BOMBAY HIGH COURT

Premprakash Surajmal

Vs.

Maharashtra Revenue Tribunal

Spl. Civil Appln. No. 178 of 1967

(Abhyankar, J.)

10.08.1966. 29.09.1968

ORDER

(Abhyankar, J.)

1. The petitioner is a minor and tenure-holder of survey No. 17/1, area 14 acres and 30 gunthas, land-revenue Rs. 38-50 of village Rasulpur, in taluq and District Amravati. Even in these proceedings, he is represented by his natural and legal guardian Surajmal who is his father. On 26-4-1960 an application was made on behalf of Sri Premprakash for restoration of the field from the opponent Maroti on the ground that he needed the land *bona fide* for his own cultivation. Prior to that a notice under Section 38 was given according to law. This field and some other field as detailed in a copy of the family partition deed of 1950 was owned by the petitioner.

2. The opponents Maroti and Shamrao resisted the application principally on the ground that Premprakash was not the owner of the family property but the joint family continued to be in possession and the owner was Surajmal, the father of the petitioner. This was really the sole basis of the defense in resisting the application. The petitioner proved the partition by examining his brother Nathmal. On behalf of the opponents, Maroti entered the witness box. During cross-examination of Nathmal, he was asked about a sale transaction in respect of survey No. 20 belonging to the petitioner. In reply to this question, the witness Nathmal stated that survey No. 20 was sold by their father in 1960-61 for Rs. 1500. He also stated that he did not know whether the father had taken permission for sale of the field. Before sale, the field was in personal cultivation at home and that it yielded an income of Rs. 200 to 300 after deducting expenses.

3. The Naib Tahsildar held that the partition was a sham transaction and there was no compelling necessity for the petitioner to cultivate the land personally. On these findings, the application was rejected.

4. When the matter came before the appellate authority at the instance of the petitioner, the appellate authority reversed the findings of the first Court and held that the partition was *bona fide* and was acted upon and could not be challenged. The appellate authority has also observed that it was not shown that the petitioner had income from any other source, and that he was dependent on the income from the field. Having so held, the appellate authority observed that it is to be noted that the landlord sold 20 acres of land after proceedings for possession of the suit land for personal cultivation were started. It was also observed that the land did not appear to have been sold when there was necessity for payment of medical charges and there was no satisfactory explanation for sale in 1961, and in the absence of tangible explanation for sale of the land after proceedings were started, it should not be held that the landlord *bona fide* needs the land for his personal cultivation.

5. Against the order of the appellate authority the petitioner preferred a revision application before the Maharashtra Revenue Tribunal. In paragraph 3 of its order, the Tribunal has observed as follows :-

> "The record of the case shows that the applicant got 50 acres and 4 gunthas of land as a result of partition effected on 9-3-1950 between himself, his father and other brothers. The applicant filed resumption application before the original Court on 26-4-1960 and during the pendency of the proceedings he held 20 acres 10 gunthas of land on 5-1-1961, which was under his personal cultivation. The father of the applicant did not offer any explanation for the sale of the above field. It was open to him to show that the sale was warranted by compelling circumstances but he failed to do so. In view of this position, it cannot be said that the application for resumption has been made in good faith and that the applicant needs the land *bona fide* for personal cultivation. Nonetheless the fact remains that it is very hard to believe that the applicant *bona fide* wants the suit land for personal cultivation when 20 acres and 10 gunthas of land, which was under his personal cultivation, has been sold by him immediately after the initiation of resumption proceedings. Under the circumstances, it must be held that the finding given by the Court below in this behalf is correct."

In support of this petition it is strenuously contended that the petitioner is a minor and that his property was being managed by his natural and legal guardian cannot be lost sight of in imputing to him lack of *bona fides* in respect of either the claim for restoration of possession on the ground of need for personal cultivation or regarding the transaction of sale effected by his father although as a guardian of the petitioner.

6. There is no copy of the document of sale on record. It is not, therefore, possible to find out what were the recitals in the transaction leading to that sale; actually when the sale was effected, who was the vendee and the circumstances in which the transaction came to be made. Either the sale was necessary and was binding on the minor or it was not necessary and is not binding on

the minor. There appears to be no evidence that the sale was effected after following the proceedings required under Section 8 of the Hindu Minority and Guardianship Act, 1956. The Courts below having accepted that the partition of 1950 was genuine; petitioner is the sole owner of the property that was allotted to his share. Under Section 8 (2) of the Hindu Minority and Guardianship Act a natural guardian shall not without previous permission of the Court, mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immoveable property of the minor. Thus, there is a prohibition in positive terms against a natural guardian alienating the property of his minor ward. Under sub-section (3) of Section 8 of the Act, any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him. It is further provided under sub-section (4) that no Court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor.

7. It will thus be seen that the law has cast a protective ring of these provisions against minors property being alienated by imprudent or reckless guardians, natural or otherwise. The need of obtaining permission of the Court ensures an independent judicial tribunal like the Civil Court making a thorough investigation into the circumstances of the family and deciding whether permission could be granted to sell the property. The effect of this provision is that a minor like the petitioner is entitled on attaining the maiority to avoid the sale. It is not necessary to decide in these proceedings whether the sale is only void and (sic) voidable.

8. Now, it is interesting to examine the effect of such a transaction by an imprudent guardian on the rights of a minor land-tenure-holder vis-a-vis the provisions of the new Tenancy Act. If the sale is for necessity, then possibly the alienation cannot come in the way of the petitioner because there being a compelling necessity to part with the property that transaction should not prove lack of *bona fides* in respect of an application for restoration of possession for his personal cultivation. On the other hand, if it is ultimately found that the sale is bad, vitiated on account of want of necessity and could be successfully avoided by the minor on attaining majority, the fact that such a sale was effected by a guardian contrary to the provisions of law and in disregard of it, should not visit adverse consequences on the very minor, whose property was wrongfully alienated by his guardian. So far as the minor is concerned, he is deprived of that property and unless he takes adequate steps according to law and have recourse to litigation, such property is lost to the minor for the time being. Thus, considered either way the circumstances prevailing on the date of the application and during the pendency of the enquiry, the minor is deprived of the benefit of that property. That being the position of a minor tenure-holder, I do not see how an imprudent transaction, not permitted by law, effected by a guardian of the minor should be considered relevant in deciding the *bona fides* of the need of the minor tenure-holder to have the land restored for personal cultivation.

9. In my opinion, the application of such a minor tenure-holder must be considered on the merits

of his case de hors the transactions which are not prima facie binding on him, the transactions having been made in contravention of the provisions of law.

10. There is yet another aspect of the matter. The minor undoubtedly could make an application for restoration of possession within time prescribed by Section 38 of the Tenancy Act after attainment of majority, but when an application has been made during his minority, the minor tenure holder should not be put to a double disadvantage of having every application rejected on the sole ground that his guardian had effected an imprudent alienation and at the same time depriving the minor his right to file an application for restoration of possession after attainment of majority. In my opinion, therefore, in adjudicating the application of minor tenure holder, the property that is, in fact, available for cultivation and which in fact gives income to the minor should be taken into account and if on that basis the minor establishes that there is *bona fide* need for personal cultivation of the land, the application should be decided. In this view of the matter, it is not possible to sustain the order of the Tribunal or the appellate authority. They are accordingly set aside. The order of the Naib Tahsildar is also set aside. The matter is sent back for a fresh enquiry de novo and disposal of the application according to law in the light of the observations made above.

11. The result is, the petition is allowed, but there will be no order as to costs.
Case remanded.