

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5462 OF 2015

Shamrao Krushna Gharmode and others ... Petitioners
Vs.
Dinkar Ganpat Chaugale and others ... Respondents

Mr. Sandeep S. Koregave for Petitioners.
Mr. Surel S. Shah for Respondents.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 16, 2017

P.C. :

Heard Mr. Koregave, learned Counsel for petitioners and Mr. Shah, learned Counsel for respondents at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'plaintiffs', have challenged the judgment and order dated 30.04.2015 passed by the learned District Judge-3, Kolhapur in Miscellaneous Civil Appeal No.98 of 2014. By that order, the learned District Judge allowed the Miscellaneous Civil Appeal preferred by the respondents, hereinafter referred to as 'defendants', and quashed and set aside the judgment and order dated 13.03.2014 passed by the learned 8th Joint Civil Judge, Junior Division, Kolhapur below exhibit-5 in Regular Civil Suit No.121 of 2014.

3. Plaintiffs have instituted Suit for perpetual injunction restraining the defendants No.1 to 10 from causing obstruction to the plaintiffs' possession.

4. Mr. Koregave submitted that dispute in the present case is in respect of Gat No.709A admeasuring 74 Ares. He submitted that

plaintiffs are in possession of Gat No.709A and defendants are in possession of Gat No.709B. He has invited my attention to the averments made in paragraphs 1 and 4 of the plaint as also findings recorded by the learned trial Judge in paragraphs 10 and 11. He submitted that plaintiffs' predecessor-in-title is a protected tenant. Though plaintiff's predecessor-in-title did not participate in the proceedings initiated under Section 32-G of the Maharashtra Tenancy and Agricultural Lands Act, (for short 'Act'), still, plaintiffs' predecessor-in-title, being a protected tenant, continued in possession. He has relied upon the 7 x 12 extract as also receipts evidencing supply of the sugar canes to the concerned sugar factory. He has taken me through the order dated 01.02.1964 passed by the Agricultural Lands Tribunal (A.L.T.) as also the order of the order of the Sub-Divisional Officer dismissing the Appeal on 30.10.2002. He submitted that the learned A.L.T. recorded that the predecessor of the plaintiffs namely, Daji Subhu Gharmode remained absent though duly served. It means that he has no interest in the suit land. As far as Daji Subhu Gharmode is concerned, as he has remained absent though served, he has lost right of purchase the share held by the landlords at Sr. No.2, 3, 4, 5 and 7. As far as his right to purchase the share held by landlord's at Sr.No.1 and 6 is concerned, the same is postponed. He relied upon Sections 32-M and 32-P of the Act and submitted that plaintiffs are in possession and therefore, the learned District Judge is not justified in interfering with the order passed by the trial Court.

5. On the other hand, Mr. Shah supported the impugned order. He submitted that in 32-G proceedings, Daji Subhu Gharmode did not appear despite service and the purchase qua him was declared ineffective. Section 32-M certificate is issued in favour of the defendants, which is a conclusive evidence. He has invited my attention

to the findings recorded by the learned District Judge in paragraphs 13 and 14.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that 32-G proceedings were initiated. Daji Subhu Gharmode, despite service, did not attend the proceedings. The A.L.T. recorded a finding that as Daji did not remain present though duly served, he has no interest in the suit land. It is not in dispute that Ganpat Govinda Chaugule is the predecessor of the defendants. The A.L.T. held that Ganpat Chaugule has deemed to have purchased the suit land on 01.04.1957. It was further held that Ganpat alone is entitled to purchase the land excluding the exemption earned by the landlords. As far as Daji is concerned, the A.L.T. recorded that he has lost the right of purchase for the shares held by the landlords at Sr. No.2, 3, 4, 5 and 7. His right to purchase was postponed for the shares held by the landlords at Sr. No.1 and 6, namely, Anandrao Bhimrao Pandit and Ambabai Vinayakrao Pandit.

7. Aggrieved by this decision, appeal was preferred by Krishna Daji Gharmode i.e. son of Daji Gharmode. By order dated 30.10.2002, Sub-Divisional Officer, Karvir Division, Kolhapur dismissed the appeal. No material is brought on record by the plaintiffs to show that they have challenged the orders passed by the A.L.T. and S.D.O.

8. Mr. Koregave submitted that plaintiffs have filed application under Order VI, Rule 17 of C.P.C. in 2015 for amending the plaint so as to declare the order dated 01.02.1964 passed by the A.L.T. as also the order dated 30.10.2002 passed by the S.D.O. under Section 32-G of the Act as null and void as without jurisdiction. It is however material to

note that as of today, the said application is not disposed of and is pending.

9. Mr. Koregave has invited my attention to the compilation of documents, and in particular 7 x 12 extracts as also extract of consolidation as also receipts issued by Shree Chattrapati Shahu Sahakari Sakhar Karkhana Limited showing supply of sugarcane by the petitioners. Perusal of the 7 x 12 extracts of Gat No.709A admeasuring 74 Ares i.e. suit land shows that in the column of “owner's name”, names of defendants appear. In the “other rights” column, names of Krishna Daji Gharmode, predecessor-in-title of the plaintiffs, appears as a protected tenant. In the column of “cultivation”, the mode is mentioned as “Khudda” i.e. “personal cultivation”. In other words, owners are cultivating the suit land. As far as the consolidation extract is concerned, the name of Krishna Gharmode, predecessor-in-title of the plaintiffs, appears in the column No.25 in respect of Gat No.709A and of defendants in respect of Gat No.709B. Perusal of the record of sugar factory shows that it is in respect of Gat No.709. In other words, it is not clear as to whether it is in respect of the suit property. Perusal of the impugned order shows that in paragraph 12, the learned District Judge has referred to the revenue records as also orders of the tenancy authorities. In paragraph 13, reference is made to the orders passed by A.L.T. and S.D.O. in 32-G proceedings. In paragraph 14, the learned District Judge observed that in the plaint itself, plaintiffs have averred that on the basis of 32-M certificate, names of defendants are recorded in the 7 x 12 extracts after deleting the name of the plaintiffs' predecessor-in-title, Krishna. Plaintiffs have further averred that Tenancy Appeal No.4 of 1993 was dismissed by the S.D.O. The learned District Judge observed that though the names of plaintiffs are recorded in the “other rights” column in 7 x 12 extracts, names of defendants are

recorded in the column of “ownership”. I have referred to the mode of cultivation in the 7 x 12 extracts, namely, “Khudda”. Certificate issued under Section 32-M is conclusive evidence of purchase. Certificate under Section 32-M was issued on 13.08.1985. In pursuance thereof, mutation entry No.657 was certified on 25.10.1985. Perusal of this mutation entry shows that no objections were raised and the names of defendants are entered in respect of Survey No.179/1 corresponding to Gat No.709A and Survey No.179/2 corresponding to Gat No.709B.

10. Mr. Koregave has not brought any material on record to substantiate that after the postponement of the plaintiffs' right to purchase the land, any steps were taken. In fact, it appears that landlord at Sr.No.6, Ambabai Vinayakrao Pandit was a widow. No material is produced on record as to whether she is alive or not and if she is not alive, what steps have taken by the plaintiffs under the provisions of the Act.

11. Mr. Koregave relied upon the following decisions:

- a. ***Laxman @ Bhaiyya Pandurang Edke Vs. Vishwanath Kashiba Chemte, 2007 (1) ALL MR 36;***
- b. ***Madhav Kesu Vs. Sundrabai, 1978 Mh.L.J. 289;*** and
- c. ***Ramu Kerba Bhongarde Vs. Akbar Mohamed Naikwadi, 2003 (3) ALL MR 958.***

12. However, the learned District Judge has recorded a finding that plaintiffs have failed to establish their possession, both, in view of the orders passed by the Tenancy Authorities as also on the basis of the revenue record. In view thereof, the decisions relied by Mr. Koregave do not advance the case of the plaintiffs.

13. In the case of ***Wander Limited and another Vs. Antox India Private Limited, 1990 (Supp.) SCC 727***, the Apex Court has laid down the scope of appellate Court for interfering with the discretionary order passed by the trial Court. It has been observed in paragraph 14 thus,

“....., the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. The Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court’s exercise of discretion.”

14. As the learned trial Judge has exercised his discretion arbitrarily, capriciously and perversely, the learned District Judge was justified in interfering with the discretionary order. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

15. At this stage, Mr. Koregave prays for continuation of the status-quo for a period of 12 weeks from today. In view thereof, status quo order dated 23.06.2015 is continued for a period of 12 weeks from today subject to clarification, as per the decision of the Apex Court in ***Kishore Kumar Khaitan & Anr vs. Praveen Kumar Singh, (2006) 3 SCC 312***, that plaintiffs have not established their possession. Order accordingly.

(R. G. KETKAR, J.)