



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.498 OF 2016

Mohan Dashrath Kolakhe and Ors. ... Applicants
Versus
M/s. Maratha Realty Ventures and Ors. ... Respondents

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Mr. Avinash B. Avhad for the Applicants.
Mr. A.B. Tajane for the Respondents.
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CORAM : SHARMILA U. DESHMUKH, J.
Reserved on : August 08, 2023.
Pronounced on : August 19, 2023.

P. C.

1. The revisional jurisdiction of this Court has been invoked challenging the order dated 18th January, 2016 passed in Special Civil Suit No.196 of 2014 rejecting the application under Order VII Rule 11 of the Civil Procedure Code, 1908, seeking rejection of the plaint. For sake of convenience the parties are referred to as per their status before the trial court.

2. The facts of the case are that Special Civil Suit No.196 of 2014 was instituted by the Respondent No.1-plaintiff against the defendants which included the present Applicants arrayed as Defendant Nos.13 to 18 for the following reliefs:

- “a) Plaintiff suit be decreed.*
- b) The Hon'ble Court be pleased to declare that Plaintiff is having title over suit property.*
- c) The Hon'ble Court be pleased to declare that the Plaintiff are the owners and are in lawful possession of the suit property.*
- ci) The Hon'ble Court be pleased to pass an order & set aside the sale deed bearing no. 5469/14. dated 7/7/14 in respect of suit property mentioned in para 20(a) & further declare it as null and void-ab-initio.*
- d) Defendant No. 1 to 26 also defendant no. 58 to 100 or any other person on their behalf be restrained by issuance of perpetual injunction from disturbing the possession of the plaintiff over the suit properties and also further be restrained from alienating, or creating any third party interest in suit properties permanently.*
- e) During the pendency of the suit, temporary injunction in terms of prayer clause (c) above may kindly be granted against the defendants.*
- f) Compensation of Rs.10,00,000/- be granted from the Defendants no. 1 to 26 to the plaintiff.”*

3. The case of the plaintiff is as under:

(a) The suit property was purchased by the Plaintiff vide registered sale deed dated 9th November, 2013 from one Parubai Baburao Pande and others i.e. defendant nos.27 to 57, whose names were duly mutated in the record of rights as owners for total consideration of Rupees Three Crores. The possession was handed over to the Plaintiff who is in possession since the execution of the sale deed.

(b) At the time of applying for mutating their names in record of rights, the plaintiff learnt about the order of Tahsildar mutating the names of defendant no.1 and others in 7/12 extract on an application filed in the year 2011 under Section 155 of the Maharashtra Land Revenue Code, which was allowed arbitrarily by the Tahsildar without following the procedure on the alleged rights of tenancy of the year 1959. The order is illegal and improper as the defendant nos.1 to 26 or their forefathers had failed to comply the earlier order and used the alleged right in statutory time.

(c) There was tenancy appeal filed by the defendant no.44 against the recording of the names of defendant nos.1 to 26, which was rejected on technical grounds, as against which the plaintiff has now filed Second Appeal before the Additional Collector, and stay has been granted to the order of the Sub-Divisional Officer. The suit property was in possession of the defendant nos.27 to 57 from whom the plaintiff had purchased and hence, the defendant nos.1 to 26 cannot be tenants in the suit property and order passed by the Tahsildar in their favour is illegal, improper and contrary to the provisions of law, and, barred by law of limitation.

(d) The right of tenancy of defendant nos.1 to 26 was disputed as the defendant nos.1 to 26 or their forefathers were not diligent in their right and have not exercised their alleged rights within statutory period and as such, their claim of right are not tenable. The possession of the suit property was with the defendant nos.27 to 57 and then with the plaintiff and that after a lapse of 54 years the application was filed under Section 155 of the Maharashtra Land Revenue Code before the Tahsildar.

(e) One Tarabai Gosavi had instituted proceedings before the Jt.Charity Commissioner against Hari Bhau Kalokhe from whom the defendant nos.1 to 26 are claiming the rights of tenancy and the order passed against Hari Bhau Kalokhe has attained finality. The Defendants have deliberately concealed the above facts from the revenue officers and have obtained certificate under 32 M by playing fraud.

(f) The alleged rights of tenancy of defendant nos.1 to 26 have already come to an end and it becomes just necessary to declare the title of the plaintiff over the suit property. Recently on 29.01.2015, the plaintiff came to know that the sale deed have been executed by defendant nos.2 to 10, 19 to 22 and 58 to 99 in favour of defendant no.100.

4. On 26.02.2014 an application came to be filed by defendant nos.1 to 26 under the provisions of Order VII Rule 11 of the CPC. It was contended that the defendant nos.27 to 57 were the ex-landlords and after 01.04.1957, the defendant nos. 27 to 57 are not concerned and were not in possession of the suit land. By

reason of 32 M certificate issued in their favour under the provisions of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short, "Tenancy Act"), it was contended that the defendant nos.1 to 26 have become deemed purchasers. It was contended that the suit of the plaintiff is vague, without cause, cause is not disclosed and is liable to be rejected. It was contended that the suit is barred by special law i.e. the Maharashtra Tenancy Act and Agricultural Lands Act, 1948 as the plaintiffs are indirectly challenging the orders passed under the Tenancy Act, which is beyond the jurisdiction of the Civil Court.

5. The plaintiffs filed their reply on 07.04.2014 opposing the application. It was contended that the defendant nos.1 to 26 were never in possession of the suit property and never bothered to take any steps to enforce the alleged rights of tenancy and after 54 years with an ulterior motive, the defendant no.1 filed application under Section 155 of the MLR Code before the Tahsildar, which was under conspiracy without notice and without following procedure. It was contended that the plaintiff has filed present suit for declaration of title which gives jurisdiction to the Civil Court.

6. The trial Court by the impugned order dated 18.01.2016 rejected the application, giving rise to the present revision application.

7. Heard Mr. Avhad, learned counsel appearing for the Revision Applicants and Mr. Tajane, learned counsel appearing for the Respondent.

8. Mr. Avhad, learned counsel for the revision-applicants has taken this Court through the provisions of Section 85 of the Tenancy Act and would contend that the Civil Court's jurisdiction is barred as the plaintiff seeks to adjudicate the question as to whether the defendant nos.1 to 26 were the tenants and whether they are deemed to have purchased the suit land from the landlords. According to Mr. Avhad, the averments in the plaint demonstrate that the challenge in the proceedings is to the tenancy rights acquired by the defendant nos.1 to 26 and the adjudication will necessarily involve an inquiry into the tenancy rights of the defendant nos.1 to 26, which is within the jurisdiction of the Mamalatdars or Tribunal and not the Civil Court. He would

further submit that the erstwhile owners i.e. the landlords had challenged the certificate issued to the defendants nos.1 to 26 and had not succeeded and a challenge now is again sought to be raised to Section 32 M and 32 G proceedings and without the proceedings under 32 G and the certificate 32 M of the Tenancy Act being set aside, the plaintiff cannot be declared as having title over the suit property. He would further submit that the trial Court has observed that the decision in RTS Second Appeal No.634 of 2013 can have impact on the hearing of the suit, however, has rejected the application. He draws support from the provisions of Section 85 of Tenancy Act and would contend that Section 85 puts an embargo on the Civil Court to entertain any proceedings which deals with any question which is required to be decided by the Mamalatdars or Tribunal. In support of his submissions, he relies upon the decision of Goa Bench of this Court in ***Nilesh Sangodkar vs. Laxmi Rohidas Calangutkar***, reported in ***(2019) 3 Mh.L.J. 59***.

9. *Per contra*, Mr.Tajane, learned counsel for the Respondents submits that the suit was filed on 24.01.2014 which

came to be rejected on 18.01.2016 and that the revision application is pending since 2016. He would further submit that the averments in the plaint makes it clear that the plaintiff is a *bonafide* purchaser for value having paid a sum of Rs.3 Crores. He would further submit that the plaint was subsequently amended and a specific case has been put forward as regards the proceedings instituted by Tarabai Gosavi and that an assertion is made that the certificate under 32 M has been obtained by concealing the factual position from the Revenue Authority. He submits that against the revenue proceedings, RTS No.434 of 2013 has been filed. He would further submit that in the present proceedings, the plaintiff is seeking a declaration as to title and it is specifically averred that the tenancy proceedings are the result of fraud. In support of his submissions, he relies upon the decision of this Court in the case of ***Gulab Lahanu Dorge vs. Namdeo Ramkrishna Katkar***, reported in ***2005(1) Mh.L.J. 149***, and the decision of the Apex Court in the case of ***Salim D. Agboatwala and Others vs. Shamalji Oddhavji Thakkar and Others***, reported in ***2021 SCC OnLine SC 735***.

10. Considered the submissions and perused the papers with the assistance of the learned counsel for the parties.

11. There is no debate about the settled position that while deciding an application under Order VII Rule 11 of the CPC, the averments in the plaint are germane. It is also settled that there should be a meaningful and not formal reading of the plaint as a whole to ascertain whether the same is barred by any law. In the present case, the relief sought is declaration of title and perpetual injunction. The plaintiff has come with a case of being *bonafide* purchaser for valuable consideration. It is pleaded that after lapse of 54 years, the defendant no.1 and others filed an application under Section 155 of the MLR Code, for mutating their names as owners which was allowed by the Tahsildar arbitrarily without following any procedure resulting in the names of Defendant Nos.1 to 26 being mutated on the basis of alleged rights of tenancy of the year 1959 as against which second appeal is preferred and is pending wherein a stay has been granted.

12. While asserting their rights as *bonafide* purchasers for

value without notice, the plaintiff has pleaded that the defendant nos.1 to 26 cannot be tenants of the property as they have not exercised their rights within statutory period and the application filed before the Tahsildar under Section 155 of MLR Code after a lapse of 54 years is not tenable and the order of the Tahsildar is without notice and without following due procedure. The plaintiffs case is that the certificate under Section 32 M has been obtained by concealing the factual position from the revenue officers. Based on these facts, the claim for declaration of ownership over the suit property is made.

13. Upon reading of the averments in the plaint as a whole, to my mind, the case of the plaintiffs is that they are the *bonafide* purchasers for valuable consideration and the mutation entries which have been effected by the Tahsildar in favour of the defendant nos.1 to 26 is illegal and without following the prescribed procedure. The right to ownership is also based on the ground that the 32 M certificate has been obtained by fraud and by concealing the factual fact of the proceedings which were instituted

by Tarabai Gosavi against Hari Bhau Kalokhe from whom the defendant nos.1 to 26 are claiming rights of tenancy.

14. Learned Counsel for Revision Applicant has canvassed submissions only as regards the bar under Section 85 of the Tenancy Act. Before proceeding further, it would be beneficial to refer the provisions of Section 85 of the Tenancy Act, which reads as under:

“85. Bar of jurisdiction:- (1) No Civil Court shall have jurisdiction to settle, decide or deal with any question including a question whether a person is or was at any time in the past a tenant and whether any such tenant is or should be deemed to have purchased from his landlord the land held by him which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal, a Manager, the Collector or the Maharashtra Revenue Tribunal in appeal or revision or the State Government in exercise of their powers of control.

(2) No order of the Mamlatdar, the Tribunal, the Collector or the Maharashtra Revenue Tribunal or the State Government made under this Act shall be questioned in any Civil or Criminal Court.

Explanation.- For the purposes of this section a Civil Court shall include a Mamalatdar's Court constituted under the Mamalatdar's Courts Act, 1906."

15. A plain reading of the provisions of Section 85 would indicate that the said section places an embargo on the jurisdiction of the Civil Court to decide any question including a question whether a person is a tenant and whether any such tenant is or should be deemed to have purchased from his landlord the land held by him. In other words the Civil Court is barred from deciding any issue which is required to be decided by Mamlatdar or Tribunal. The instant suit is for title based on the registered sale deed executed in favour of the Plaintiff. The revenue authorities have no jurisdiction to give a finding on the issue of title. The grounds on which the relief is founded is fraud and limitation. The instant case does not challenge the 32 G proceedings and the certificate issued under 32 M of Tenancy Act. What the Plaintiff asserts in support of its title is that the certificate under Section 32 M has been issued on the ground of fraud and that names of the Defendant Nos.1 to 26 has been mutated by the Tahsildar without

following due procedure on the ground of alleged tenancy of the year 1959.

16. In paragraph 14 of the plaint, the plaintiff has asserted that the defendant nos.1 to 26 cannot be tenants in the property and that the order passed in their favour is totally illegal, improper and contrary to the procedure of the law and the order passed by the Tahsildar is totally illegal, improper and barred by the law of limitation and that after a lapse of more than 54 years steps have been taken by them for mutating their name, which application ought to have been rejected. In my opinion, it cannot be said that in every case where there are pleadings about tenancy, the suit is required to be thrown out at the threshold without ascertaining whether the adjudication is as regards a subject matter which will fall within the jurisdiction of the Mamlatdar or Tribunal. Learned Counsel for the Revision Applicants has laid emphasis on the isolated pleadings to contend that the tenancy rights are disputed ignoring the settled position in law that the averments in the plaint has to be read as a whole.

17. In support of their entitlement to declaration of ownership there is a dispute raised to the defendant nos. 1 to 26 as tenants of the suit property. However, the question which is required to be answered is whether the plaintiff seeks an enquiry into the tenancy rights of the defendant nos.1 to 26. The answer is in the negative. The plaintiff has come with a simple case that they are *bonafide* purchasers for value without notice and the order of Tahsildar mutating the names of the defendant nos.1 to 26 in the record or rights based on the alleged tenancy of year 1959 was illegal and without following the proper procedure.

18. In the pleadings there is no challenge to the tenancy rights and challenge appears to be to the order of the Tahsildar passed under Section 155 of the MLR Code. The Plaintiff is claiming ownership on the basis of the registered sale deed executed in his favour. No doubt, while asserting their right to the suit property, the rights of the defendant nos. 1 to 26 as tenants of the suit property is disputed, however, in my view, the same cannot be construed as seeking an enquiry into their tenancy rights.

Whether the Plaintiff succeeds in establishing his title on the basis of the registered sale deed is the only adjudication in the instant case.

19. The trial Court has rightly held that the main grievance of the plaintiff is that the defendant nos.1 to 26 have slept over their rights for long period of 53 years and thereafter, entered their names in 7/12 extract in ownership column as tenants-purchasers. The trial Court has rightly observed that the order of Tahsildar or the Sub Divisional Officer is not challenged before this Court and no relief in that respect is claimed. As such the order of trial Court cannot be faulted.

20. Insofar as the decision in the case of ***Nilesh Sangodkar*** (supra) is concerned, the said decision was rendered in the context of the proceedings under the SARFAESI Act. In the facts of that case, this Court had observed that the plaintiffs have clearly admitted the Respondent No.10-borrower had obtained loan from the Bank and she along with her late husband had stood surety to the said loan transaction. It is pertinent to note that this Court has

observed that it was nowhere the case of the plaintiff that there was no question of any challenge and in view thereof the bar under Section 34 of the SARFAESI Act was applied and the plaint was rejected.

21. The decision in the case of ***Gulab Lahanu Dorge*** (supra) clearly lays down that the Revenue Authority does not get the jurisdiction to entertain the issue as to declaration of title to the land by virtue of this proceedings and that it is settled law when the question of title is raised by the parties, by raising contentions that any transfer of any land is invalid either in accordance with the provisions of tenancy Act or the Transfer of Properties Act, 1982, the Civil Court alone has a jurisdiction to decide the said question. In the decision of ***Salim D. Agboatwala*** (supra), the Apex Court considered the provisions of Section 85 and 85A of the Tenancy Act. In that case the relief sought was *inter alia* a declaration that the order of ALT holding the Defendants therein as deemed purchasers is null and void and there was direct challenge to the Section 32M certificate. The Apex Court analysed the

provisions of Section 85 and Section 85A of the Tenancy Act and held thus in paragraphs 23 and 24:

“23. If the bar under Section 85(2) was absolute, the Civil Court would have no option except to dismiss the suit. If the bar of jurisdiction is absolute, the question of the Civil Court staying further proceedings in the suit, referring the issues for the adjudication of the competent authority under the Act and disposing of the suit after receipt of a decision from the competent authority, would not arise.

24. The City Civil Court as well as the High Court refused to follow the procedure prescribed by Section 85-A of the Act, on the short ground that the same could be invoked only in cases where the issues covered by the Act have not already been settled, decided or dealt with by an authority competent under the Act to do so. Supporting the view taken by the Trial Court and the High Court, it is contended by Mr. Aniruddha Joshi, learned counsel for some of the contesting respondents that as against the orders passed under Section 32-G and 32-M, an alternative remedy of appeal is provided under Clauses (mb) and (n) of Sub-section (1) of Section 74 of the Act. The Collector is the appellate authority under Section 74. Under Section 76-A, the Collector even has suo motu power of revision, even in cases where no appeal has been filed. Section 79 of the Act prescribes a period of 60 days as the limitation for filing an appeal or revision. Therefore, it is contended by Mr.

Aniruddha Joshi, learned counsel that a party who suffered an order from the ALT and who chose not to challenge the same by way of an appeal or revision for a period of more than two decades, cannot resurrect his right to avail statutory remedies, first by filing a suit and then seeking recourse to Section 85-A. Reliance is placed in this regard by the learned counsel for the respondent, on the decision of the Bombay High Court in Vithoba Rama Randive v. Dhairyasinhrao Bhayasaheb Ghatge.”

22. The Apex Court considered the provisions of Section 85(2) which provides that no order of Mamlatdar or Tribunal etc made under the Tenancy Act can be called in question in Civil Court and held that if the bar of jurisdiction is absolute then there is no question of applicability of Section 85A of Tenancy Act. The Apex Court also negated the contention of the Respondents therein that the procedure prescribed by Section 85A can be invoked only in cases where the issues covered by the Act have not already been settled. The Apex Court held in the facts of that case that collusion and fraud are the main planks on which the plaintiffs have built up their case and cannot be determined by the appellate or revisional authority under the Act. Applying the law laid down by the Apex

Court to the facts of the present case, the plaintiff in paragraph no.10 has specifically asserted that the Tahsildar without following any procedure arbitrarily allowed the application of the defendant nos.1 to 26. Further in paragraph 14, the plaintiff has asserted that the order passed in favour of the defendant nos.1 to 26 is totally illegal, improper and contrary to the provisions under the law and the order passed by the Tahsildar is totally illegal, improper and barred by law of limitation. In paragraph 16 (c), it is specifically asserted that the defendants have concealed the facts from the revenue authority and seems to have obtained certificate under 32 M and has played fraud on the Revenue Court and on the Hon'ble Court.

23. Having regard to the discussion above, I am of the view that the termination of the action at the threshold in light of the averments in the plaint seeking declaration of title is not warranted. The Revision Application fails and stands dismissed.

(Sharmila U. Deshmukh, J.)