

(1971) 06 BOM CK 0009**Bombay High Court****Case No:** Spl. Civil Application No. 2047 of 1966

Dadu Narayan Patil

APPELLANT

Vs

Jamnibai Ragho Patil and Others

RESPONDENT

Date of Decision: June 17, 1971**Acts Referred:**

- Bombay Tenancy and Agricultural Lands Act, 1948 - Section 84
- Constitution of India, 1950 - Article 227

Citation: AIR 1973 Bom 192 : (1972) 74 BOMLR 625 : (1972) ILR (Bom) 910 : (1972) MhLJ 912**Hon'ble Judges:** Wagle, J**Bench:** Single Bench**Advocate:** D.N. Parulekar, for N.S. Shastri, for the Appellant; H.D. Gole, for the Respondent**Judgement**

@JUDGMENTTAG-ORDER

1. This is a petition by an opponent to an application made by the heir of the tenant to claim possession u/s 84 of the Tenancy Act in which an order for eviction was passed. The facts of this case are the following :

2. On January 9, 1965 the present Opponent No.1 made an application u/s 84 of the Tenancy Act for obtaining possession from the present petitioner. Her contention in the application was that her husband Ragho Patil was declared to be a protected tenant of the lands in dispute. He continued to be in possession until his death in 1959. Jamnibai, the widow, was his only heir, as such she became entitled to possession of this land. She further stated that Opponent No.1 was wrongfully in possession of the property and had deprived her of her legitimate right to be in possession. She, therefore, claimed the relief for possession u/s 84 of the Bombay Tenancy Act.

3. This application was contested by the petitioner on the ground that the brother of opponent No.1, the landlord, had in the year 1953 given these lands on lease to him. Some unstamped vague letter was produced as a deed of lease. Upon enquiry the learned Assistant Collector of Thana came to the conclusion that the material led by the petitioner was not believable that he was the tenant of the land. However, a further fact was taken into consideration by the learned Assistant Collector viz. that an application u/s 70-B of the Tenancy Act was made by the petitioner and that the right of Ragho Patil, the deceased husband of the original applicant needs to be properly enquired into and only then the summary powers u/s 84 can be exercised. The application made by present Opponent No.1 was dismissed. Against that order the present Opponent No.1 went in appeal to the Revenue Tribunal and the Revenue Tribunal held that the present petitioner failed to prove that he had any right to remain upon the property and therefore the original Applicant Jamnibai had proved that the present petitioner was wrongfully in possession of the land. The revision application, therefore was allowed by the Revenue Tribunal and an order for summary eviction of the present petitioner was made. Against this order the instant petition has been filed.

4. Mr. Parulekar who appears for the petitioner contended that under a clear misconception of law an application which was not maintainable was considered by both the lower Authorities and an order was passed which is detrimental to the rights of the present petitioner. What was urged by Mr. Parulekar was that Section 84 could come into operation only if there was no other provision in the Tenancy Act which enabled a person to obtain possession of agricultural property, Reliance was placed by Mr. Parulekar on clause (c) of Section 84 which reads as follows :

"any person unauthorizedly occupying or wrongfully in possession of any land to the use and occupation of which he is not entitled under the said provisions and the said provisions do not provide for the eviction of such persons, may be summarily evicted by the Collector."

It was not sufficient, according to Mr. Parulekar, for the applicant u/s 84 to prove that the person actually in possession was unauthorizedly occupying it or was wrongfully in possession of it but also that there was no provision in the Tenancy Act which provided for the eviction of such a person. In other words, if there was any other provision in the Tenancy Act which provided for the eviction of such a person then Section 84 which confers a very wide power for exercising summary jurisdiction could not be availed of.

5. In furtherance of his argument Mr. Parulekar referred to the provision of Section 29 (1) of the Tenancy Act to urge that this section provided for obtaining of possession by a tenant who was put out of possession. He, therefore, urged that if Section 29 (1) was available to the tenant even against a trespasser, then the provisions of Section 84 would be excluded. If Mr. Parulekar could establish the fact that an application by a tenant against a trespasser could be made under the

provisions of any section other than Section 84 of the Tenancy Act, then certainly the argument would have great force. It is, therefore, necessary to find out whether an application by a tenant for possession against a trespasser who has dispossessed him could lie under the provisions of the Tenancy Act other than Section 84. In regard to the scope of Section 29 (1) and Section 84 certain decisions of this Court were cited by Mr. Parulekar. The first decision cited was [Shankar Raoji Patil Vs. Mahadu Govind Chawan](#), Chagla, C. J. delivering the judgment of the Division Bench observed at the end of the judgment as follows :

"There is some discussion in the judgments below as to the powers of the Collector u/s 84 summarily to evict the petitioners. In our opinion it is unnecessary to consider what is the true interpretation of Section 84 because either the Mamlatdar has jurisdiction u/s 29 (1) or he has not. The jurisdiction of the Collector to summarily evict a person u/s 84 can have no bearing on the jurisdiction of the Mamlatdar u/s 29 (1)"

It may be noticed here that the dispute in this case was between a tenant and a landlord. That was not a dispute between a tenant and trespasser and since the learned Judges observed that it was unnecessary to consider the true interpretation of Section 84, I do not think this judgment helps in any way so far as the instant case is concerned. A subsequent judgment of this Court in [Durgaben Manibhai Makanji Vs. Moria Bavia](#), was relied upon by the learned counsel, but the facts of this case reveal that the landlord had obtained an order from the Mamlatdar u/s 29 (2) of the Act. The tenant made an application u/s 84 of the Act for summary eviction of the landlord alleging that notwithstanding the order of the Mamlatdar he, in fact, had continued to be in possession but that he was dispossessed by the landlord. The Collector passed, an order u/s 84 summarily evicting the landlord. The learned Judges held that the Collector had no jurisdiction to proceed u/s 84 of the Act and that if the tenant had any grievance against the landlord, he should approach the Mamlatdar u/s 29 (1) of the Act. This is also a dispute between a tenant and a landlord where a tenant had made an application u/s 84. The learned Judges while construing the provisions of Section 84 observed as follows :

"The Legislature was very careful in enacting this section and conferring this wide power upon the Collector to see that where a procedure for eviction was provided for in the Act itself that procedure had to be availed of and it was only in those rare cases where the tenant or the landlord had to proceed against a person unauthorizedly in possession where he could not avail himself of the procedure under the tenancy Act that he could approach the Collector and ask his assistance for summary eviction."

6. The contention advanced by Mr. Parulekar was that Section 29 (1) provided for every case wherein a tenant could seek possession of agricultural land. Whether relief was claimed against the landlord, a person claiming under the landlord or a trespasser, the right of the tenant was restricted to Section 29 (1) of the Bombay

Tenancy Act. The observations cited by me above of the Division Bench clearly repel this contention advanced by Mr. Parulekar. The Division Bench recognised that there were rare cases where the tenant or the landlord had to proceed against the person unauthorizedly in possession. As to what those rare cases were or in what circumstances such cases arise was not discussed by the Division Bench, but it was assumed for the purpose of interpretation of the legislative enactment that in rare cases it was permissible for the tenant to proceed u/s 84 of the Tenancy Act. The last case on this point to which a reference was made, clearly considered what sort of rare cases would give a right to the tenant to proceed u/s 84. This is an unreported decision in *Spl. Civil Appln. No. 207 of 1956* decided by shah and Vyas, JJ. on 19-6-1956. The facts of this case were that a landlord had obtained an order for possession on January 19, 1951 as against the tenant Krishna, Krishna, the tenant, appealed to the Deputy Collector of Kolaba. On September 27, 1951 the Deputy Collector set aside the order of the Mamlatdar. However, before the final order was passed in appeal the landlord enforced the order of the Mamlatdar and obtained possession of the lands of the tenant. On these facts the tenant made an application u/s 84 of the Bombay Tenancy Act claiming a relief that the landlord be summarily evicted from the land as he had wrongfully obtained possession of the land. The question of the scope of Section 29 as well as the scope of Section 84 of the Tenancy Act was considered by the learned Judges and the learned Judges after referring to several circumstances observed as follows :

"If however he does not seek to enforce a right arising under the provisions of the Act but claims possession relying upon his title, an application invoking the exercise of jurisdiction by the Collector u/s 84 would in our judgment lie."

What were mentioned as rare cases in which a tenant could apply u/s 84 was further illustrated by the Division Bench in *Sp. C. A. No. 207 of 1956* by pointing out what one of such cases could be. The learned Judges observed that if without claiming any rights for enforcement arising under the Tenancy Act a tenant sought possession simpliciter on the ground that he was entitled to possession then an application u/s 84 would lie. In the three cases cited above, I find that in the first case in [Shankar Raoji Patil Vs. Mahadu Govind Chawan](#), the Division Bench specifically mentioned that they were not interpreting the scope of Section 84. In [Durgaben Manibhai Makanji Vs. Moria Bavia](#), the learned Judges observed that there were rare cases in which a tenant as well as a landlord could apply u/s 84. That was a clear interpretation of law that Sections 29 (1) and 29 (2) do not lay down the only remedies available to a landlord or a tenant, and the last case *Spl. C. A. No. 207 of 1956* clearly lays down that an application u/s 84 could be made by a tenant who was dispossessed, not claiming under any provisions of the Bombay Tenancy Act, but only upon his title to possession of land. There is, therefore, no substance in the contention advanced by Mr. Parulekar that the application made by Opponent No.1 was misconceived.

7. A further point was taken by Mr. Parulekar that before the application made by Opponent No.1 u/s 84 was disposed of, the petitioner had applied u/s 70B. But the fact that an application is made u/s 70B does not establish any right in the petitioner to contend that he has been rightfully in possession of the property. Whether a person was unauthorisedly occupying or was wrongfully in possession of the property, is a question of fact and that is decided by the Revenue Tribunal by holding that the present petitioner was unauthorisedly occupying or wrongfully in possession of the property. For the purpose of deciding that question the first court held that the petitioner was unauthorisedly occupying and wrongfully in possession of the property. The claim made by the petitioner that he had obtained a writing from the brother of the original landlord was considered by the Assistant Collector by comparing the same with the fact that the name of opponent No. 1's husband appeared as a protected tenant and that there was a mutation entry to that effect. In view of these circumstances it cannot now be urged by the petitioner in this Court that the decision that he was wrongfully in possession is erroneous. The result is that the petition fails.

8. Rule is discharged with costs. As has been pointed out by the Member of the Revenue Tribunal, the application made by the petitioner u/s 70B will not in any way be affected by these orders.

9. Rule discharged.