

Pundlik Krishna Ji and others

Vs

Trimbak Bhikaji Patil and others

Civil Appeals Nos. 349-50 of 1978

(Kuldip Singh, Smt. M. S. Fathima Beevi JJ)

23.04.1993

JUDGEMENT

KULDIP SINGH, J.:-

1. These appeals are directed against the judgment of the Nagpur Bench of Bombay High Court directing the ejectment of the appellants from three tracts of agricultural land which the appellants are in cultivating possession since 1951.
2. Respondent Bhikaji is the owner of about 20 acres of land subject-matter of the dispute. The said land is in cultivating possession of the appellants since 1951 and according to them, they have acquired the status of protected lessees under the Berar Regulation of Agricultural Leases Act, 1951 (hereinafter called 'the Berar Act') and the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter called 'the Bombay Act').
3. The respondent Bhikaji initiated proceedings before the Sub-Divisional Officer, Buldana for ejectment of the appellants on the ground that predecessor of the first appellants created sub-leases in favour of second appellant and one Zipra Wanchhu and as such their tenancy was liable to be terminated in terms of S. 8(1)(c)(f) of the Berar Act. Bhikaji filed two separate applications against the appellants. The applications were resisted by the appellants inter alia on the ground that all the three persons namely Pundlik Krishna, Kesho Krishna and Zipra Wanchhu were independent lessees in their own rights and as such there was no question of Pundlik Krishnaji having created sub-leases in favour of the other two. Before the Sub-Divisional Officer, the respondent Bhikaji produced a lease deed dated April 30, 1951 to prove that all the three tracts of land were leased to late Pundlik Krishnaji and no part of the land was ever leased to Keshao Krishnaji and Zipra Wanchhu. It was sought to be shown from the lease deed that the original lessee Pundlik Krishnaji sub-leased part of the land to the other two occupants. The Sub-Divisional Officer accepted the contention of the respondent and ordered the ejectment of the appellants. The Sub-Divisional Officer proceeded on the following reasoning:-

"The contention of the defendants Nos. 1 and 2 that the lease of the remaining half share of the suit land was created by the plaintiff's brother Keshav Bhikaji with the defendant Nos. 2 and 3 has no force

The defendants Nos. 1 and 2 contended that the original lease deed dated 30-4-51 is a forged one, but they have failed to mention this fact in all their written statements or

to show any reason when questioned by the plaintiffs counsel....."

4. Pundlik Krishnaji and Keshao Krishnaji went in appeal before the Sub-Deputy Collector against the order of the Sub-Divisional Officer. The Collector dismissed the appeals. Regarding the lease deed relied upon by the respondent Bhikaji, the Collector observed as under:-

"The very fact that the appellant Pundlik executed a lease deed of all these fields in favour of respondent Trimbak goes to prove that he was the Karta of the family and his brother Keshao had no hand in the management on leasing out the property....."

The execution of lease deed dated 30-4-51 by appellant Pundlik in favour of the respondent Trimbak has been admitted by the appellants.....

On the other hand there is document "Lease Deed" dated 30-4-51 which clearly shows that appellant Pundlik was the sole lessee of the fields in question. I, therefore, agree with the finding of the lower court that appellant Pundlik was a tenant of the fields in question."

5. The tenants further went in revision before the Revenue Tribunal. The Tribunal set aside the orders of the Sub-Divisional Officer and of the Sub-Collector and dismissed the ejection applications of the respondent-landlord. The Tribunal noticed the arguments of the appellants-tenants in the following words:-

"Feeling aggrieved by this order, applicants filed two separate appeals. In their appeals, they urged that neither Keshao nor Zipra Wanchhu was the sub-tenant of the fields in question. Pundlik had not sublet the fields to them. The alleged lease deed dated 30-4-51 was a forged document and adverse inference against them should not have been drawn for their failure to plead that the document dated 30-4-51 was a forged one as the same was produced after the written statements by the applicants were already filed. Zipra Wanchhu was colluding with landholder Trimbak Bhikaji and the story put up, by him should have been discarded"

The Tribunal finally held as under:-

"It has been contended by the applicants that the lease deed of 30-4-51 was a forgery. This contention of the applicants had not been inquired into upon the short ground that it was not made in the written statements of the applicants. The applicants say that the lease deed dated 30-4-51 was filed after their written statements. It is true that they could have amended their written statements so as to allege forgery of the lease deed dated 30-4-51 when the same was filed. None-the-less, it appears to me that the contention of forgery should have been inquired into when the same was made by the applicants. It has been the case of applicants that Pundlik was the lessee of half of the share in the fields survey numbers, whereas applicant No. 2 Keshao Krishnaji and Zipra Wanchhu cultivated as the lessee of the other half of the fields. They never said that they were the lessees under any lease deed. It was, therefore, necessary to find out as to whether the lease deed dated 30-4-51 was genuine or forged document.

In the result, applications made by Trimbak Bhikaji alone without joining Keshao

Bhikaji, who was a necessary party to the applications, are rejected."

6. The tenant challenged the order of the Tribunal by way of two petitions under Article 227 of the Constitution of India before the Nagpur Bench of the Bombay High Court. The order of the Tribunal dated March 25, 1970 was challenged in the High Court on August 4, 1971. In order to get over the delay in filing the writ petition counsel for the land-owner filed an affidavit stating that the papers in his office remained unattended due to oversight and pressure of work and as such the filing of the petitions was delayed. The High Court allowed the petitions on the following grounds:-

(1) The reasons for not filing the writ petitions diligently having been explained by the petitioner's advocate by filing an affidavit the petition could not be dismissed on the ground of delay and laches.

(2) The Tribunal rejected the claim of the tenant-petitioner on the only ground that the original applications were bad as petitioner's brother was not joined as a party. The High Court held that "Trimbak Bhikaji Patil being the Karta of the family could file the applications for ejection in that capacity".

(3) Regarding the lease deed April 30, 1951, the High Court held as under:-

"There is one more circumstance. The lease deed that was executed in respect of the suit lands was in favour of the petitioner. It is dated 30-4-51. The lessee is respondent No. 1. Thus, the relationship of the landlord and tenant came into existence between the petitioner and respondent No. 1. It will not be normally open for respondent No. 1 to urge that the petitioner alone is not his landlord. To get over this difficulty, it was suggested at the time of the arguments that this lease deed is forged one. The M. R. T. has considered this question in a slipshod-manner. The point as to the alleged forgery of lease deed was not taken in the written statement by any of the respondents. In spite of that the M.R.T. has stated that the contention of forgery should have been enquired into. I am not able to accept this reasoning particularly when the Naib Tahsildar and the S. D. O. have accepted the lease deed as genuine one."

(4) Under the Berar Act, before initiating ejection proceedings, no notice was required to be sent to the tenant but under the Bombay Act there is requirement of the notice. It was argued on behalf of the tenant that since in the year 1958 the Bombay Act had come into force repealing the Berar Act and the proceedings, though initiated under the Berar Act, were deemed to be under the Bombay Act, and because no prior notice as required by the Bombay Act was given, the proceedings were bad in law. The High Court rejected the argument on the ground that the proceedings having already been initiated under the Berar Act no notice was necessary and the proceedings were rightly taken to be under the Bombay Act.

7. The High Court allowed the petition and set aside the order of the Tribunal. It's in these circumstances that these appeals by the tenants by way of special leave petitions are before us.

8. We have heard learned counsel for the parties at length. We are of the view that the High Court was not justified in reaching the conclusion that the lease deed dated April 30, 1951 was a genuine document.

9. The Tribunal allowed the tenants' revision on the following grounds:-

(1) The land in question belonged to the two brothers jointly. The applications for ejectment were filed only by Trimbak Bhikaji. The other brother had not made the applications for terminating the tenancy either separately or by joining his brother. The Tribunal came to the conclusion that the applications by Trimbak Bhikaji alone were not competent and on this ground the Tribunal rejected the applications.

(2) The Tribunal after examining the pleadings and the evidence on the record came to the conclusion that the Courts below should have inquired into the genuineness of the lease deed. The Tribunal reached the finding "it was, therefore, necessary to find out as to whether the lease deed dated 30-4-51 was genuine or forged document".

10. A bare reading of the Tribunal's order shows that the Tribunal granted relief to the appellant-tenant on the above two grounds. We are of the view that the High Court was justified in setting aside the Tribunal's finding on the first point mentioned above. The High Court found that Trimbak Bhikaji being the Karta of the family could file the applications for termination of the tenancy without associating his brother. We see no infirmity in the said finding of the High Court. The High Court was also right in rejecting the contention of the tenant that the proceedings under the Bombay Act were illegal as the requirement of prior notice under the said Act was not complied with. We are, however, of the view that the High Court erred in holding that the lease deed dated April 30, 1951 was a genuine document. No enquiry was held at any stage regarding the genuineness of the lease deed. The Sub-Divisional Officer refused to go into the question on the ground that there were no pleadings on the point. The Sub-Divisional Officer was obviously wrong because the lease deed was filed by the respondent-land-owner after the pleadings were completed. The Appellate Court was wholly unjustified in observing that the appellants-tenants had admitted the execution of the lease deed. The appellants' case throughout had been that the lease deed was a forged document.

11. The Tribunal could not remand the case for enquiry into genuineness of the lease deed because it had allowed the revisions on two grounds. The High Court, having reversed the finding of the Tribunal on the first point, should have remanded the case to the Trial Court for determining the genuineness of the lease deed dated April 30, 1951 specially when the case of the respondent-land-owner has wholly based on the said document. The High Court had no material before it to come to the conclusion that the lease deed was a genuine document.

12. We, therefore, set aside the High Court judgment and also of the Courts below and remand the case to the concerned trial court for deciding the ejectment applications filed by the respondent-landowner afresh after affording opportunity to the parties in accordance with law. The trial Court shall afford full opportunity to the parties to produce evidence on the issue of the genuineness or otherwise of the lease deed dated April 30, 1951.

13. The appeals are allowed in the above terms with no order as to costs. Appeals allowed.

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