

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3473 OF 1992

Yashwant S. Mang
since deceased through Lrs.
Smt. Muktabai Y. Mang and ors. .. Petitioners

vs.
Dadu D. Mang
since deceased through Lrs.
Smt. Sakrubai D. More and ors. .. Respondents

Mr. N.J. Patil for Petitioners.
Mr. P.D. Dalvi for Respondent No.1A to 1C.

CORAM : M. S. SONAK, J.
DATE : 16 JANUARY, 2015

P.C. :-

1] This petition is directed against the orders dated 22 August 1979, 11 July 1988 and 28 January 1992, which hold that the respondents herein (defendants) have proved that they were lawful tenants in the suit property at the date of execution of Sale Deed dated 11 August 1954.

2] The facts in brief are that on 9 October 1968, the original petitioner instituted Regular Civil Suit No.49 of 1968, seeking *inter alia*, Specific Performance of Deed and Right dated 11 August 1954 in the matter of re-conveyance of suit property. The Civil Judge, Junior Division, was pleased to decree the suit vide judgment and decree dated 31 March 1970. In Civil Appeal No.84 of 1970, by judgment and decree dated 10 April 1972, the Appeal Court set aside the judgment and decree dated 31 March 1970, granted the

respondents an opportunity to amend their written statement by way of taking a clear plea of tenancy and remanded the matter to the Court of Civil Judge, Junior Division for reconsideration, in accordance with law. In view of the leave to amend granted by the Appeal Court, the written statement was amended, the following issue was cast and thereafter referred to the Tenancy Awal Karkun, Kagal for adjudication:

“Does the defendant prove he was a lawful tenant in the suit property at the date of Sale deed dated 11.8.1954?”

3] The Tenancy Awal Karkoon, by order dated 22 August 1979, relying mainly upon the admission contained in the Deed dated 11 August 1954, has answered the issue in favour of the respondent (original defendant). The Appeal and Revisional Authorities, by their orders dated 11 July 1988 and 28 January 1992 declined to interfere with the conclusions recorded by the Tenancy Awal Karkun in his order dated 22 August 1979. Accordingly, the present petition is directed against the three orders as aforesaid.

4] Mr. N.J. Patil, learned counsel for the petitioners, in the first place submitted that the finding of fact recorded by the Tenancy Awal Karkun and confirmed by the Appeal and Revisional Authorities are perverse. Learned counsel submitted that it was the case of the respondents that by virtue of Deed dated 11 August 1954, the respondents became the absolute owners in respect of the suit property. If this is so, then as held by the Apex Court in case of *Puran Chand (Deceased) through LRS. & and ors vs. Kirpal Singh (Deceased) and ors.*¹, the rights of the tenant as tenant merge with

1 (2001)2 SCC 433

the higher rights as owner and the tenancy comes to an end under Section 111 (d) of the Transfer of Property Act, 1882. Inasmuch as, this vital aspect has not been considered, the orders impugned in this petition ought to be interfered with. Mr. Patil further contended that alongwith the Deed dated 11 August 1954, the respondent (original defendant) had executed yet another writing, in the matter of re-conveyance of the suit property. Therefore, even assuming that the respondent (original defendant) were tenants at the time when the Deed dated 11 August 1954 was executed, such tenancy would not subsist as on 11 August 1954. There would accordingly, be no bar to decreeing the suit for specific performance.

5] Mr. P.D. Dalvi, learned counsel for respondents submitted that there was absolutely no perversity involved in the finding of fact recorded in the impugned orders. The Deed dated 11 August 1954 executed by the original petitioner, clearly contained the admissions as to the tenancy of the original defendant. That apart, the evidence led by the Authorities also established this fact. In such circumstances, Mr. Dalvi submitted that this Court ought not to interfere with the concurrent findings of fact recorded by not less than three Authorities.

6] Having considered the rival submissions and perused the record, in my judgment, this is not a case which warrants any interference with the impugned orders. The issue which tenancy of authorities were called upon to consider was whether the original defendant prove that he was the lawful tenant in the suit property, *“at the date of Sale Deed dated 11 August 1954”*. The Sale Deed dated 11 August 1954 itself records that the original defendant was

the tenant in respect of suit property. Further the statements / evidence tendered by the parties before the Tenancy Awal Karkun also established that the original defendant was indeed tenant in respect of the suit property at the date of Sale Deed dated 11 August 1954. The entries in the revenue records, though only presumptive in nature, also support such position. In such circumstances, it cannot be held that the finding of fact recorded by Tenancy Awal Karkun and confirmed by both the Appeal as well as Revisional Authorities suffers from any perversity. This Court in exercise of powers of judicial review, would normally be loathe to interfere with finding of fact, unless it is established that such findings are not at all borne by the evidence on record or are clearly contrary to the weight of the evidence on record. Accordingly, no case is made out to interfere with the impugned orders.

7] There is no necessity for this Court to go into the issue of the effect of Sale Deed dated 11 August 1954 upon the tenancy rights of the respondents (defendants). Similarly, there is no necessity for this Court to go into the effect of some other writing executed on 11 August 1954 itself in the matter of re-conveyance of the suit property. All these are matters, which will be gone into by the civil Court which had referred the issue of tenancy to the Authorities under the Tenancy Act. The issue before this Court basically relates to the finding that the defendant was lawful tenant of the suit property, at the time of Sale Deed dated 11 August 1954. Such issue has been rightly answered in favour of respondents (defendants) and no case is made out to interfere with the findings of fact recorded in that regard.

8] Accordingly, this petition fails and the same is dismissed. The Civil Court, before whom Regular Civil Suit No.49 of 1968 is pending, shall hear and decide the same, in accordance with law. Considering that the suit relates to the year 1968, it is only proper that the Trial Court decides the same expeditiously and in any case within a period of one year from the date of this order.

9] Rule is accordingly discharged. There shall be no order as to costs.

(M. S. SONAK, J.)

dinesh