(1969) 08 BOM CK 0013

Bombay High Court

Case No: Spl. C. Application No. 866 of 1967

Vithal		APPELLANT
	Vs	
Maharashtra Revenue Tribunal, Nagpur and others		RESPONDENT

Date of Decision: Aug. 26, 1969

Acts Referred:

- Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 - Section 38(3)(d)

Citation: (1970) MhLj 185

Hon'ble Judges: M. N. Chandurkar, J

Bench: Single Bench

Advocate: P. S. Badiye, for the Appellant; V. G. Palshikar, For respondent No. 4, Respondents Nos. 1 to 3 were not represented, for the Respondent

Final Decision: Dismissed

Judgement

M. N. Chandurkar, J.

This petition involves the question as to what meaning should be given to the word "ancestor" used in section 38 (3) (d) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, hereafter referred to as the Tenancy Act. Field survey number 24/1, area 4 acres, 37 gunthas of village Gaulkhed, taluq Akot, district Akola, was owned by one Nathu son of Ramji Kunbi. Nathu died on 31-7-1959. He had executed a will on 22-11-1957 by which he bequeathed the field to the present petitioner Vithal Kisan. Vithal is the grand-son of the sister of Nathu''s wife, that is, the sister of Nathu''s wife was the grand-mother of the present petitioner and it is not disputed that the two families are entirely different. The petitioner''s name came to be recorded in the revenue papers as tenure-holder on 27-5-1900 and he started proceedings for resumption of possession of the disputed field on the ground that he required the land for personal cultivation. The Naib-Tahsildar granted the application of the petitioner and directed the tenant to deliver possession of this field survey No. 24/1 to the petitioner.

2. The tenant filed an appeal against this order and the Special Deputy Collector, who decided the appeal, took the view that the petitioner had not satisfied the requirement of section 38 (3) (d) of the Tenancy Act. He, therefore, allowed the appeal. The petitioner then filed a revisional application before the Maharashtra Revenue Tribunal and the Tribunal took the view that the petitioner had failed to show that the deceased Nathu was his ancestor. The revision application was, therefore, rejected. The petitioner has now filed this petition challenging the orders passed by the Maharashtra Revenue Tribunal and the Special Deputy Collector.

3. The learned counsel appearing on behalf of the petitioner contends that the petitioner was a relative of the deceased tenure-holder Nathu and that his name having been recorded on 27-5-1900 in the revenue records and that before that the name of deceased Nathu stood recorded in the revenue records, he must be taken to have satisfied the requirements of section 38 (3) (d) of the Tenancy Act. His contention is that the Revenue Tribunal was not justified in dismissing the revision application on the ground that the petitioner has failed to show that Nathu was his ancestor.

4. In order to appreciate this contention it is necessary to refer to section 38 (3) (d) of the Tenancy Act, which is as follows:

"38(3). The right of a landlord to terminate a tenancy under sub-section (1) shall be subject to the following conditions, namely,-

(a) .. ..

(b) ... ..

(c) .. ..

(d) The land leased stands in the record-of-rights or in any public record or similar revenue record on the 1st day of August 1957 and thereafter during the period between the said date and the date of the commencement of this Act in the name of the landlord himself or any of his ancestors, but not of any other predecessor-in-title from whom title is derived, whether by assignment or Court sale or otherwise or if the landlord is a member of a joint family, in the name of a member of such family."

The condition laid down in clause (d) reproduced above is required to be satisfied before the Tahsildar can hold that the landlord is entitled to possession of the land which he seeks on the ground that he bona fide requires it for personal cultivation. This clause contemplates that the name of the tenure-holder who makes an application u/s 38 read with section 36 of the Tenancy Act must be found recorded in the record-of-rights or a public record or similar revenue record, not only on the 1st day of August 1957, but between that date and the date of the commencement of the Act, that is, 30th December 1958, and this means that merely because the land stands recorded in the name of the landholder on the date on which he makes an application for possession he cannot be held to be entitled to obtain possession.

This clause further provides that in a given case if the landlord who applies for possession is not the same whose name is recorded during the aforesaid period, that is, 1-8-1957 to 30-12-1958, then this clause requires that the person in whose name the record stands must be any.of his ancestors, or if the landlord is a member of a joint family, the record must stand in the narao of a member of his family. It appears that if the name of only a particular category of predeeessor-in-title is recorded an application for possession can be made by a tenure-holder, in a case where the name of the tenure-holder applying for possession is not to be found recorded during the earlier period. This clause refers to two categories of predecessors-in-title, one category is of the ancestors and the other category includes the predecessors-in-title from whom title is derived whether by assignment or Court sale or otherwise. In other words, the effect of this clause is that if a landholder who applies for possession has derived his title to the agricultural land of which he seeks possession either by assignment or Court sale or in any other manner, then it cannot be said that he satisfies the requirements of section 38 (3) (d) of the Tenancy Act. The total effect of this clause appears to be that a tenure-holder who derives title from his prodecessor-in-title, who is not his ancestor, has no right to apply for possession.

5. The question, however, is what is the meaning to be attached to the word "ancestor". The words used in the clause are "any of his ancestors". The word "ancestor" is not defined in the Act. Webster''s dictionary gives the meaning of the word "ancestor" as follows:

"ancestor-

1. One from whom a person descends, either by the father or the mother, at any distance or time, a forefather; as, an ancestor of mine was one of the Pilgrim fathers.

2. In biology, a progenitor; a-hypothetical from or an early type from which an organism is developed.

3 In law, a predecessor in line of inheritance; a person from whom an estate was descended."

Chamber''s dictionary gives the meaning of the word "ancestor" as one from whom a person is descended; a forefather, Though the provisions of the Tenancy Act in their application are not restricted only to Hindus but apply to persons of all religions, it may be interesting to refer to a Full Bench decision of the Madras High Court in which meaning of the word "ancestor" in Hindu Law fell for consideration. This decision is reported in Karuppai Nachiar v. Shankara Narayan Chetty I L R 27 Mad. 300. Referring to the decision of the Privy Council in Venkayyamma Garu v. Venkataramanayyamma Bahadur Garu I L R 25 Mad. 678 the Madras High Court observed:

"In the Hindu law the word "ancestor" is not used in the wide sense in which it is used in English law as merely equivalent to the propositus and as the co-relative of heir. In Hindu law it is used only as signifying a direct ascendant in the paternal or maternal line, "and more technically as signifying the paternal grandfather and his ascendants in the male line, and in Colebrook''s ''Translation of the Mitakshara'' it is the expression "father''s father''s property" that is translated into "ancestral property''''. While it may or may not be that the expression "ancestral property" in their Lordships'' judgment is used in the latter sense iu which technical sense it is used in several judgments of their Lordships of the Privy Council and also by the Indian Legislature Suraj Burnt Koer v. Sheo Persad Singh I L R Cal. 148 at p. 164, Parbati Kumari Debi v. Jagdis Chunder Dhabat I L R Cal. 433 at pp. 452, 453, Rajah Suraneni Venkata Gopalla Narashimha Row v. Rajah Suraneni Lakshma Venkama Row 13 Moo. I A 113 at p. 140, Umrithnath Chowdhry v. Coureenalh Chowdhry 13 Moo. I A 542 at p. 546] and article 126 of the second schedule to the Indian Limitation Act, 1 877 it appears to us clear that it is not used as denoting property other than that which has devolved from a direct ancestor either in the paternal or maternal line."

6 The meaning of the word "ancestor" as used in English law also came up for consideration before Willmer J. in Knowles v Attorney-General (1950) 2 All England Law Reports 6. The provision which was being considered in that decision was section 2 (1) of the Legitimacy Act, 1926. Section 2 (1) of that Act was as follows:

"2 (1). A person claiming that he or his parent or any remoter ancestor became or has become a legitimated person may present a petition u/s 188 of the Supreme Court of Judicature (Consolidation) Act, 1926, and that Act, subject to such necessary modification as may be prescribed by rules of Court, shall apply accordingly."

The question posed for consideration was "whether the petitioner''s uncles Alexander and Arthur, in respect of whom this declaration was sought, can properly be regarded as being "remoter ancestors" within the meaning of section 2 (1)." The learned Judge proceeded to find out what was meant by "any remoter ancestor''''" and a reference was made to a decision of the House of Lords in Earl of Zetland v. Lord Advocate (1878) 3 Appl. Cas. 505. In this decision section 3 of the Succession Duty Act, 1953, the material part of which provided "... .the term ''predecessor'' shall denote the settlor, disponer, testator, obligor, ancestor, or other person from whom the interest of the successor is or shall be derived," was considered, and the views of two Law Lords were quoted. Lord Matherley''s observations that "the expression ''ancestor'' is perfectly accurate in a case of this kind and the word ''ancestor'' is properly assignable to the person who really preceded in the estate, although that person may not be the progenitor of the successor he may be, as in this case, his uncle" were quoted. The observations of Lord Selborne which were quoted were:

"Devolution by law takes place whenever the title is such that an heir takes under it by descent from an ''ancestor'', according to the rules of law applicable to the

descent of heritable estates; and in all cases of descent the estate of the successor is immediately ''derived'' from the ''ancestor'' from whom the estate descends. The word ''ancestor'' does not mean, either etymologically or technically, a lineal ancestor only; in illustration of which proposition, I may refer to a passage in Comyns'' Digest as to the English writ of ''mort d'' ancestor''; which (it is said)''does not lie upon the death of any ancestor, except a father, mother, brother, sisters, uncle, aunt, nephew or niece; for, upon the death of another ancestor, an aiel, besaiel, or coinage ,lies."

Willmer J. referring to both those views observed:

"Clearly if ''ancestor'' is capable of that extended meaning in relation to the Act of 1926 the petitioner would be justified in saying that his two uncles were ''ancestors''. Equally clearly he cannot say so if the expression ''ancestor'' connotes merely a lineal progenitor."

7. The extended meaning of the word "ancestor" referred to in the decision of the House of Lords in the case of Earl of Zetland v. Lord Advocate it is also referred to as the meaning of that word in ''Words and Phrases Judicially Defined'' by Roland Burrows K. C. in Volume 1 where at serial No. 377 with reference to the word ''ancestor'' it is stated that "the word ''ancestor'' is properly assignable to the person who really preceded in the estate, although that person may not be the progenitor of the successor-he may be, as in this case, his uncle. Zetland (Earl) v. Lord Advocate." The learned Judge who decided the Knowle''s case referred to the history of the writ of ''mort d'' ancestor'' to which a reference was made by Lord Solborne in the observations quoted above, and it appears from the decision that that writ was available for the relief of a dispossessed heir and the writ was equally available where he was heir to his father or to his uncle or to some other distant relation and it covered something more than mere lineal descent. On the basis of the authorities cited before the learned Judge, referring to the etymological meaning and the use of the word "ancestor" in England, the learned Judge has observed:

"Etymologically, as was pointed out and has been accepted by both sides, the word means "antecessor", one who goes before, and in this wider sense it has, I suppose, been replaced in modern times by the word "predecessor". I am tempted to take the view, from the etymological authorities to which I was referred, that the word was imparted into this country as part of the Norman-French which the Norman conquerors brought with them, and I can well believe that in the early days of its use its primary meaning was to connote the idea of succession, the "ancestor" being the person prior in succession to the "heir". That is the meaning, as I understand it, which is attributable to the word in connection with the writ of ''mort d'' ancestor. That is, of course, a technical meaning, and it is at least clear that for some purposes that technical meaning has survived otherwise the House of Lords, in dealing with the question of succession duty in the case to which I have referred, could not have come to the conclusion that they did come to, but it is equally clear that, at some

time in English history, another and new meaning of the word "ancestor" grew up, namely, as being the equivalent of forefather or lineal ascendant, and it is in that sense that it is in common use in ordinary language in modern times. It is interesting to note, as a matter of history, that the ousting of "forefather" in favour of "ancestor" does not seem to have taken place, at any rate, before the seventeenth century because in the authorised version of the Bible we still find the old-English word "forefather" regularly used, but in modern times we talk less of our forefather and rather more of our ancestors, and there is no doubt, I think, that in ordinary usage in modern times it has replaced the older English word to a large extent. On reference to modern English dictionaries, it appears clearly that in modern times the primary meaning of the word is "progenitor", i. e., it connotes lineal descent-indeed Murray''s Oxford English Dictionary fails to notice altogether the older and rather more technical meaning of the word which I have endeavoured to describe, and which appears in the House of Lords case to which I have referred "

(Italics is mine)

The learned Judge also then made a reference to an American decision in Valentine v. Wetherill (1860) 31 Barbour 635. In that case the President of the Court delivering the judgment of the Court had observed in relation to the use of the word "ancestor" under the American statute to which he was referring, as follows:

"The term "ancestor" is used in its proper sense, in the statute, and designates the immediate not the remote source of the intestate''s title. It is not equivalent to the expression ''the parent or other kindred of the intestate, as used in the statutes of Rhode Island. ''Ancestors'', derived from antecessors ,designates the ascendants of the intestate in the! right line, as father and mother, grandfather and grandmother, and does not include collateral relatives as brothers and sisters".

Having thus referred to the etymological meaning and the American decision, Willmer J. proceeded to observe:

"I accept the argument presented on behalf of the Attorney-General that prima facie in a statute such as these words are to be construed in accordance with their ordinary and natural meaning and, having regard to the English dictionaries to which I have been referred, I feel bound, at any rate at this date, to accept that "ancestor" in its ordinary and natural meaning connotes a progenitor or one in direct lineal line of descent."

In my view the decision in Knowles'' case can be considered as good authority for the view that the word "ancestor" as commonly used has ceased to have the extended meaning when it was used as referring to a person who preceded in the estate although that person may not be the progenitor of the successor and the meaning which should be given to word "ancestor" in modern times should be its natural and primary meaning connoting a progenitor and one in direct lineal line of descent.

8. That this is the sense in which the word is used in the Tenancy Act is also clear from the words of section 38 (3) (d) of the Tenancy Act. u/s 38 (3) (d), whatever may be the manner in which the landholder had derived his title if the predecessor-in-title of the landholder was not his ancestor, then an application for resumption of land in possession of the tenant is not maintainable. The word "ancestor" is used in a Restricted sense in section 38 (3) (d) as is clear from the words ''in the name of the landlord himself or any of his ancestors, but not of any other predecessor-in-title from whom title is derived''. Thus the entry contemplated by that clause (d) of section 38(3) is not of the name of any predecessor-in-title but only of that predecessor-in-title who is an ancestor. Thus it is clear that word ''ancestor'' cannot be given the extended meaning referred to earlier as contended on behalf of the petitioner, but it will have to be given the ordinary and natural meaning Which, as observed above, any of his ancestors. The mere fact connotes a progenitor or one in direct lineal line of descent.

9. As already stated, the present petitioner who came altogether from a different family and could not claim to be a descendant of the original landholder Nathu, cannot, therefore, be held to be a person who has satisfied the requirement of section 38 (3) (d) of the Act because the field did not stand recorded in the name of any of his ancestors The mere fact that no other heirs have come forth to claim the property or that the property had devolved on Vithal by virtue of a will does not entitle him to claim resumption, because before an order for resumption is made it is incumbent on the Revenue authorities to find out whether the person applying for resumption satisfies the requirements of section 38 (3) (d) among other provisions of the Tenancy Act. The Tribunal, in my view, was, therefore, right in coming to the conclusion that the petitioner did not satisfy the requirements of section 38 (3) (c) of the Act.

10. The order passed by the Tribunal is not, therefore, open to challenge. The petition must, therefore, be dismissed and it is dismissed with costs.