

(1958) 07 BOM CK 0038

Bombay High Court

Case No: Special Civil Application No. 530 of 1958

Dhundiraj Jayaram Marathe

APPELLANT

Vs

Dhondu Anaji Pilankar and
Others

RESPONDENT

Date of Decision: July 15, 1958

Acts Referred:

- Bombay Tenancy and Agricultural Lands Act, 1948 - Section 43C, 84

Citation: AIR 1959 Bom 319 : (1958) 60 BOMLR 1393 : (1959) ILR (Bom) 590

Hon'ble Judges: Chagla, C.J; V.S. Desai, J; Tarkunde, J

Bench: Full Bench

Advocate: L.G. Khare, for the Appellant; T.N. Walavalkar and K.B. Parchure, for the Respondent

Judgement

M.C. Chagla, C.J.

This is a more extreme case than the one we were considering in the previous Full Bench case, where an attempt is made by the tenant to avail himself of the proviso of Section 43C of the Tenancy Act. The few facts here are that the landlord terminated the tenancy on the 18th December 1953 and filed a suit in the Civil Court for ejectment on the 18th August, 1954. A decree was passed on the 22nd April 1955 by which the landlord was given possession. The landlord executed the decree and a warrant for possession was issued in his favour on the 23rd April 1955, and on the very next day he obtained possession. Then, after the amendment came into force, the tenant applied to the Prant Officer u/s 84 of the Tenancy Act claiming possession from the landlord on the ground that he was a trespasser. That application was rejected by the Prant Officer. There was a revision application to the Revenue Tribunal. The Tribunal concurred with the decision of the Prant Officers; and the tenant has now come in revision.

2. Now, what the tenant is seeking to do is to set aside, decree passed by a competent Court. When the decree was passed on the 22nd April 1955, that decree was in conformity with the law. The legal fiction introduced by the proviso was not available to the tenant and inasmuch as the Tenancy Act did not apply to him the landlord was entitled to the decree. Not only the decree has become final inasmuch as no appeal or revision has been preferred against it, but the decree has been executed and possession has been taken by the landlord under that decree. The legal fiction at the highest can be availed of by the tenant in pending proceedings. The tenant can ask a Court either of first instance or of appeal or even of revision to pass a decree in conformity with the law which obtains at present. But the legal fiction does not permit the tenant to tell us that although the Courts passed judgment in accordance with the law, although that judgment has been executed, in view of the legal fiction introduced thereafter he is claiming certain rights which rights he did not have at the date when the litigation finally ended. In our opinion, no Court has ever taken the view unless the Legislature expressly provides that a particular legal fiction should affect not only pending litigation but decrees passed by a competent Court, retrospective effect of any legislation can be such as to affect or prejudice decrees passed by competent Courts.

3. The result is that the application must fail and is dismissed. No order as to costs.

4. Application dismissed.