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ARUN KUMAR

v.

STATE OF KARNATAKA AND ANR.
(Civil Appeal Nos.1096-1097 of 2002)

B

APRIL 7, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Tenancy laws:

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Bombay Tenancy and Agricultural lands Act, 1948 – s.5(3)(b) – Surrender of lands relating to two survey numbers by tenant-respondent – Order passed by Tehsildar showed only land relating to one survey number – Respondent filed application for grant of occupancy rights – Dismissed – High Court placed reliance on order of Tehsildar that surrender was only in respect of one survey number – On appeal, Held: Documents show that lands in respect of both survey numbers were surrendered by respondent – Deposition of respondent in a statement made before Tehsildar that he voluntarily left cultivation and surrender deed bore his signature – In view of documentary evidence, High Court ought not to have placed reliance on order where there appeared omission of surrendered survey number.

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Appellant was the owner of suit property measuring 2 acres 30 guntas in Survey no.179 and an extent of 2 acres and 15 guntas in Survey no.106. The said land was under the tenancy of respondent no.2 who had surrendered both the suit properties to the appellant's father. To substantiate such stand the appellant produced the deed of surrender, statement of the father of the appellant dated 22.8.1955 before the Tehsildar; statement of the respondent dated 6.9.1955 before the Tehsildar and possession certificate issued in the presence of Village Accountant and Panchas on 8.12.1955, which were in respect of both the properties.

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Apart from the above documents, mutation entries in the records in respect of both the properties were in favour of the appellants since 1955. However, due to inadvertence when the order was passed by Tehsildar on 6.9.1955, Survey no.106 was not recorded. Taking advantage of the said order, respondent no.2 filed an application for grant of occupancy rights after amendment to the Act w.e.f. 1.3.1974. The Appellate Authority, recorded the findings that there has been valid surrender in accordance with the provisions of the Bombay Tenancy Act in the year 1955 itself. It was, however, got recorded in the name of the appellant in the revenue records since 1955 without any objection from respondent no.2 and as on 1.3.1974 the respondent no.2 was not cultivating the land at the tenancy.

A revision was filed before the High Court by respondent no.2, wherein it was held that the surrender was only in respect of Survey no.179, and, therefore, respondent no.2 was entitled to grant of occupancy rights in respect of Survey no.106.

In appeal to this Court, appellant contended that the High Court did not notice the requirement of s.5(3)(b) of the Bombay Tenancy Act, according to which the requirement for valid surrender namely; firstly, surrender deed has to be executed and secondly it has to be verified by the Tehsildar/Mamlatdar.

Allowing the appeal, the Court

HELD: 1.1. In the surrender certificate, it was clearly noted that both the lands were handed over to the father of the appellant. All the documents relied upon by the appellant clearly show that the surrender was in respect of lands relating to both survey numbers. [Para 9] [1197-D-E]

1.2. The deposition of respondent no.2 dated 6.9.1955 clearly showed that he himself admitted that he voluntarily

A left cultivation and the surrendered deed bore his signature. In view of the documentary evidence, the High Court ought not to have placed reliance on the order dated 6.9.1955 where there appeared to be genuine omission of the surrendered survey number. A surrender by
B tenant could be only valid and binding on him if it was in writing and was verified by Mamlatdar whose duty is to ascertain whether surrender was voluntary and was not under any pressure or undue influence of the landlord. [Paras 10, 11] [1198-G; 1199-A-B]

C *Vallabhbhai Nathabhai v. Bai Jivi* AIR (1969) SC 1190; *Ramchandra Keshav Adke (Dead) by Lrs. v. Govind Joti Chavare and Ors.* (1975) 1 SCC 559 – referred to.

D 1.3. The documentary evidence clearly established the fact that the surrender was voluntary and without pressure or undue influence. Tehsildar had endorsed his findings on the document itself. It is necessary to refer to ss.7 and 41 of the Act which provide for restoration of possession under certain circumstances. The procedure for recovery of such possession is also prescribed.
E Undisputedly, no such application was filed by the respondent no.2. Additionally, no action was taken by respondent no.2 for grant of tenancy rights from 1955 till 1974. [Para 12] [1199-C-D]

F CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1096-1097 of 2002.

From the Judgment and Order dated 9.3.1999 and 6.8.1999 of the High Court of Karnataka at Bangalore in L.R.R.P. No. 4052/1988 and C.P. No. 547/1999 respectively.

G Kiran Suri for the Appellant.

Sanjay R. Hegde (NP) for the Respondents.

The Judgment of the Court was delivered by

H DR. ARIJIT PASAYAT, J. 1 Challenge in these appeals

is to the order passed by a learned Single Judge of the Karnataka High Court allowing the civil revision filed under Section 121(A) of the Karnataka Land Reforms Act, 1961 (in short 'the Act'). Challenge in the petition was to the order passed by the Land Reforms Appellate Authority, Dharwad (in short 'Appellate Authority') Respondent no. 3 had filed the petition. The Appellate Authority set aside the grant of occupancy rights as granted by the Land Tribunal, Dharwad (in short 'the Tribunal').

2. Background facts as projected by the appellant are as follows:

Appellant is the owner of suit property measuring 2 acres 30 guntas in Survey no. 179 and an extent of 2 acres and 15 guntas in Survey no. 106. The said land was under the tenancy of respondent no. 2 who had surrendered both the suit properties to the appellant's father. To substantiate such stand the appellant produced the following documents:

- (a) Deed of surrender dated 10.3.1955.
- (b) The statement of the father of the appellant dated 22.8.1955 before the Tehsildar.
- (c) The statement of the respondent dated 6.9.1955 before the Tehsildar.
- (d) The possession certificate in the presence of village Accountant and Panchas on 8.12.1955.
- (e) The mutation entry dated 8.12.1955 by the Tehsildar.

3. At the relevant point of time the Bombay Tenancy and Agricultural Lands Act, 1948 (in short the 'Bombay Tenancy Act') was in operation in the State of Karnataka. Section 5(3)(b) of the said Act reads as follows;

"(3) Notwithstanding anything contained in sub-section (1)–

- (a) xxxxxx

- A (b) a tenant may terminate the tenancy at any time by
surrendering his interest as a tenant in favour of the
landlord:

B Provided that such surrender shall be in writing and shall
be verified before the Mamlatdar in the prescribed
manner.”

- C 4. Apart from the above documents, mutation entries in
the records in respect of both the properties are in favour of the
appellants since 1955. However, due to inadvertence when the
order was passed on 6.9.1955, Survey no. 106 was not
recorded. However, all the documents including the mutation
records, deed of surrender which was verified by the Tehsildar,
statement of parties, possession certificate, panchnama are in
respect of both the properties. Taking advantage of the said
D order, respondent no. 2 filed an application for grant of
occupancy rights after amendment to the Act w.e.f. 1.3.1974.
The Appellate Authority after considering the facts on record,
recorded the findings that there has been valid surrender in
accordance with the provisions of the Bombay Tenancy Act in
E the year 1955 itself. It was, however, got recorded in the name
of the appellant in the revenue records since 1955 without any
objection from respondent no.2 and as on 1.3.1974 the
respondent no.2 was not cultivating the land at the tenancy. In
fact, in the revenue records name of appellant is recorded as
F cultivator of his own lands.

- G 5. A revision was filed before the High Court by respondent
no.2. The High Court came to hold that the surrender was in
respect of Survey no.179. Reference was made only to the order
of the Tehsildar where reference was made only to Survey
no.179. It was, therefore, held that respondent no.2 is entitled to
grant occupancy rights in respect of 2 acres and 5 guntas in
respect of Survey no.106 re-numbered as 208.

- H 6. Stand of the appellant in the present appeal is that the
High Court should not have exercised revisional jurisdiction
interfering with the findings recorded by the Appellate Authority.

The High Court, it is submitted, did not notice the requirement of Section 5(3)(b) of the Bombay Tenancy Act, according to which the requirement for valid surrender namely; firstly, surrender deed has to be executed and secondly it has to be verified by the Tehsildar/Mamalatdar (for Karnataka). The deed of surrender was verified by the Tehsildar whereby the Tehsildar has verified as under:

“The right of a tenant and the effects of surrender were fully explained to the tenant and I am satisfied the surrender is voluntary.”

7. According to the appellant, the inevitable conclusion is that there was valid surrender in 1955 itself.

8. There is no appearance on behalf of the respondent no.2 in spite of service of notice.

9. In the surrender certificate it is clearly noted that both the lands were handed over to the father of the appellant. All the documents relied upon by the appellant clearly show that the surrender was in respect of lands relating to both survey numbers. The statement of the respondent was recorded by the Land Tribunal and is very significant. In the order dated 24.12.1981 it has been noted as follows:

“Applicant and Respondents are present. Applicant has stated that in the said land he is cultivating the land as tenant to the area measuring about 2 acres 30 guntas. Respondent has denied and stated that he is not cultivating as a tenant, he was cultivating the land prior to 1955, he has surrendered the lands in 1955 since then we are only cultivating the land.”

In the records from 1956-57 to 1978-79 in the cultivators column, it is shown as “OWN” (Swantha Saguvali). The name of the applicant is nowhere mentioned as a tenant. Hence, to decide who is cultivating the said land measuring 2 acres 30 guntas whether the applicant is cultivating as a tenant or whether the tenancy rights can be granted to

A the applicant, the tribunal decided to do the spot inspection. And on 19-12-1981 inspected the spot.

B At the time of spot inspection inquired the neighbouring owners of the land and villagers, 1 Sri Basappa Fakirappa Pattada i, Sri Ahamappa, Sri Jeevapa Sangolli, Sri Hanumanthappa Padmappa Ahethi, Sri Bheemappa Huger etc., have stated that 2 acres 30 guntas in survey No. 208, Garag is cultivated by the applicant since from his father's time.

C Hence in the records the name of the applicant is not appearing in the year 1973-74 for block no. 208 measuring 2 acres 30 guntas as tenant. At the time of spot inspection, it was seen that applicant is cultivating the said land. Hence, the Land Tribunal decided that applicant was a tenant in the year 1973-74 for 2 acres 30 guntas and as D on 1-3-1974 the said land 2 acres 30 guntas was a tenancy land, has granted the tenancy rights for 2 acres 30 guntas. Allowed the applications for 2 acres 30 guntas, for rest of the land application is rejected.

E For the land in Block No.208 situated at Garag village, Dharwad measuring 2 acres 30 guntas, the name of the applicant i.e., Sri Havalappa Gadigeppa Kittur is granted tenancy rights as per Sec. 48-A(5) of the Land Reforms Act.

F Order pronounced in the open court on 24-12-1981."

G 10. The deposition of respondent no. 2 dated 6.9.1955 clearly show that he himself admitted he voluntarily left cultivation and the surrendered deed bears his signature. In view of the documentary evidence the High Court should not have placed reliance on the order dated 6.9.1955 where there appears to be genuine omission of the surrendered survey number.

H 11. The effect of surrender of tenancy was considered by this Court in (AIR 1969 SC 1190) and *Ramchandra keshav Adke (Dead) by Lrs. v. Govind Joti Chavare and Ors.* ((1975)

1 SCC 559). In the latter case it was, inter alia, held that the tenancy of such surrender comes to an end and the rights arising out of that relationship terminate. A surrender by tenant can be only valid and binding on him if it was in writing and was verified by Mamaltdar whose duty is to ascertain whether surrender was voluntarily and was not under any pressure or undue influence of the landlord.

12. In the instant case the documentary evidence clearly established the fact that the surrender was voluntary and without pressure or undue influence. As noted above, Tehsildar has endorsed his findings on the document itself. It is necessary to refer to Sections 7 and 41 of the Act which provide for restoration of possession under certain circumstances. The procedure for recovery of such possession is also prescribed. Undisputedly, no such application was, however, filed by the respondent no.2. Additionally, no action was taken by respondent no.2 for grant of tenancy rights from 1955 till 1974.

13. Above being the position, the High Court's order is clearly indefensible and is set aside and the order passed by the Appellate Authority is restored.

14. The appeals are allowed without any order as to costs.

D.G.

Appeal allowed