

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 749 OF 1992**

1. Shri Prabhakat Sitaram
Prabhune & Ors.

..Appellants

Vs

1 Shri Bapu Jaywant Khomane,
since deceased, through L.Rs:
1A. Smt.Gunabai Bapu
Khomane and Ors

.. Respondents

Mr. V.S.Gokhale, Advocate for Appellants.
Mr. Sagar Joshi, Advocate for Respondents.

CORAM : R.G.KETKAR,J.
DATE : 20/04/2015

ORAL JUDGMENT:

1. Heard Mr. V. S. Gokhale, learned counsel for the appellants and Mr. Sagar Joshi, learned counsel for the respondents at length.

2. By this Appeal under section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), legal representatives of defendant no.1 and defendant no.2 have challenged the Judgment and decree dated 11.12.1991 passed by the learned Jt. Civil Judge, Jr. Dn., Baramati in Regular Civil Suit No.48 of 1988 as also the Judgment and decree dated 16.1.1992 passed by the learned Addl. District Judge, Baramati in Civil Appeal No.26 of 1991. By these orders, the Courts below decreed the suit instituted by respondent no.1-

Bapu Jaywant Khomane through his heirs and restrained defendant no.1-Prabhakar Sitaram Prabhune and defendant no.2 Sayyad Papabhai Gulab from causing any obstruction to peaceful possession of Vahivat of the plaintiff over the land admeasuring 1 Hectar 90R, out of Gat No. 327, situate at village Jalgaon-Supe, Taluka-Baramati, District-Pune (for short, 'suit land'). Parties shall, hereinafter, be referred to as per their status in trial Court. The relevant and material facts that are necessary for disposal of the Second Appeal, briefly stated, are as under.

3. The plaintiff instituted suit for perpetual injunction, inter alia, contending that the land bearing Gat no.327 is ancestral property of defendant no.1-Prabhakar Sitaram Prabhune and it is possessed by plaintiff-Bapu Jaywant Khomane and one Maruti Bala Khomane. They are tenants prior to tillers' day, i.e. 1.4.1957. The plaintiff contended that he is in lawful possession of the suit land and was not dispossessed by any competent authority. Defendant no.1 executed sale deed of 1/4th portion of Gat No.327 in favour of defendant no.2. The defendants are intending to dispossess him. He, therefore, instituted suit for perpetual injunction.

4. The defendants filed their Written Statements at Exhibits 24, 51 and 67. It was, inter alia, contended that the

plaintiff is not in possession of the suit land and that the defendants are in possession. On 6.7.1958, the plaintiff delivered possession to the father of defendant no.1. That apart, during the proceedings under section 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, 'Act'), the plaintiff voluntarily gave statement that he is not ready and willing to purchase the suit land. The purchase of the plaintiff had become ineffective. In the year 1969, defendant no.1 had sold out 1/4th share of the suit land to defendant no.2. It is because of that the plaintiff has instituted present suit.

5. On the basis of the pleadings of the parties, learned trial Judge framed the necessary issues. Parties led evidence. After considering the evidence on record, the trial Court decreed the suit. Aggrieved by that decision, the defendants preferred Civil Appeal. The same was dismissed. It is against these decisions, legal representatives of defendants no.1 and 2 have preferred this Second Appeal.

6. By order dated 11.2.1993, Appeal was admitted as grounds 1,2 and 3 raised substantial questions of law. These grounds read as under:

“1. Whether the Civil Court has a jurisdiction to declare that order passed by Tenancy Authorities are not just and proper?

2. Whether the Civil Court has a jurisdiction to examine validity of the various orders passed by Tenancy authorities and to declare them as unjust and improper?

3. Whether the suit filed by the plaintiff is tenable in view of Section 36(4) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act?"

7. In support of this Appeal, Mr. Gokhale reiterated the submissions that were advanced before the Courts below. He submitted that on 6.7.1958 the plaintiff had handed over possession and to that effect possession receipts were executed on 6.7.1958. That apart, in the proceedings under section 32-G of the Act, Bapu Jayant Khomane had made statement on 21.4.1959 (Exh.54) and expressed his willingness to purchase the suit land. On the same day Tribunal passed order declaring purchase ineffective. He submitted that Civil Court has no jurisdiction to declare that the orders passed by tenancy authorities are not just and proper. The Civil Court has no jurisdiction to examine the validity of various orders passed by tenancy authorities and to declare them as unjust and improper. The Courts below also failed to appreciate that the suit instituted by the plaintiff is not tenable in view of Section 36(4) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. For all these reasons, he submitted that the Courts

below committed serious error in decreeing the suit.

8. On the other hand, Mr. Joshi supported the impugned orders. He submitted that the Courts below, after considering the evidence on record, have concurrently held that the plaintiff is in lawful possession of the suit land and accordingly issued injunction. He, therefore submitted that no case is made out for invoking powers under section 100 of C.P.C.

9. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. In support of the plaintiff's case, the plaintiff examined two witnesses, namely PW Gopinath Jaywant Khomane at Exh.71 and PW 2 Hanumant Tukaram Khomane at Exh.80. Defendant no.1 examined himself at Exh.84 and on behalf of defendant no.2 Papabhai was examined at Exh.110. The defendants also examined Gulabrao Ramji Wable. After considering the evidence on record, the learned trial Judge decreed the suit. Th Appeal preferred by the defendants was also dismissed. The Courts below considered the statement dated 21.4.1959 (Exh.73) made by Bapu Jayant Khomane and the order passed on the same day ie 21.4.1959 at Exh.74. With the assistance of the learned counsel appearing for the parties, I have gone through Exhibits 73 and 74 as also Section 15 of the Act read

with Rule 9 of the Bombay Tenancy and Agricultural Lands Rules, 1956 (for short, Rules). Section 15 reads as under :-

S.15. Termination of tenancy by surrender thereof:-

(1) A tenant may terminate the tenancy in respect of any land at any time by surrendering his interest therein in favour of the landlords:

Provided that such surrender shall be in writing, and verified before the Mamlatdar in the prescribed manner.

(2) Where a tenant surrenders his tenancy, the landlord shall be entitled to retain the land so surrendered for the like purposes, and to the like extent, and in so far as the conditions are applicable subject to the like conditions, as are provided in sections 31 and 31A for the termination of tenancies.

(2A) The Mamlatdar shall in respect of the surrender verified under sub-section (1), hold an inquiry and decide whether the landlord is entitled under sub-section (2) to retain the whole or any portion of the land so surrendered, and specify the extent and particulars in that behalf.

(3) The land or any portion thereof, which the landlord is not entitled to retain under sub-section (2), shall be liable to be disposed of in the manner provided under clause (c) of sub-section (2) of section 32P.

10. Proviso to sub section (1) of Section 15 shows that the Mamlatdar before whom surrender is made, will ensure that it shall be in writing, and verified before Mamlatdar in the prescribed manner. Sub-section (2A) further lays down that the Mamlatdar shall in respect of the surrender verified under sub section (1), hold an inquiry and decide whether the

landlord is entitled under sub-section (2) to retain whole or any portion of the land so surrendered, and specify the extent and particulars in that behalf. Rule 9 of the Rules reads as under :

“9. Manner of verifying surrender of tenancy.

The Mamlatdar when verifying the surrender of a tenancy by a tenant in favour of the landlord under section 15 shall satisfy himself, after such enquiry as he thinks fit, that the tenant understands the nature and consequences of the surrender and also that it is voluntary and shall endorse his findings in that behalf upon the instrument of surrender.”

Perusal of Rule 9 shows that the Mamlatdar while verifying the surrender of a tenancy by a tenant in favour of the landlord under section 15 has to satisfy himself, after such inquiry as he thinks fit that he understands the nature and consequences of the surrender and also that it is voluntary and shall record his findings on that behalf upon the instrument of surrender. Perusal of the statement dated 21.4.1959 at Exh.73 and the order dated 21.4.1959 at Exh.74 do not show that the provisions of Section 15 of the Act read with Rule 9 of the Rules are complied. It does not appear that the Mamlatdar has explained the consequences to the tenant. Order also does not reflect compliance of Rule 9. In view thereof, I do not find that the Courts below committed any

error in decreeing the suit.

11. As far as the purported statement dated 6.7.1958 made by Bapu Khomane is concerned, in my opinion in the absence of valid surrender under section 15, the statement purportedly made by Bapu Khomane will have no evidentiary value. The Courts below, after appreciating the evidence on record, have found that the plaintiff is in lawful possession of the suit land. In view thereof, I do not find any merits in this Appeal. Substantial questions of law formulated at the time of admission of this Appeal on 11.2.1993 are answered accordingly. The Appeal fails and the same is dismissed with no order as to costs. Order accordingly.

(R.G.KETKAR, J.)