

BOMBAY HIGH COURT

Shivappa Satawappa

Vs.

Gajanan Chintaman

Second Appeal No. 304 of 1951, in Civil Appeal No. 374 of 1950

(Shah, J.)

31.03.1953

JUDGMENT

Shah, J.

1. The plaintiff filed Suit No. 408 of 1949 in the Court of the Civil Judge (Junior Division) at Shahapur against the two defendants for a decree for possession of certain lands from the defendants, together with future mesne profits and costs. It was the plaintiff's case that the defendants were his tenants, that he called upon the defendants to vacate and deliver possession, on the expiration of the month of March 1949, and the defendants having failed to deliver possession he filed the suit.
2. The defendants by their written statement contended 'inter alia' that the suit lands were agricultural lands, that they were protected tenants under the Bombay Tenancy and Agricultural Lands Act (67 of 1948), and that the Court had no jurisdiction to entertain the suit.
3. The learned trial Judge held that the Court had jurisdiction notwithstanding the Bombay Tenancy and Agricultural Lands Act (67 of 1948), and passed a decree in favour of the plaintiff directing the defendants to deliver possession of the suit lands to him, together with future mesne profits to be ascertained under Order 20, Rule 12, Civil Procedure Code
4. An appeal was preferred by the defendants to the District Court; but the appeal was summarily dismissed by the learned Assistant Judge at Belgaum. Defendant 1 has come to this Court in second appeal.
5. It is urged on behalf of the appellant by Mr. Bhasme that the civil Court had no jurisdiction to proceed with the suit once a contention was raised by the appellant that he was a protected tenant. In support of that contention he relied upon Section 70(b) and Section 85, Bombay Tenancy and

Agricultural Lands Act, 1948. Section 70(b) provides :

"For the purposes of this Act, the following shall be the duties and functions to be performed by the Mamlatdar.....

(b) to decide whether a person is a tenant or a protected tenant....."

Section 85(1) provides :

"No civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, or dealt with by the Mamlatdar or Tribunal, a Manager, the Collector or the Bombay Revenue Tribunal in appeal or revision or the State Government in exercise of their powers of control." 'Ex facie', by the operation of Section 70 and Section 85, Bombay Tenancy and Agricultural Lands Act, 1943, the jurisdiction of the civil Court to decide whether the defendants were tenants or protected tenants must be regarded as excluded and the Mamlatdar alone must be regarded as competent to decide that question. That is the view which has been taken by a Division Bench of this Court in - '*Dhondi Tukaram v. Dadoo Piraji*'¹, Mr. S.M. Shah, on behalf of respondent 1, has, however, contended that the defendants having raised two contentions, viz. (i) that the lands were agricultural lands, and (ii) that the defendants were protected tenants, the question whether the lands were agricultural lands has to be decided by the civil Court, and it is only after the civil Court decides the question whether the lands were agricultural lands that any question of staying the suit for the decision whether the defendants were protected tenants on the authority of the decision in - '*Dhondi Tukaram v. Dadoo Piraji*'², arose.

He also urged that the civil Court having decided that the lands were not agricultural lands, the defendants could not in law be tenants, and no question of staying the suit survived. In my view, there is no substance in that contention. It is true that the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, apply only to tenancies of agricultural lands. But that does not mean that in adjudicating upon the contention raised in a civil suit that the defendant is a tenant or a protected tenant, the jurisdiction to decide the question whether a particular land is agricultural land remains vested in the civil Court, and only the question whether the defendant is a tenant of that land is to be decided by the Mamlatdar. Section 2(18) of the Act defines the expression "tenant" as meaning "an agriculturist who holds land on lease and includes a person who is deemed to be a tenant under the provisions of this Act." The expression "land" is defined in Section 2(8) as meaning "land which is used for agricultural purposes, and includes (a) the sites of farm buildings appurtenant to land used for agricultural purposes, and (b) the sites of dwelling houses occupied by agriculturists, agricultural labourers or artisans and land appurtenant to such dwelling houses." It is evident, therefore, from the definitions of "tenant" and "land" in Section 2(18) and Section 2(8) that when it is contended by a party to a suit that he is a tenant and governed by Bombay Act 67 of 1948, it is implicit in the contention that he is an agriculturist who holds agricultural land on lease. The jurisdiction to decide the question whether

a person is a tenant (as defined by the Act) being conferred exclusively upon the Mamlatdar, there would be no warrant for holding that the Mamlatdar is authorised only to decide whether the defendant is an agriculturist and whether he holds land on lease, but not whether the land held by the defendant is agricultural land. The jurisdiction to decide whether a person is a tenant postulates jurisdiction to decide all the components of the definition of 'tenant'. Obviously the Mamlatdar cannot decide that a person is a tenant within the meaning of the Act unless he decides that he holds agricultural lands on lease. Therefore, in my judgment, the decision of the question whether a person is or is not a tenant within the meaning of the Act

¹ AIR 1954 Bom 100

involves the determination of three questions : (i) whether he is an agriculturist, (ii) whether he holds land on lease, and (iii) whether the land is agricultural, land. and the jurisdiction to decide all the three questions in determining the status of a person as a tenant must be deemed exclusively to be vested in the Mamlatdar. I am, therefore, unable to agree with the argument of Mr. Shah that the jurisdiction of the civil Court to decide whether the land was agricultural land was not ousted. It has been observed in the judgment of the Division Bench, to which I have made reference earlier, that in a case where a question has been raised by the defendant which falls within any of the clauses of Section 70, the civil Court should not dismiss the suit but should direct the party raising the question to obtain an adjudication from the Mamlatdar. Following the decision of the Division Bench, I hold that the suit is liable to be stayed till the defendants obtain an adjudication from the Mamlatdar on the question whether they are tenants or protected tenants of the disputed land.

6. Mr. Bhasme on behalf of defendant 1 has contended that Act 67 of 1948 makes no provision for making an application for a declaration of the nature indicated. If, however, the jurisdiction to decide the various matters under Section 70 is vested exclusively in the Mamlatdar, I fail to see why in a proper case a party may not be entitled to make an application to the Mamlatdar to declare him a tenant or a protected tenant. Mr. S.M. Shah on behalf of respondent 1 has contended that as a matter of fact an application was submitted to the Mamlatdar for adjudication of the question whether the defendants were tenants, and that the Mamlatdar has negatived the contention of the defendants that they were tenants. Mr. Shah has, however, not produced a certified copy of the order, nor has he furnished any details as to when the application was made and when the order was passed.

7. I accordingly direct that the decree passed by the Courts below be set aside, the suit be remanded to the trial Court and the hearing of the suit be stayed till an adjudication is obtained from the Mamlatdar according to the direction given hereinbefore. If the Mamlatdar declares that defendants 1 and 2 are tenants or protected tenants, the learned trial Judge will proceed to dismiss the suit. If the Mamlatdar refuses to declare defendants 1 and 2 as tenants or protected tenants, the learned trial Judge will proceed to decide the suit according to law. The plaintiff may produce before the trial Court any adjudication from the Mamlatdar which it is alleged, has been made prior to the date of the suit. If any such adjudication regarding the claim of the defendants is

produced, the learned trial Judge will proceed to decide the suit on the footing that the defendants are tenants or protected tenant's. Costs in the District Court and in this appeal will be costs in the suit. Costs in the trial Court will abide the result of the suit.

8. The defendants should make their application within three months from this date to the Mamlatdar having jurisdiction to decide the question. If within three months from this date no application is made to the Mamlatdar, the trial Court will proceed to decide the suit on the footing that the defendants have failed to obtain the declaration.

Order accordingly.