

Gurumukhsing Narayansing Chadda

Vs

Ganpati Narsinga Lamdade and Others

Civil Appeal No. 2913(N) of 1979

(N. M. Kasliwal, Smt. M. S. Fathima Beevi JJ)

05.09.1990

JUDGMENT

N. M. KASLIWAL, J. –

1. This appeal by the grant of certificate under Article 136 of the Constitution is directed against the judgment of the Bombay High Court dated April 7, 1978. This litigation has a long chequered history. The dispute relates to agricultural land bearing Survey No. 784/1 situated within the municipal limits of Miraj town in Sangli District, Maharashtra. The area of the land is 1 acre 20 gunthas. Dhondiba Santu Lamdade was the original tenant of the land. He died issueless on March 1, 1964. Dhondiba Santu Lamdade during his lifetime had taken two wives one of whom died during his lifetime but the other Dhondibai alias Sakhubai survived Dhondiba. On the evidence led before the Tenancy Aval Karkun (Special Tehsildar), he came to the conclusion that there was a divorce between Dhondiba Santu Lamdade and Sakhubai by a document dated October 9, 1947.

2. This land originally belonged to Sanmukh family and was purchased by Gurumukhsing Narayansing Chadda (appellants) on August 21, 1964. After the death of Dhondiba, the present respondent Ganpati Narsinga Lamdade being the nephew of Dhondiba claimed tenancy rights in the land. He filed an application under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the Act) on March 26, 1968. Special Tehsildar, Miraj by his order dated October 31, 1968 dismissed the application as time barred and further held that he was not a tenant. On appeal, the Deputy Collector, Miraj Sub-Division dismissed the appeal by order dated May 31, 1969. In this appeal it was held that late Dhondiba Santu Lamdade was a tenant, the application filed by Ganpati Narsinga for possession was time barred and he was not an heir to the deceased tenant. Ganpati Narsinga Lamdade then filed a revision before the Maharashtra Revenue Tribunal. The Tribunal by its order dated December 23, 1970 held that the deceased Dhondiba was the tenant of the suit land from the year 1959-60, and his name appeared in the 'Kul and Khand' column. The Tribunal further held that Ganpati Narsinga Lamdade was contending that he was an heir of the deceased tenant under Section 40 of the Act. In the Kabjedar's column, Shri Imam Babaji Jamadar's name is shown in ink as Kabjedar and afterwards his name was deleted and the name of Ganpati Narsinga Lamdade and others were shown in Kabjedar's column. Shri Dhondiba Santu Lamdade died in 1964, and after his death the revision applicant (Ganpati Narsinga Lamdade) and the other heirs were cultivating the suit land. Not only that but they had also paid assessment of the suit land. It was contended before the Tribunal that the appellant tried to obstruct them and therefore they had filed this application. The appellant had taken the stand that Dhondiba was their servant and not a tenant and in support of this produced a "Nokarnama". The Maharashtra Revenue Tribunal held that both the parties had produced documentary evidence before the appellate authority. The revision applicant had produced a divorce deed but the other side had not been given an opportunity

to rebut it. It is the duty of the lower court to give an opportunity to both the parties in the interest of justice. The Tribunal observed that prima facie, it appears that the revision applicant has shown that he is the heir of the deceased Dhondiba that he had paid the assessment of the suit land and that without any order of competent authority the revision opponent (appellant) had dispossessed him. The Tribunal set aside the orders of both the authorities below and remanded the case to the trial court for disposal according to law.

3. After the remand of the case, the tenant A.K. Miraj on April 21, 1972 held the divorce deed as proved. He further held that Ganpati Narsinga Lamdade proved that they were the tenants of the suit land. On the basis of these findings he declared that Shri Ganpati Narsinga Lamdade was a tenant of the suit land as per provisions contained in Section 70(b) read with Section 40 of the Act and directed that he should be put in possession of the suit land after the appeal period is over. Aggrieved against the aforesaid order, appeals were filed by Gurumukhsing Narayansing as well as by Shankar Ganpati Sanmukh. The Deputy Collector on March 31, 1973 upheld the order of the lower court and dismissed the appeals. Shri Gurumukhsing Narayansing then filed a revision before the Maharashtra Revenue Tribunal. The Tribunal by its order dated October 15, 1973 set aside the order of both the courts below and rejected the original application filed by Ganpati Narsinga Lamdade on March 26, 1968. It was held by the Tribunal that Dhondiba was a tenant in the land and Ganpati Narsinga Lamdade was the nephew of Dhondiba but the important question to be considered was whether Ganpati Narsinga Lamdade and his brothers were the heirs of the deceased Dhondiba. The Tribunal found that Ganpati Narsinga Lamdade had specifically admitted that Dhondiba's wife was alive and she did not know whether there was a divorce deed. As regards possession it was held by the Tribunal that Ganpati Narsinga Lamdade did not get possession of the land after the death of Dhondiba which took place on March 1, 1964. In view of this, their application for possession filed on March 26, 1968 was clearly time barred under Section 29 of the Act, even if, there was a scope to hold that these persons were the heirs of deceased Dhondiba. The view of the appellate court (Deputy Collector) that point of limitation was not open, cannot be supported, because the Tribunal in its earlier order had remanded the entire case to be disposed of according to law.

4. Ganpati Narsinga Lamdade then filed an application under Section 227 of the Constitution before the High Court. The High Court took the view that the learned Tenancy Aval Karkun Miraj by his judgment and order dated April 21, 1972 held that the petitioner (Ganpati Narsinga Lamdade) is a tenant of the suit land and that he should be put in possession of the same. This order was confirmed by the learned Sub-Divisional Officer (Deputy Collector) by his judgment dated March 31, 1973. Thus, it was abundantly clear that what was decided by the two courts of facts was essentially a finding of fact given on appreciation of oral and documentary evidence. It was further held by the High Court that Gurumukhsing Narayansing preferred a revision application to the Maharashtra Revenue Tribunal which by its order dated October 15, 1973 allowed the same and set aside the orders of the two courts below. While so doing, learned member of the Tribunal noticed what he recorded as an admission on the part of the petitioner that he did not know whether there was a divorce deed in respect of Dhondiba's wife and Dhondiba himself. The High Court in this regard made the following observation :

"In my view this admission does not seem to have been properly appreciated. Even otherwise, assuming that the petitioner did not know, as indeed he himself says he did not know personally, whether the divorce took place, he is not precluded from proving that fact by leading evidence, both documentary and oral. This latter thing he has done. Two witnesses one who scribed the divorce deed and the other who

actually witnessed the divorce have been examined. The deed itself has been identified by the scribe as the one which was written at the time of the divorce. All this evidence commended itself to the two courts of facts and I do not see how the Tribunal in exercise of its revisional jurisdiction could interfere with that finding. In my opinion, therefore, by doing so the Tribunal has committed an error of jurisdiction and its order is, therefore, liable to be set aside."

5. The High Court by order dated April 7, 1978 set aside the order of the Tribunal dated October 15, 1973 and restored the orders of the lower courts. Aggrieved against the aforesaid order of the High Court, Gurumukhsing Narayansing has come in appeal before this Court.

6. We have heard learned counsel for the parties and have thoroughly perused the records. So far as the finding regarding the divorce between Dhondiba Santu Lamdade and his second wife Sakhubai is concerned, we do not find any reason to disturb the order of the High Court. The divorce is held proved on the basis of a written divorce deed dated October 9, 1947. Its execution has been proved by evidence placed on record. Thus it has rightly been held that respondent Ganpati Narsinga Lamdade was the legal heir of deceased Dhondiba on the date of his death i.e. March 1, 1964. However, the further important question is whether the application filed on March 26, 1968 by Ganpati Narsinga Lamdade under Section 70(b) of the Act was within limitation and whether he was entitled to claim possession on the suit land. Sub-section (1) of Section 29 of the Act relevant for our purpose is reproduced as under :

"29. (1) A tenant or an agricultural labourer or artisan entitled to possession of any land or dwelling house under any of the provisions of this Act may apply in writing for such possession to the Mamlatdar. The application shall be made in such form as may be prescribed and within a period of two years from the date on which the right to obtain possession of the land or dwelling house is deemed to have accrued to the tenant, agricultural labourer or artisan, as the case may be."

7. According to the above provision a tenant entitled to possession of any land may apply in writing for such possession to the Mamlatdar. Such application is required to be made within a period of two years from the date on which the right to obtain possession of the land accrues to the tenant. Admittedly Dhondiba died on March 1, 1964 and the application was submitted by Ganpati Narsinga Lamdade on March 26, 1968 long after the expiry of two years. Though Ganpati Narsinga Lamdade tried to set up a case that he had come into possession of the land in question after the death of Dhondiba and was subsequently dispossessed, but this case is totally demolished by his own admission in the statement given by him before the trial court. His statements dated July 24, 1968 and September 25, 1968 before the remand of the case by the Tribunal have been placed on record as Ex. 8. In the above statement he categorically stated as follows :

"Since the death of Lamdade, Sanmukh family members have not allowed us to come in the land. Therefore, I sent a notice to Sanmukh by post. The suit which I have filed now is filed (by) me thereafter ? Prior to this suit I have not proceeded with any matter anywhere. After the death of Dhondiba, Sanmukh took possession of the suit land in that very night."

The above statement clearly shows that after the death of Dhondiba, Ganpati was not allowed to come on the land and according to him Sanmukh had taken possession of the suit land in the very night of the death of Dhondiba. At one stage in the cross-examination dated September 25, 1968 he

stated as under :

"3 1/2 years have elapsed since the death of Dhondiba. I lost possession after a year after 2 1/2 years after that date."

8. After the remand of the case Ganpati Narsinga Lamdade again appeared as witness. He appeared to have become wiser in the intervening period and as such gave a statement that after the death of Dhondiba, he himself had started cultivating the suit land. In the cross-examination he stated that after the death of Dhondiba he was cultivating the land for 4 years. He gave notice for getting possession in the year 1964 and he waited up to the year 1968 for instituting a suit. The above vacillating and contradictory statement clearly goes to show that he himself is not clear regarding his coming into possession over the suit land and being dispossessed by Sanmukh family. This clearly establishes that he never came into possession after the death of Dhondiba on March 1, 1964 and the application filed by him on March 26, 1968 is clearly barred by limitation. Even in the statement given after remand, though at one stage he stated that he was cultivating land for 4 years but in the same breath admitted that he gave notice for getting possession in the year 1964 and waited up to the year 1968 for instituting a suit.

9. Learned counsel appearing on behalf of Ganpati Narsinga Lamdade submitted that the Tribunal in its remand order dated December 23, 1970 had only directed the lower court to record a finding on the question of divorce between Dhondiba and his wife Sakhubai. It was submitted that other point had been decided by the Tribunal in favour of Ganpati Narsinga Lamdade and as such the question of limitation cannot be considered afresh. We have perused the order of remand of the Tribunal dated December 23, 1970 in which the Tribunal had set aside the order of both the authorities below and had remanded the case to the trial court for disposal according to law. This goes to show that the entire case had been sent back for fresh decision. A similar argument was raised before the Tribunal when the matter was considered by it second time. The Tribunal while dealing with such argument observed as under :

"The admission referred to above, will show that they did not get into the land after the death of Dhondi, which took place on March 1, 1964. In view of this, their application for possession, filed on March 26, 1968 would be clearly time barred under Section 29 of the Act, even if, there was a scope to hold that these persons were the heirs of deceased Dhondi, the erstwhile tenant in the land. The view of the appellate court that point of limitation was not open, cannot be supported, because, it will be clear from the decision of the MRT in SS. VIII. 19/69 that the MRT remanded whole of the case to be disposed of, according to law. The material on record enable a finding in this respect. The admission of the applicant Ganpati Lamdade would show that they have not come to the court in time claim possession."

10. In our view the Tribunal correctly interpreted its earlier order and there is no force in the contention of the learned counsel for the respondent that the question of limitation cannot be gone into now.

11. In the result we allow this appeal, set aside the order of the High Court dated April 7, 1978 and restore the order of the Maharashtra Revenue Tribunal dated October 15, 1973.

12. In the facts and circumstances of the case the parties shall bear their own costs.

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