

Wamanrao Keshavrao Deshmukh and Others

Vs

Dinkarrao Bhausaheb Deshmukh and Others

Civil Appeal No. 2250 of 1991

(S. P. Kurdukar, M. Jagannadha Rao JJ)

28.10.1998

JUDGMENT

S. P. KURDUKAR, J. -

1. The lands bearing Survey Nos. 9/1-B, 8-B, 3-B, 4-B and 5-B situate in Village Shivgaon, Taluka Khanapur, District Sangli, were owned by one Mahadeo Mohite (since deceased). These lands were Watan lands of Class IV and the said Watan was abolished under the provisions of the Bombay Pargana and Kulkarni Watans (Abolition) Act, 1950. From 1-5-1956, the interest in these lands vested in the State Government pending the regrant. Concededly, the first respondent, Dinkar Deshmukh was the tenant in lawful possession of these lands till 8-2-1959, on which date, according to the Watandar, Mahadeo Mohite, the tenant had voluntarily surrendered his tenancy rights in his favour. The lands were regranted to the Watandar by the State Government on payment of occupancy price on 8-8-1963. Before such regrant was made, Mahadeo Mohite, the former Watandar, had sold these lands to M/s. Hanumant Rao Deshmukh and Wamanrao Deshmukh, the appellants herein, by registered sale deed dated 4-4-1959. Pursuant to this sale transaction, mutation was sought to be made in favour of the appellants to which the tenant objected claiming that he was wrongfully dispossessed by the Watandar and the purchasers.

2. After dispossession, the first respondent-tenant (for short the tenant) filed an application on 25-9-1959 under Section 84 of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short the Act) for possession on the ground that the appellants are in unauthorised occupation of these lands. This application was made to the Deputy Collector who, after hearing the parties, by his judgment and order dated 3-11-1960 dismissed the same on the ground that the same was not maintainable. The tenant's appeal to the Maharashtra Revenue Tribunal also came to be dismissed on 30-6-1961. Both these authorities held that the tenant's remedy was to file an application under Section 29 of the Act before the Tehsildar for restoration of possession of these lands. The tenant on 30-6-1961, filed an application under Section 29(1) of the Act for restoration of possession to which the appellants as well as the Watandar, Mahadeo Mohite were joined as respondents. The appellants and the Watandar raised a plea that the tenant's application was barred by limitation since he did not file the application within two years from the date of dispossession. The Tenancy Awal Karkoon (Tehsildar) by his judgment and order dated 5-10-1966, rejected the said application of the tenant holding that it was barred by limitation. On appeal to the Deputy Collector by the tenant, the same was also dismissed but, however, the Maharashtra Revenue Tribunal vide its order dated 7-4-1972 remanded the matter to the Tehsildar to find out the actual date of dispossession and thereafter pass appropriate order. The tenant moved the High Court by way of writ petition which came to be dismissed on 19-9-1977.

3. On remand, the TAK Tehsildar after considering the material on record, dismissed the tenant's application vide his order dated 28-2-1979 holding that it was barred by limitation. The tenant's appeal was also dismissed by the Collector vide order dated 15-2-1983. Revision application filed by the tenant to the Maharashtra Tribunal was also dismissed on 24-2-1985. Against these concurrent judgments passed by the tenancy authorities, the tenant preferred a writ petition to the High Court and the High Court vide its judgment and order dated 6-9-1990, set aside the judgments of the tenancy authorities holding that the tenant's application was within time after giving him the benefit of Section 14 of the Limitation Act, 1963. The High Court directed that the possession of these lands be restored to the tenant. Against this order passed by the High Court, the appellants by special leave have filed this appeal to this Court.

4. Mr. Mohta, the learned Senior Counsel appearing in support of this appeal, urged that the High Court had committed a patent error while setting aside the concurrent findings of facts recorded by the tenancy authorities that the tenant's application was barred by limitation. He urged that the tenancy authorities found that the tenant was dispossessed sometime in April 1958 and therefore his application under Section 29 filed on 30-6-1961 was clearly beyond the prescribed period of limitation of two years from the date of dispossession and, therefore, it was rightly dismissed by the tenancy authorities. He also submitted that the tenant in his original application neither pleaded that the benefit of Section 14 of the Limitation Act be given to him nor raised a contention that he was prosecuting the application under Section 84 of the Tenancy Act in good faith before the Deputy Collector and the Revenue Tribunal. The appellants were not given any opportunity to contest the alleged claim of bona fide prosecution of the proceedings by the tenant under Section 84 of the Tenancy Act and therefore the matter be remanded to the TAK Tehsildar for disposal in accordance with law.

5. Mr. Ganpule, the learned Senior Counsel appearing for the respondent-tenant, supported the judgment of the High Court and urged that the High Court was fully justified in giving the benefit of Section 14 of the Limitation Act. He urged that it was open to the appellants to challenge the tenant's plea under Section 14 of the Limitation Act on all grounds including the bona fides. Having not done so, it would be too late to accept such a contention at this stage and seek remand of the matter to the tenancy authorities. He also urged that the tenant who had been fighting for his rights under the Act was successfully kept out of possession for more than 40 years and therefore, this Court should not interfere in the present appeal.

6. We have gone through the judgments of the authorities below and the relevant material on record. It was not the appellant's plea before the High Court that the provisions of the Limitation Act are not applicable and therefore, we need not deal with this aspect in the present proceedings. We do not, therefore, permit the said plea of non-applicability of the Limitation Act for being taken before us for the first time in this Court. The only question that survives for our consideration is as to whether the tenant was prosecuting his application under Section 84 in good faith. From the material on record, it is quite clear that the tenant has been struggling to get back the possession on the ground that he was unauthorisedly dispossessed by the Watandar. The tenant's application under Section 84 of the Act was dismissed on the ground that the relationship of landlord and tenant existed on the date of the application and therefore, the proper course for the tenant was to make an application under Section 29 of the Tenancy Act. It is only after this finding by the Maharashtra Revenue Tribunal on 30-6-1961, the tenant on the very same day filed an application under Section 29(1) of the Act. The High Court, therefore, was right in holding that the tenant was prosecuting the proceedings under Section 84 of the Act bona fide and in good faith and consequently justified in condoning the delay in filing the application under Section 29 of the Act on 30-6-1961. The

judgment of the High Court, in our view, does not suffer from any infirmity. It also needs to be stated that the Watandar, Mahadeo Mohite, who had suffered an adverse order in the High Court, did not challenge the same either by filing separate special leave petition or joining himself as an appellant in this appeal.

7. In the result, the appeal fails and the same is dismissed with costs.