

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12851 OF 2015

Ramesh Jamsing Patil	..	Petitioner
vs.		
Gulbabsing Ramsing Kachava & Ors.	..	Respondents

Mr. Sushant Prabhune with Mr. Amol R. Patil for Petitioner.
Mr. S. G. Karandikar i/b. Mr. Arun Palekar for Respondent Nos. 1 to 10.

CORAM : M. S. SONAK, J.
DATE: 28 JANUARY 2016

P.C :

1] The challenge in this petition is to the judgments and orders dated 21 July 2012, 5 June 2013 and 21 November 2014 made by the Tahsildar, Sub Divisional Officer (SDO) and the Maharashtra Revenue Tribunal (MRT) respectively holding that the petitioner is not the tenant under the Maharashtra Tenancy and Agricultural Lands Act, 1948 (said Act) in respect of the suit property.

2] The respondent landlord, had instituted a suit against the petitioner alleging that the petitioner is a trespasser in relation to the suit property. In the written statement filed by the petitioner, the petitioner had taken up a plea that he is the tenant in respect of the suit property in terms of Will executed in his favour by Kesharbai

Maharu Deore, who was the tenant in respect of the suit property. At the stage when the suit was posted for judgment, the Presiding Officer, realizing that there was such a plea in the written statement, invoked the provisions under Section 85 A of the said Act and made a reference to the Tahsildar for determination of the issue of tenancy. The Tahsildar has held that the petitioner is not the tenant in respect of the suit property. The appeal and the revision instituted by the petitioner before the SDO and the MRT have since been dismissed. Hence, the present petition.

3] Mr. Sushant Prabhune, the learned counsel for the petitioner has submitted that the petitioner had raised the plea that Kesharbai was a permanent tenant; Kesharbai had sub let the suit property to the petitioner; and in any case, the petitioner had acquired tenancy rights to the suit property by virtue of the Will left behind by Kesharbai. He submits that the plea of permanent tenancy has not been considered at all; the plea of sub tenancy has been rejected by ignoring the provisions contained in Section 27 of the said Act, which permit sub lease by a widow tenant; and in any case, suitable opportunity of leading evidence was never offered to the petitioner. The learned counsel pointed out that this was not a case where the petitioner had applied for declaration of tenancy in terms of section 70 sub section (b) of the said Act but this was a reference under

Section 85A and therefore it was the duty of the Tahsildar to suo moto enquire in the matter to determine whether the petitioner was indeed a tenant in terms of the said Act.

4] Having considered the aforesaid contentions and perused the record, in my judgment, there is no case made out to interfere with the concurrent findings of fact recorded by all the three Authorities. At the outset, it must be noted that the only plea raised by the petitioner in the written statement was that the petitioner has acquired tenancy to the suit property on the basis of Will left behind by Kesharbai. In the written statement there is no plea of either Kesharbai being a permanent tenant or that the petitioner was a sub lessee from Kesharbai. In so far as, the claim of tenancy on the basis of Will is concerned, upon, perusal of Section 27 of the said Act, this appears to be impermissible. In the case of *Bhaskar Bhagwant Deshpande vs. Dattatraya Narsingrao Deshpande & Anr.*¹, the learned Judge of this Court has held that the substantive provision contained in Section 27 prohibits tenancy rights to be willed away. In paragraph 7, this Court has observed thus :

“7. What is brought to my notice is a substantive provision contained in Section 27 which prohibits assignments otherwise than provided for in the said Section and I am relying upon the Division Bench decision reported in AIR 1980 Bom 69 (Dr. Anant Trimbak Sabnis v. Vasant Pratap

1 1993 B.C.J. 626

Pandit) for the proposition that word 'assign' would include bequest and therefore tenancy rights cannot be willed away and this the authorities could have gone into and even on the basis that there is valid will duly proved. Still the question whether the tenancy rights can be willed away or not could have been gone into by the tenancy authorities but instead of doing so, the tenancy authorities expected the legatees to file some civil proceedings and whether till this date any proceedings are initiated in the Civil Court or not is not known, nor Shri Gokhale was in a position to point out to me about the same. In view of this, I hold that the reliance on the decision reported in 1977 Tenancy Law Reporter 17 [Anant Kisan Mayekar v. Madhukar S. Hadkar] was uncalled for. In any event I accept the last contention of Shri Gokhale when he points out to me that the intimation itself is given beyond the period prescribed under the provisions of Tenancy Act, therefore, the tenant or his heirs or even the legatees have lost their right and under these circumstance, the application initially filed by the original tenant will have to be rejected and, thereafter in accordance with provisions of the Tenancy Act, the proceedings under Section 32 (P) will have to be initiated. In view of this I allow the Writ Petition, set aside the Judgment and Order passed by the Sub Divisional Officer in Tenancy Appeal No. 8 of 1979 dated 30th September, 1980 and the Judgment and Order passed by the Member, M.R.T. Pune on 22nd December, 1981 in Revision Application No. MRT/SH/XII/7/80 and make the Rule absolute. However, since Respondents are absent, there shall be no order as to costs."

5] Similarly, the Hon'ble Apex Court in the case of *Sangappa Kalyanappa Bangi (dead) through LRs. vs. Land Tribunal, Jamkhandi & Ors.*², in the context of similar provisions contained in the Karnataka Land Reforms Act, 1961, has held that the tenancy rights cannot be willed away. In paragraphs 5 and 6, the Hon'ble Apex Court has observed thus :

“5. This case gives rise to a difficult and doubtful question whether a devise under a Will would amount to an assignment of interest in the lands and, therefore, invalid under the provisions of Section 21 of the Land Reforms Act. What is prohibited under [Section 21](#) of the Act is that there cannot be any sub-division or sub-letting of the land held by a tenant or assignment of any interest thereunder. Exceptions thereto are when the tenant dies, the surviving members of the joint family and if he is not a member of the joint family, his heirs shall be entitled to partition and sub-divide the land leased subject to certain conditions. Section 24 of the Act declares that when a tenant dies, the landlord is deemed to continue the tenancy to the heirs of such tenant on the same terms and conditions on which the tenant was holding at the time of his death. We have to read [Section 21](#) with [Section 24](#) to understand the full purport of the provisions. [Section 24](#) is enacted only for the purpose of making it clear that the tenancy continues notwithstanding the death of the tenant and such tenancy is held by the heirs of such tenant on the same terms and conditions on which he had held prior to his death. The heirs who can take the property are those who are referable to in Section 21. If he is member of the joint family

² (1998) 7 SCC 294

then the surviving members of the joint family and if he is not such a member of a joint family, his heirs would be entitled to partition, Again, as to who his heirs are will have to be determined not with reference to the Act, but with reference to the personal law on the matter. The assignment of any interest in the tenanted land will not be valid. A devise or a bequest under a Will cannot be stated to fall outside the scope of the said provisions inasmuch as such assignment disposes of or deals with the lease. When there is a disposition of rights under a Will, though it operates posthumously is nevertheless a recognition of the right of the legatee thereunder as to his rights of the tenanted land. In that event, there is an assignment of the tenanted land, but that right will come into effect after the death of the testator. Therefore, though it can be said in general terms that the devise simpliciter will not amount to an assignment, in a special case of this nature, interpretation will have to be otherwise.

6. *If we bear in mind the purpose behind Section 21, it becomes clear that the object of the law is not to allow strangers to the family of the tenant to come upon the land. The tenanted land is not allowed to be sub-let, i.e. to pass to the hands of a stranger nor any kind of assignment taking place in respect of the lease held. If the tenant could assign his interest, strangers can come upon the land, and therefore, the expression 'assignment' will have to be given such meaning as to promote the object of the enactment. Therefore, the deceased tenant can assign his rights only to the heirs noticed in the provision and such heirs could only be the spouse or any descendants or who is related to the deceased tenant by legitimate kinship. We must take into*

consideration that when it is possible for the tenant to pass the property to those who may not necessarily be the heirs under the ordinary law and who become heirs only by reason of a bequest under a Will in which event, he would be a stranger to the family and imported on the land thus to the detriment of the landlord. In that event, it must be taken that a devise under a Will also amount to an assignment and, therefore, be not valid for the purpose of [Section 21](#) of the Act. If [Section 24](#) is read along with [Section 21](#), it would only mean that the land can pass by succession to the heirs of a deceased tenant, but subject to the conditions prescribed in [Section 21](#) of the Act. Therefore, we are of the view that the broad statement made by the High Court in the two decisions in [Shivanna and Dhareppa v. State of Karnataka and Others](#), would not promote the object and purpose of the law. Therefore, the better view appears to us is as stated by the High Court in [Timmakka Kom Venkanna Naik v. Land Tribunal](#).”

6] The learned counsel for the petitioner pointed out that the Tahsildar has non suited the petitioner's claim of sub tenancy on the ground of breach of [Section 27](#) of the said Act. The learned counsel for the petitioner may be right in his submission that the bar to subletting may not apply to the tenant, who is a widow in view of the provisions contained in [Section 27 \(2\)\(a\)](#). However, for this purpose, it was necessary for the petitioner to have set up a case of sub tenancy in the pleadings and thereafter, adduce evidence in that regard. The petitioner, merely seeks to rely upon certain entries

in the crop registers and on the said basis contends that he was a sub lessee. This is clearly not permissible. As noted earlier, in the written statement, no plea of sub tenancy was ever raised. Further, even the entries in the crop register came to be recorded after the demise of the original tenant Kesharbai. Obviously, no sub lease could arise after the demise of Kesharbai. The SDO and the MRT have rightly rejected the claim of sub tenancy.

7] Similarly, there were no pleadings whatsoever with regard to the claim of Kesharbai being a permanent tenant. In fact, the parties proceeded on the basis that Kesharbai was inducted as a tenant some time in the year 1952-53. As such, it is too late to attempt to raise such a plea at this stage.

8] Even in an enquiry under Section 85A of the said Act, it is not as if the, the parties are relieved of the obligation to at least state their case and adduce evidence in support of their respective pleas. It is not possible to accept the contention of the learned counsel for the petitioner that in an enquiry under Section 85A of the said Act, the responsibility is entirely of the Tahsildar or the ALT to enter into a roving enquiry with a view to determine whether one of the parties is indeed the tenant of the suit property. The record indicates that ample opportunity was afforded to the petitioner in the matter of adducing evidence.

9] There are concurrent findings of fact and no perversity has been demonstrated in record of the same.

10] For all the aforesaid reasons, this petition is dismissed. There shall be no order as to costs.

Chandka

(M. S. SONAK, J.)