

SUPREME COURT OF INDIA

Ganpat Mahadeo Gawand

Vs.

Shrinivas M. Pendse (Dead) by Lrs.

C.A.No.2106 of 1996

(K.G. Balakrishnan and P. Venkatarama Reddi JJ.)

02.04.2003

JUDGMENT

P.Venkatarama Reddi, J.

1. This appeal by special leave arises out of the proceedings under the *Bombay Tenancy and Agricultural Lands Act, 1948* (hereinafter referred to as 'the Act'). The learned Single Judge of the High Court at Bombay allowed the writ petition filed by the 2nd respondent herein by setting aside the order of Maharashtra Revenue Tribunal which, in a revision filed before it by the 2nd respondent and his father, confirmed the order of the Sub Divisional Officer, Alibag. The Sub Divisional Officer allowed the tenancy appeal filed by the appellants herein against the order of the Tahsildar and directed the possession of the 'suit land' of about one acre and 10 guntas to be restored to them. The High Court, in allowing the writ petition, upset the finding of fact recorded by the appellate and revisional authorities on the question of effectiveness of gift made by the 2nd respondent and his deceased father in favour of the 3rd respondent herein.

2. The father of the appellants 1 to 3 and the husband of appellant No. 4 was the original tenant of the 1st respondent (since deceased). Under Section 31 of the Act, a landlord, after giving notice to the tenant and making an application for possession before the Tahsildar, could terminate the tenancy of any land (except permanent tenancy) if the landlord *bona fide* requires the land for personal cultivation or for any non-agricultural purpose. Accordingly, an application was filed by the 1st respondent (since deceased). The Tahsildar passed an order on 30.11.1965 releasing half the area of the tenanted land to the 1st respondent-landlord. The possession was handed over to the landlord on 24.12.1965. A settlement deed was executed in the year 1971 by the 1st respondent in favour of his son, the 2nd respondent, which was to take effect after the death of 1st respondent. On 13.1.1977 Respondents 1 and 2 executed a deed of gift in favour of the 3rd respondent, who was their farm servant and who was cultivating the land on behalf of the landlords. The original tenant died on 18.11.1967 leaving behind him appellants 1 to 4, as his legal heirs. On 8.2.1977 the appellants gave a notice to the 1st and 2nd respondents under Section 37(1) of the Act to restore the possession of the suit land. Omitting the irrelevant parts of Section 37(1), the said section ordains that if

after the landlord takes possession of the land on the termination of the tenancy under Section 31, he fails to use it for any of the purposes specified in the notice given under Section 31 within one year from the date on which he took possession or ceases to use it at any time for any of the aforesaid purposes within 12 years from the date on which he took such possession, the landlord shall forthwith restore possession of the land to the tenant. Section 39 enables the tenant to file an application for recovery of possession in case the landlord fails to comply with the provisions of Section 37 within a reasonable time. Accordingly, the appellants herein filed an application before the Tahsildar under Section 39 on 25.4.1977 alleging that by virtue of the gift made to the 3rd respondent, the landlord ceased to make use of the land for personal cultivation for 12 years from the date on which he took possession because of the transfer of title to 3rd respondent by means of gift deed. It appears that the gift deed was purportedly cancelled by Respondents 1 and 2 8.7.1979 or 8.7.1980 (the year is not clear). The Tahsildar dismissed the tenancy suit on the ground that the gift was not acted upon. However, on appeal by the aggrieved tenants (appellants herein), the Sub Divisional Officer, Alibag set aside the order of the Tahsildar and directed possession of the land to be restored to the appellants. As already stated, the revision filed by respondents 1 and 2 was rejected by the Revenue Tribunal. On a writ petition filed by the landlord the Tribunal's order was set aside thereby restoring the order of the Tahsildar. Hence the present appeal by the tenants.

3. The core issue in the case turns on the question whether the respondent-landlord ceased to cultivate the land personally from the date of execution of the gift deed. It is to be noted that the 12 years period stipulated in Section 37(1) would expire by the end of the year 1977. The gift deed was executed about a year prior to that date. Whether or not the personal cultivation continued even after the execution of the gift deed and whether the factum of gift would sufficiently negative the theory of personal cultivation during the year 1977 are the relevant questions that arise. There is no dispute that the 3rd respondent-the donee was a paid servant who was cultivating the land on behalf of the 1st respondent since long. The Revenue Tribunal categorically held that the gift in his favour was accepted. The said finding was based on the solid fact that R-3 had put his thumb impression by way of acceptance of gift and he was also present at the time of registration. One more aspect referred to by the Tribunal was the covenant in the deed that the "donee can hereafter peaceably and quietly enter upon, have hold, occupy, possess and enjoy the property hereby gifted and receive and take the rent and profits thereof without any let or hindrance whatsoever from or by the donors or by any person claiming under them." It means that the delivery of possession was simultaneous. The Tribunal also referred to the deposition of the 2nd respondent admitting the correctness of the contents of the gift deed and R-3 putting his thumb impression on the deed. These findings based on the evidence go to show that the gift was accepted and that the gift was not a sham or nominal transaction. If the recitals in the gift deed are to be taken at their face value, the donee was entitled to enter into possession of the land and enjoy the same without let or hindrance. It follows that the possession of 3rd respondent, which was till then for and on behalf of the landlord, will thereafter be in his own right, as rightly pointed out by the Tribunal. The gift deed and the covenant contained therein would be totally inconsistent with the oral evidence of the 3rd respondent that notwithstanding the factum of gift, he continued to cultivate the land for the benefit of the donors-landlords and he did not

have independent possession. However, the High Court placed strong reliance on the oral evidence of R-3 which contradicts the terms of the document in order to draw an inference that the gift deed was not acted upon and the possession remained with the landlords through the media of their servant. The High Court commented that the evidence of R-3, though crucial, was ignored by the lower Tribunal.

4. We are of the view that the approach of the High Court is not right and the High Court was not justified in disturbing the finding of fact reached by both the authorities. Assuming that the oral evidence is permissible to establish the nature of possession in the post-gift period, the question is what evidentiary value can be attached to the mere statement of R-3 that he continued to cultivate the land as a servant. Once it is found that the gift was accepted and the truth of the contents of the gift was admitted, clinching evidence is required to establish that the donor still retained possession with him and the document was not acted upon. The bare oral testimony of R-3 cannot be considered to be such a clinching evidence as to destroy the tenor and effect of the gift deed. It is worthy of note that no explanation whatsoever was forthcoming from R-3 or from any other person as to why the parties did not act in accordance with the gift deed and what was the reason for executing the gift deed if it was meant to be a mere paper transaction. The evidentiary value of the deposition of R-3 ought to have been tested in the light coupled with the fact that no independent evidence was let in to show that the landlords received the usufruct from the land in question during the relevant year. But, the High Court implicitly relied on whatever was asserted by R-3.

5. We are therefore, of the view that the conclusion of the High Court cannot be legally sustained and the High Court should not have interfered with the finding on a factual aspect while exercising jurisdiction under Article 226. The appeal is, therefore, allowed and the order of the Maharashtra Revenue Tribunal is restored. No costs.
Appeal allowed.