BOMBAY HIGH COURT

Tatya Savla

Vs.

Yeshwant Kondiba

S. A. No. 179 of 1948

(Bhagwati and Dixit, JJ.)

22.08.1950

JUDGMENT

Bhagwati, J.

1. This is a second appeal from the decree of the learned Assistant Judge of Ahmednagar who dismissed the appeal which was filed by the original Defendant 1, 5 and 6 against the decision of the learned Civil Judge, Junior Division, at Karjat, decreeing the pltfs.' suit.

2. The pltfs. filed the suit against deft. 1 who was described as their tenant in respect of the suit lands, Defendant 2, 3 and 4, the sons of deft. No. 1 and Defendant Nos. 5 and 6 who claimed to be sharers of the pltfs. under certain entries which were made in the Record of Rights. There had been prior litigation between the pltfs. and deft. No. 1, a suit, being Suit No. 418 of 1942, having been filed by the pltfs. against him, to evict him from the suit lands. In that suit deft. 1 had disclaimed the pltfs.' title and had set up a title in the suit lands in Defendant Nos. 5 and 6. Because of this disclaimer of the pltfs.' title the pltfs.' contended in this suit which was filed by them on 9-11-1944, that they were entitled to evict deft. No. 1 from the suit lands. Defendants 1, 5 and 6 made common cause. It was contended on behalf of the Defendant that the pltfs. were not the sole owners of the suit lands and that Defendant 5 and 6 were sharers along with them in the same and that therefore the suit was not maintainable by the pltfs. as framed. It was also contended that here was no valid notice to quit given by the pltfs in accordance with the provisions of Section 84, Bombay Land Revenue Code, that the tenancy had not determined and that therefore the pltfs. were not entitled to maintain this suit in eviction.

3. In regard to the title of the pltfs. both the Courts below held that the pltfs. were the exclusive owners of the suit lands. That finding is a finding of fact and is binding not only on deft. 1 but also on Defendant 5 and 6. That finding has not been challenged, as it could not be by Mr. B. N. Gokhale appearing for Defendant 1, 5 and 6 who are the Appellants . in this appeal before us.

Apart, however, from this finding as to the pltfs. being the exclusive owners of the suit lands, the trial Court held that by reason of the disclaimer of the pltfs.' title by deft 1 in Suit No. 418 of 1942 there was a forfeiture of the lease and therefore there was no necessity of giving the notice under Section 84, Bombay Land Revenue Code. The trial Court, therefore, decreed the pltfs.' claim. The lower appellate Court also held that the pltfs. were entitled to possession of the suit lands and dismissed the appeal of Defendant 1, 5 and 6. It is against this judgment of the lower appellate Court that this second appeal was filed. This second appeal came in the first instance before Dixit J., sitting alone and he referred it to a division bench. It has now come before us for hearing and final disposal.

4. The question of the pltfs.' title to the suit lands as the exclusive owners thereof being thus established, the only question which arises for our consideration and has been agitated by Mr. B. N. Gokhale for the Appellants . is whether, even though deft. 1 had disclaimed the pltfs'. title in Suit No. 418 of 1942, it was not necessary for the pltfs. under the provisions of Section 111 (g), T. P. Act, which applied to agricultural leases as a matter of justice, equity and good conscience, to have given a notice to deft. 1 in writing as to their intention to determine the lease. It was contended that no such notice in writing having been given by the pltfs. the cause of action was not complete and the pltfs. were not entitled to maintain the suit for eviction.

5. Both the Courts below have decided the suit on the basis that the disclaimer of the pltfs.' title by deft. 1 in Suit No. 418 of 1942 was enough to entail a forfeiture, and that once such forfeiture was incurred, it was not necessary for the pltfs. to give any notice either in accordance with the provisions of Section 111 (g), T. P. Act, or in accordance with the provisions of Section 84, Bombay Land Revenue Code. It is common ground that no such notice was given by the pltfs. and the only thing which the pltfs. did was to file this suit to evict deft. 1 on the ground that by reason of the disclaimer of the pltfs.' title by deft. 1 a forfeiture had been incurred and the lease had determined. If there had been no forfeiture, it would have been incumbent on the pltfs. to give the requisite notice under Section 84, Bombay Land Revenue Code. It was, therefore, urged that in the absence of either of these notices it was not competent to the pltfs. to maintain the suit as framed.

6. At the outset it must be remarked that the pltfs. have not come to Ct. on the basis of the determination of the lease by a notice to quit under Section 84, Bombay Land Revenue Code. The only thing which the pltfs. have been relying upon in support of their claim in this suit is the forfeiture which had been incurred by reason of the disclaimer of the pltfs.' title by deft. 1 in Suit No. 418 of 1942. It was urged by Mr. K. V. Joshi for the Respondent that once the forfeiture was incurred by reason of such disclaimer, it was not at all necessary for the pltfs. to give any notice even within the terms of Section 111 (g), T. P. Act as it stands amended after 1929. He contended that by virtue of Section 117, T. P. Act, agricultural leases were exempted from the operation of the provisions of the T. P. Act except in certain circumstances therein mentioned which, however, did not apply to the facts of the present case. If the provisions of T. P. Act were to apply to

agricultural leases as a matter of justice, equity and good conscience, even there he urged that the provisions which embodied technical rules could not be made thus applicable. He contended that the provision which was enacted in the amended Section 111 (g), T. P. Act in regard to the giving of the notice in writing to the lessee of the lessor's intention to determine the lease was a technical rule and should therefore not be incorporated in the relations between the parties. It was enough, he submitted, that following upon the forfeiture which had been incurred a suit was filed by the pltfs. in eviction and nothing more needed to be done by the pltfs. He relied upon the decisions of our H. C. reported in *Venkaji Krishna v. Lakshman Devji*[1], and *Vidyavardhak Sangh Co. v. Ayyappa*[2], which lend support to his contention.

7. This contention of Mr. K. V. Joshi however does not give due effect to the amendment which has been incorporated in Section 111 (g), T. P. Act from and after 1929. The law before this amendment was that even in the case of disclaimer of the lessor's title by the lessee what the lessor had to do was some act showing his intention to determine the lease, and it had been held under that provision of the law that the filing of a suit in ejectment against such lessee was an act showing the lessor's intention to determine the lease. This position was, however, changed by the amendment in 1929 and as a result of the amendment it became incumbent on the lessor to give notice in writing to the lessee of his intention to determine the lease before a suit could be filed by him against the lessee for eviction. So far as the provision of T. P. Act are concerned, it has also been held by the various High Courts in India that in the absence of any local Act or custom or special reason to the contrary the principles of English law as introduced by T. P. Act were applicable to agricultural leases by way of justice, equity and good conscience, and in fact the provisions as to the forfeiture contained in Section 111 (g), T. P. Act had been so applied. (Vide Mulla's T. P. Act, Edn. 3, p. 739.) The only question, therefore, which remains to be considered by us is whether in applying the principles which have been enacted in T. P. Act by way of justice, equity and good conscience, we should also apply the principle which has been enacted in Section 111 (g), T. P. Act as amended in 1929. This question arose for determination be fore the Madras High Court in a decision reported in *Umar Pulavar v. Dawood Rowther*[3], and Chandrasekhara Aivar J. who decided that case stated (p. 69) :

> "It is for the purpose of attenuating the rigour of the law as thus interpreted and applied in such decisions that Section 111 (g) was amended in 1929 and it was made clear that even in the case of forfeiture by denial of the landlord's title a notice in writing determining the lease must be given. The principle so embodied in the section as a result of this amendment becomes, so to say, a principal of justice, equity and good conscience which must be held to govern even agricultural leases, though under Section 117 of the Act they are exempt from the operation of the chapter. To hold that with reference to agricultural leases previous notice determining the tenancy is not necessary is to ignore the policy of the Act as disclosed by the amendment which was intended to afford all tenants greater protection than what was afforded by the decisions which interpreted Section 111 (g) as it originally stood. It is reasonably clear that if notice is necessary with reference to non-

agricultural leases it is still more necessary in the case of agricultural leases where larger interests are at stake, generally speaking, and where in the absence of a proper notice to quit the right to the standing crops raised by the tenants might itself become a subject of dispute as between them and the landlord."

Our own appellate Court here in an unreported judgment in *Mahiboobkhan v. Ghanashyam*[4], by Chagla, C.J. and Shah, J.) applied the same principle enacted in Section 111 (g), T. P. Act as amended and negatived the contention which was urged before them

[1]20 Bom. 354 F.B
[2](AIR 1925 Bom 524)
[3] AIR 1947 Mad 68 : (231 I. c. 276)227 Bom. l. R. 1152
[4] F. A. Nos. 149, 153 and 154 of 1946, D/-21-4-1949

that a notice under Section 84, Bombay Land Revenue Code, was necessary before the lessor could maintain a suit in ejectment against the lessee. Both the decisions which were cited by Mr. K. V. Joshi for the respondents, viz. *Venkaji Krishna v. Lakshman Devji*[5], and *Vidyavardhak Sangh Co. v. Ayyappa*[6], were considered by the learned Judges of the appellate Court and the contention which was urged based on those decisions was negatived. Apart from our subscribing to the same principle, we are bound by the decision of the appellate Court which is a Court of co-ordinate jurisdiction.

8. We are, therefore, of opinion that the judgments of both the Courts below in so far as they decreed possession against Defendant 1 to 4 are wrong and are liable to be set aside. So far as Defendant 5 and 6 are concerned, both the Courts have held that the pltfs. are the exclusive owners of the suit lands and the pltfs. would therefore be entitled to a decree against them for possession of the suit lands to the extent that Defendant 5 and 6 are in possession of the same. There will also be a decree against Defendant 5 and 6 for Rs. 40 by way of past mesne profits and there will also be an inquiry as regards future mesne profits from the date of the suit under Order 20, Rule 12, Civil Procedure Code. The suit against Defendant 1 to 4 will stand dismissed. In regard to the costs, Defendant 1 to 4 set up a title to the suit lands in Defendant 5 and 6 and actively supported them in setting up the same. Both Defendant 1 to 4 and Defendant 5 and 6 have failed in that contention of theirs and we therefore think that the proper order as to costs should be that as between the pltfs. and Defendant 1 to 4 each party should bear and pay his own costs throughout. So far as Defendant 5 and 6 are concerned, they shall pay the cos

ts of the pltfs. in so far as there is a decree passed by us against them, throughout.
9. The appeal by deft. 1 will be allowed. The appeal by Defendant 5 and 6 will be dismissed.
Order accordingly.

[5](20 Bom. 354 F.B)
[6]27 Bom. L. R. 1152 : (AIR 1925 Bom 524)