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Prithviraj Chunilal Sand Vs Hari Ganesh Parkhe

Letters Patent Appeal No. 37 of 1951

Court: Bombay High Court

Date of Decision: July 14, 1954

Acts Referred:
Bombay Tenancy and Agricultural Lands Act, 1948 â€" Section 89(2)#Civil Procedure Code, 1908 (CPC) â€" Order 21 Rule 35

Citation: (1954) 56 BOMLR 1076

Hon'ble Judges: Gajendragadkar, J; Chainani, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Gajendragadkar, J.
This appeal arises in execution proceedings and it raises a very short question under the Tenancy Act.

2. In Civil Suit No 47 of 1946 a decree for eviction was passed in favour of the landlord. The landlord had alleged that the tenant was in

possession of the land for some years before the institution of this suit and that his tenancy had been duly determined on April 15, 1942, or 1943.

He, therefore, claimed possession of the property and mesne profits for three years before the date of suit and future mesne profits, The civil suit

was instituted on October 16, 1946, The earlier Tenancy Act of 1989 was extended to Ahmednagar on November 8, 1946. On July 31, 1947,

the trial Court decreed the landlord"s claim. The landlord was authorised to take possession of the land from the defendant and he was given a

decree for Rs. 140 for past mesne profits and an order for inquiry into the future mesne profits under Order XX, Rule 12, was also made. Against

this decree the tenant preferred an appeal. The appeal was filed before the new Act of Tenancy of 1948, Act No. LXVII of 1948, came into

operation. The appeal failed and the decree of the trial Court was confirmed on July 19, 1950. It would appear that subsequent to the appeal

Court"s decision the tenant applied to the Mamlatdar on August 2, 1950, for a declaration that he was a protected tenant; and the Mamlatdar gave

him that declaration on November 1, 1950. An entry was accordingly made in the Record of Rights showing the tenant to be the protected tenant.

On November 23, 1950, the decree-holder filed the present darkhast claiming to recover possession of the land from the judgment-debtor. His

claim was met on two grounds. That the civil Court had no jurisdiction to execute the decree and that the only remedy available to the decree-

holder was to move the Mamlatdar in that behalf. It was also urged that the decree could not be executed in view of the declaration given by the

Mamlatdar that the judgment-debtor was a protected tenant. The executing Court has rejected both the pleas and has ordered execution to

proceed, under Order XXI, Rule 35, of the Code of Civil Procedure. The judgment-debtor preferred an appeal against this order; but his appeal

was summarily dismissed by Bavdekav J, It is this order which Mr. Kotwal seeks to challenge before us on behalf of the judgment-debtor.

3. From the dates which I have just mentioned, it would be apparent that the suit was filed before the earlier Tenancy Act of 1939 was made

applicable to Ahmednagar where the suit was tried. It is true that under the provisions of the Tenancy Act, LXVII of 1948, the jurisdiction of the

civil Court has been excluded as regards matters mentioned in Section 70 of the Act. The effect of Sections 70 and 85 of the Tenancy Act of 1948

is to confer exclusive jurisdiction on the Mamlatdar to determine the matters mentioned in Section 70 and to exclude the jurisdiction of the civil

Courts to determine these points. The position under the earlier Act of 1939 was, however, substantially different in regard to the jurisdiction of the

civil Courts. Mr. Kotwal has not seriously disputed before us that since the decree was passed in a suit which was filed even before the earlier Act

of 1989 was made applicable to the area, it could not be said that the civil Court had no jurisdiction to execute this decree. Mr. Kotwal, however,

has strenuously contended before us that even if the civil Court is competent to execute the decree, the civil Court will have to take judicial notice

of the fact that the Mamlatdar has given a declaration to the judgment-debtor about his status as a protected tenant and the effect of this

declaration must be that the civil Court would have to stay its hands and not direct possession of the property to be delivered to the decree-holder.

In support of this contention Mr. Kotwal has relied upon the provisions of Section 14 of the Tenancy Act, No. LXVII of 1948. This section

provides for the manner in which and the circumstances under which the tenancy can be determined and the provisions of this section apply

notwithstanding any agreement, usage, decree or order of a Court of law. According to Mr. Kotwal despite the decree which has been passed in

favour of the decree-holder it is only in pursuance of the provisions of Section 14 that the tenancy of the judgment-debtor can validly be

determined, and unless his tenancy is thus determined, it would not be open to a civil Court to execute the decree and evict the tenant. In support

of this argument Mr. Kotwal has also referred to the provisions of Section 29 of the Tenancy Act which lays down the procedure for taking

possession of agricultural lands. In our opinion the execution of the decree against the judgment-debtor in the present proceedings cannot be

resisted on these pleas. Section 89 of the Tenancy Act gives an answer to the pleas raised by the judgment-debtor. Section 89(2) lays down that

nothing in this Act...shall save as expressly provided in this Act, affect or be deemed to affect,

(i) any right, title, interest, obligation or liability already acquired, accrued, or incurred before the commencement of this Act, or

(ii) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability or anything done or suffered before the

commencement of this Act, and any such proceedings shall be continued and disposed of as if this Act was not passed.

It would be clear that the provisions of Sub-section (2) are intended to protect certain rights. They are also intended to protect legal proceedings in

respect of those rights. In the present case there can be no doubt that the landlord had the right to determine the tenancy in favour of his tenant and

that the said right had been validly exercised by him before he instituted his suit in 1946 against his tenant. The decree which was passed in his

favour gave effect to this right, and by directing the defendant to pay past mesne profits the decree recognised the fact that the possession of the

defendant was that of a trespasser after the tenancy in his favour had been validly determined by the plaintiff. In other words the defendant was

sued as a trespasser and a decree was passed against him on that basis. That explains why a decree for past mesne profits was passed against him

and an inquiry into future mesne profits was ordered to be made. In our opinion under the provisions of Section 89(2) this right which had vested in

the landlord and which has been recognised by a decree passed by a civil Court of competent jurisdiction has been expressly saved, and any of the

provisions contained in the Tenancy Act of 1948 cannot be pleaded against the enforcement of this right. It is perfectly true that it is only the legal

proceedings which are already instituted that receive the protection of this clause. In Dhondi Tukaram v. Dadoo Piraji (1952) 55 Bom. L.R. 663,

myself and Mr. Justice Vyas had occasion to consider the effect of the provisions of Sections 70 and 89 of the Bombay Tenancy and Agricultural

Lands Act, 1948. We have held in the said case that u/s 89(2)(b)(ii) it is only pending proceedings in respect of vested rights that are saved from

the operation of the Act and that even in respect of vested rights which are saved, if a suit to enforce them is filed subsequent to the

commencement of the Act, the provisions of the Act will apply. But in the present case, there can be no doubt that the legal proceeding to enforce

his right was instituted by the landlord when he filed the present suit. All further proceedings between the parties such as an appeal or an execution

application are continuation of the suit and arise from the suit. Therefore, in our opinion, there can be no doubt that just as the vested right of the

plaintiff to evict the defendant as a trespasser has been saved, so also the legal proceedings instituted by him in 1946 are saved, under the

provisions of Section 89(2).

4. Mr. Kotwal, however, contends that the right which the landlord seeks to enforce is not his original right to terminate the tenancy of the

defendant and to evict him, but the right to execute the decree which has accrued to him on the passing of the decree. Mr. Kotwal ingeniously

contends that the original right of terminating the tenancy and of evicting the defendant thereafter is now merged in the decree and it is the decretal

right which is being enforced and this decretal right is the right to execute the decree. In our opinion this is not a sound argument. The right which is

sought to be enforced in the present proceeding is the right to evict a trespasser. That right was asserted in the suit and was recognised by the

decree and is now being enforced in the execution of that decree. And it is exactly this kind of right and legal proceeding instituted to enforce it that

are saved by the provisions of Section 89(2) of the Tenancy Act of 1948. If this right and the proceeding in which it is enforced are protected

under Sub-section (2) of Section 89, no contention can be raised against the enforcement of this right by reference to any of the provisions of the

Tenancy Act. Nothing contained in this Act will affect the said right and the legal proceedings to enforce that right. If that be the true position, the

declaration given by the Mamlatdar purpoting to exercise jurisdiction u/s 70 can create no difficulty in the way of the decree-holder; it must be

remembered that the relationship of landlord and tenant between the plaintiff and the defendant has been already determined and a decree has

been passed against the defendant on the basis that he was a trespasser. In such a case the Mamlatdar would have no authority to hold that the

defendant is a protected tenant. The declaration granted by the Mamlatdar is, therefore, outside his jurisdiction and cannot affect the plaintiff"s right

to evict the defendant.

5. A similar question was raised before Mr. Justice Shah in Rajesab Imamsab v. Harischandra (1954) 54 Bom. L.R. 638 and it appears that Mr.

Justice Shah has taken the same view about the effect of the provisions of Section 89(2) as we have done. Since we hold that the right of the

decree-holder and the legal proceeding in which that right is enforced are saved under the provisions Section of 89(2), it is unnecessary to consider

what the effect of Section 14 or of Section 29 would be in cases where the said sections apply.

6. The result is the appeal fails and must be dismissed with costs.