

(2010) 02 BOM CK 0127

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 658 of 1990

Maroti Chavan (died
through L.Rs.,
Harischandra Chavan,
(died through L.Rs.,
Vimalbai Harischandra
Chavan and Others)),
Bhikchand Chavan and
Jaichand Gopinath
Chavan

APPELLANT

Vs

Patilba Patekar (Died
through L.Rs., Zelabai
Patekar and Others),
State of Maharashtra
and Maharashtra
Revenue Tribunal

RESPONDENT

Date of Decision: Feb. 26, 2010

Acts Referred:

- Evidence Act, 1872 - Section 116

Citation: (2010) 02 BOM CK 0127

Hon'ble Judges: P.R. Borkar, J

Bench: Single Bench

Advocate: S.P. Deshmukh, for the Appellant; M.N. Navandar and B.V. Wagh, Assistant Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

P.R. Borkar, J.

This writ petition, which is filed by legal representatives of Gopinath Chavan, challenges the order passed by the Maharashtra Revenue Tribunal (for short "M.R.T."), in Case No. 150/B/89-Aurangabad and Case No. 3/B/88-Aurangabad, decided by a common

judgment on 30.06.1989, whereby the Tribunal allowed the both revision petitions, set aside orders of the Tahsildar and Collector and held that both the Lower Courts committed error of law in directing original respondent Patilba to handover possession to heirs of Gopinath, who are original petitioners in this petition. He also set aside order regarding recovery of arrears of rent.

2. Brief facts giving rise to this writ petition may be stated as follows:

One Radhakishan was the original owner of Survey No. 83 (Block No. 130) of village Turkabad Kharadi, Tal. Gangapur, Dist. Aurangabad. He had agreed to sell said land to Gopinath Chavan of whom petitioners are legal representatives and accordingly an agreement of sale was executed in favour of Gopinath. On same day, there was an agreement of lease executed between Gopinath and present respondent No. 1-Patilba Patekar and thereby it is stated that respondent Patilba was inducted as a tenant. However, case of Patilba is that he had been tenant of the land since prior to said agreement and had become protected tenant. It is further admitted position that permission for sale was sought. The permission was granted and the sale deed was by Radhakishan in favour of Gopinath on 18.08.1951.

3. Thereafter, Gopinath applied for recovery of possession and arrears of rent. Said application dated 19.07.1963 was rejected by the Tahsildar. The arrears of rent claimed were for the years 1960-61, 1961-62 and 1962-63. Arrears were in all Rs. 523=40 ps. Gopinath died pending the proceeding before the Tahsildar on 22.01.1964 and the original petitioners of this writ petition were brought on record as his legal representatives and they continued the proceeding. The application was rejected and therefore appeal was filed to the Dy. Collector and the Dy. Collector also dismissed the appeal on 27.12.1966. As against the same, revision was filed to M.R.T., which, by order dated 19.01.1968 remanded the matter. Thereafter, the matter was reheard by the Additional Tahsildar and he held that the lease-deed was executed by Patilba in favour of Gopinath and he passed order for arrears of rent and also for delivery of possession. Said order passed by the Additional Tahsildar dated 15.10.1985 is produced on record with the petition. It is said therein that respondent Patilba who was tenant was proved to be willful defaulter of payment of rent and thus u/s 32(2) of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (for short "H.T.A.L. Act"), possession be restored to the legal representatives of Gopinath, so also they are entitled to arrears of rent of Rs. 523.40 ps. for the years 1960-61 to 1962-63 in three equal installments. As against said decision respondent No. 1 Patilba filed appeal bearing case No. LR/TNC/219 which was heard by the Dy. Collector, Land Reference, Aurangabad, and the judgment is dated 29.08.1986, copy of which is at Exh. "C" with the petition. The Dy. Collector held that the claim for possession u/s 32(2), which was made in the original plaint was deleted by amendment application that was allowed by the then Nayab Tahsildar vide order dated 22.10.1975 and therefore that part of the order of the Tahsildar was set aside. He allowed the appeal to the extent of delivery of possession and set aside order about delivery of possession, but confirmed the order so far as payment of arrears of rent is concerned.

4. In the meantime, a fresh application was filed by the present petitioners for possession on the ground of default. The Tahsildar ordered delivery of possession. Respondent No. 1 Patilba filed appeal against the same. Same was also dismissed. As against the orders passed by the Dy. Collector, Land Reference, Aurangabad, (by order dated 29.08.1986 in Case No. LR/TNC/219), revision was filed to M.R.T. Similarly, revision was also filed to M.R.T. against order of delivery of possession passed in separate proceedings which were initiated. The M.R.T. decided both the revision application viz. Case No. 150/B/89-Aurangabad and Case No. 3/B/88-Aurangabad by a common judgment dated 30.06.1989. As stated earlier, the M.R.T. allowed both the revision petitions and set aside orders of the Lower Court. Thus, both prayers for possession and recovery of rent were rejected by the M.R.T. and as against the same, present petition is filed.

5. Even prior to above litigation, the permission for sale by Radhakishan to Gopinath granted was challenged by Patilba. Said permission was cancelled by the Collector. That order was challenged by Gopinath in record No. 87 of 1953 before the Board of Revenue. The Board of Revenue by order dated 03.11.1952 confirmed the order passed by the Dy. Collector, Aurangabad, thereby cancelling the permission for sale granted to Gopinath to purchase land from Radhakishan. The copy of certified copy of judgment of Board of Revenue is at page No. 255 of the Trial Court record and proceeding. Therein, the Board of Revenue has come to a conclusion that Patilba was a protected tenant and as such he had preferential right of purchase and the offer of sale should have been made first to Patilba and in the circumstances the order passed by the Dy. Collector revoking permission was upheld and the appeal to the Board of Revenue was dismissed. Said order dated 03.11.1952 has become final and there is nothing on record to show that it was ever challenged. So, in the circumstances, the sale-deed executed by Radhakishan in favour of Gopinath on 18.08.1951 was without permission or put it more correctly, it could not be held to be with valid permission, in as much as permission was revoked subsequent to the sale-deed.

6. It is argued on behalf of petitioners that on 26.07.1950 Radhakishan has put Gopinath into possession on the basis of agreement of sale and on same day lease-deed has come to be executed between Gopinath on one hand and Patilba on the other. So, Gopinath was in lawful possession on the basis of agreement of sale and as such he is holder of the land and respondent No. 1 Patil was his tenant and as such he was entitled to file proceedings u/s 28 of the H.T.A.L. Act for termination of tenancy for non-payment of rent and recovery of rent and in the circumstances the M.R.T. committed error in not considering this aspect.

7. As per Section 28 of the H.T.A.L. Act, where a tenancy of any land held by a tenant is terminated for nonpayment of rent and the land holder files any proceeding to eject the tenant, the Tahsildar shall call upon the tenant to tender to the land holder the rent in arrears together with the cost of proceedings within ninety days from the date of the order, and if the tenant complies with such order, the Tahsildar shall, in lieu of making an order of ejectment pass an order directing that the tenancy has not been terminated. The

holder of land is not defined in H.T.A.L. Act. However, as per Section 2(z) the words and expressions used in H.T.A.L. Act and the Act defined therein shall have meaning assigned to them in Hyderabad Land Revenue Act, (VIII, 1317 Fasli). As per Section 2(6) of the Hyderabad Land Revenue Act, 'to hold land' or to be 'land holder' or 'holder of land' means to be lawfully in possession of land, whether such possession is actual or not. So, it is argued that a person put into possession of land on the basis of agreement of sale will be a holder.

8. On record of the Trial Court, the copy of judgment of Civil Suit No. 16/1 of 1959 in the Court of Civil Judge, Junior Division, Gangapur, Dist. Aurangabad, is produced. It was a suit filed by Gopinath against sons of Radhakishan and present respondent No. 1 Patilba. The suit was filed for recovery of Rs. 5500/- from the sons of Radhakishan and also Patilba. It was stated therein that sale-deed dated 18.08.1951 was executed by Radhakishan in favour of plaintiff Gopinath. He also produced agreement of sale dated 26.07.1950, the original permission for sale was granted by the Dy. Collector on 18.07.1951 and the copy of decision of Collector dated 31.08.1956 thereby revoking the permission for sale. Written statements were filed by the minor sons of Radhakishan and also by Patilba. They pleaded ignorance of the sale and the proceedings before the Revenue Court and it is also said that it was ancestral property of Radhakishan, which he was not competent to sell. He was also drunkard, leading luxurious life and sons of Radhakishan are not liable to pay. Present respondent No. 1 Patilba also filed written statement and stated that he is not responsible for the payment of the money nor the plaintiff had paid it to Radhakishan. It is mentioned in the judgment that the plaintiff was entitled to get back amount in view of cancellation of the sale-deed, however, the suit is barred by limitation. So, if we consider the judgment, the suit ultimately was dismissed on the ground of limitation. So, question arose, whether after said judgment present petitioner can claim any right to the suit property even on the basis of agreement of sale. He ceased to have any right once he filed suit with a case that since permission was revoked, the contract of sale has become frustrated and he is entitled to get back purchase price paid to Radhakishan. So, after decree is R.C.S. No. 16/1 of 1959, decided on 8th July, 1959, the petitioners are not entitled to claim arrears of rent of years 1960-61 to 1962-63 or claim possession for nonpayment of rent. Moreover, basis for revocation of permission for sale was that respondent Patilba was protected tenant of land, which finding is not set aside by any authority.

9. The learned advocate for the petitioner referred to Exh. "B", which is possession receipt dated 05.01.1988 and also relied upon V.F. 7/12 extracts which are collectively given Exh. "C" with the reply affidavit and argued that on 05.01.1988 present petitioners were put into possession of the property and thereby respondent No. 1 - Patilba was dispossessed. The V.F. 7/12 extract is though continued to show name of petitioner Maroti in the occupation column, we do not find name of anybody in the cultivation column, which was kept blank throughout. So, V.F. 7/12 extracts do not show who was actually cultivating the land. The learned advocate Shri Navandar has argued that Exh.

"B" which is xerox copy of possession receipt is a forged document and it does not bear signature of respondent No. 1 Patilba and he requested this Court to compare signature on xerox copy of receipt Exh. "B" with the signatures of respondent No. 1 Patilba on Vakalatnamas presented in this writ petition, before the Additional Tahsildar, Dy. Collector and M.R.T. He also said that signature of respondent No. 1 - Patil was significantly different from the signatures appearing on receipt Exh. "B". He also argued that entries in V.F. 7/12 extracts have no evidentiary value. They do not confer or divest rights of parties and he relied upon Mahila Bajrangi (dead) through LRs. v. Badribai w/o. Jagannath and Ors. (2003) 2 S.C.C. 646, [Ganpati Munjaji Renge Vs. State of Maharashtra and others](#), [Shri Bhaguji Bayaji Pokale and others Vs. Shri Kantilal Baban Gunjawate and others](#), . Respondent No. 1 claimed that he is still in possession of the property and was never dispossessed and the possession receipt is false. Reference was also made to the observations made by the Additional Tahsildar and M.R.T. The Additional Tahsildar after comparing the signature has come to the conclusion that the signature appearing on the possession receipt is not of respondent No. 1 Patilba. However, he came to the conclusion that the lease-deed bore signatures of Patilba.

10. The Maharashtra Revenue Tribunal has proceeded on the finding of Board of Revenue (the judgment of which is on record), to hold that respondent No. 1 Patilba was a protected tenant and he was in possession for seven years prior to 1950 and offer to sell land ought to have been to the tenant in the first instance.

11. It is also observed that respondent No. 1 was entitled to challenge ownership of Gopinath and there is no bar of Section 116 of the Evidence Act. Section 116 of the Evidence Act is as follows:

116. Estoppel of tenant; and of licensee of person in possession - No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

Thus, the tenant of immovable property shall not during continuance of tenancy be permitted to deny that landlord of such tenant had, at the beginning of tenancy, a title to such immovable property. In this case, record clearly indicates that as per case of Gopinath himself, when the lease deed was executed, he was not owner. He was holder of the land on the basis of the agreement of sale. He has also filed suit for getting back the purchase money from legal representatives of Radhakishan, which suit came to be dismissed on the ground of limitation. It is also now fact prove from record that the permission for sale was refused. In the circumstances, it cannot be said that Gopinath continued to have any more right in the suit property after Civil Suit No. 16/1 of 1959 was dismissed by the Civil Judge, Junior Division, Gangapur, on 09.07.1959. In-fact, by filing

this suit, Gopinath had also given up rights whatsoever they may be under the agreement of sale. In the circumstances, the present petitioners are neither entitled to arrears of rent or for recovery of possession, claiming themselves to be holders under the provision of H.T.A.L. Act.

12. Further development deserves to be considered in this respect. Along with reply affidavit at Exh. R-1, respondent No. 1 has produced copy of judgment delivered by Civil Judge, Junior Division, Gangapur, in R.C.S. No. 216 of 1988, decided on 08.09.1993. It was a suit filed by Laxminarayan s/o. Radhakishan against original petitioner Maruti and respondent No. 1 Patilba. That was a suit filed for declaration of ownership in respect of the same land i.e. Gat No. 130 admeasuring 70 Acres 28 Gunthas situated at Turkabad, Tal. Gangapur. He also prayed for perpetual injunction restraining present respondent No. 1/Patilba from handing over possession of land to original petitioner No. 1 Maroti. In that suit present petitioner Maroti appeared and filed his say at Exh. 20. Issues were framed. The plaintiff filed his evidence. Present petitioner No. 1 Maroti filed his written statement, but did not cross-examine the plaintiff. However, present respondent No. 1, who was defendant No. 2, cross-examined the plaintiff. No evidence was led by defendants in that suit. Ultimately, the Court passed order declaring plaintiff Laxminarayan s/o. Radhakishan as owner of the land and by injunction perpetually restrained respondent No. 2 from delivering possession to respondent No. 1. Though the copy of judgment in R.C.S. No. 216 of 1988 was filed with the affidavit-in-reply on 8th July, 2009, no re-rejoinder is filed. It is not stated during arguments that said judgment and decree was challenged in appeal. So, the judgment of the Civil Court has clearly decided the rights of the petitioners finally and Laxminarayan s/o. Radhakishan was declared as owner and it is held that respondent No. 1 Patilba was not to have handover possession to petitioner Maroti. The learned advocate also invited by attention to annexure R-2 with reply affidavit, which is a copy of interim application Exh. 5 for temporary injunction filed in R.C.S. No. 81 of 2009, before the Civil Judge, Junior Division, Gangapur. That was suit filed by Laxminarayan s/o. Radhakishan against heirs of petitioner Maroti, thereby restraining said heirs from transferring, alienating or creating third party interest in the suit property on the basis of their names in V.F. 7/12 extracts and the Court has granted temporary injunction by order dated 31.01.2009. Be that as it may.

13. While parting I may also state that as per order passed on 08.03.1990, while admitting the petition, the petition was admitted by this Court only to the extent of recovery of rent. I quote said order as under:

Heard counsel.

Though the petitioner is not entitled for possession for want of intimations, petition admitted for recovery of rent.

Rule to that extent only.

14. After having given consideration to the totality of circumstances, in my opinion, present writ petition has no merit and same deserves to be dismissed. Therefore, the writ petition is dismissed. Rule discharged.