deputy Collector and the Tribunal entirely misunderstood the initial case of the appellant and committed an apparent error of law in treating his earlier statement as a nullity and proceeding on that wrong basis accepted the latter case of the appellant which was clearly an after thought. It was in that view of the matter that the High Court thought it fit to interfere with the orders of Deputy Collector and Tribunal. It was not, therefore, a case of merely reappreciating the evidence and interfering with a concurrent finding of fact recorded by the Deputy Collector and Tribunal.

4. In the result the appeal fails and is, therefore, dismissed with costs.

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