



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

SECOND APPEAL NO. 306 OF 2007

Shankar s/o Linganna Gonelwar,
aged about 50 years, Occ. Cultivator,
R/o Pachgaon, Post – Pachgaon,
Tahsil – Rajura, District – Chandrapur.

...APPELLANT

Versus

- 1] The State of Maharashtra,
through the Collector, Chandrapur,
District – Chandrapur.
- 2] The Sub-Divisional Officer, Rajura,
Tahsil – Rajura, District – Chandrapur.
- 3] Shri Madhao s/o Soma Kowe (dead) through LRs
- 3.1] Jijabai wd/o Madhao Kove,
aged about 60 years, Occ. Labour,
R/o Pachgaon, Tq. Rajura,
District – Chandrapur.
- 3.2] Sunita Fulke,
aged about 40 years, Occ. Agricultural Labour,
R/o Rajura, Tq. Rajura,
At post Indiranagar, District – Chandrapur.
- 3.3] Babita Sudhakar Gedam,
aged about 38 years, Occ. Agricultural Labour,
R/o Pachgaon, Tq. Rajura,
District – Chandrapur.
- 3.4] Santosh Madhao Kove,
aged about 37 years, Occ. Agricultural Labour,
R/o Pachgaon, Tq. Rajura,
District – Chandrapur.

3.5] Priyanka Madhao Kove,
aged about 34 years, Occ. Agricultural Labour,
R/o Kothala, Tq. Korpana,
District – Chandrapur.

...RESPONDENTS

Dr. R.S. Sirpurkar, Counsel for the appellant.
Shri B.M. Lonare, A.G.P. for respondent nos. 1 and 2.
Shri S.A. Kanetkar, Counsel for the LR's of respondent no.3.

CORAM : ANIL L. PANSARE, J.

ARGUMENTS WERE HEARD ON : APRIL 23, 2024

JUDGMENT IS PRONOUNCED ON : APRIL 30, 2024

JUDGMENT :

The appeal has been admitted on the following
substantial questions of law :

*“I) Whether the document Exh. 75 could be treated as
a document of transfer within the meaning of Section
36-A of the Maharashtra Land Revenue Code, 1966 ?
II) Whether the civil Court was not entitled to
entertain the suit in view of the provisions of Section
10 of the Maharashtra Restoration of Lands to
Scheduled Tribes Act, 1974 ?”*

2] The appellant – plaintiff filed suit against Shri
Madhao Kowe, since deceased and now represented by legal
representatives, as also the State of Maharashtra, seeking
permanent injunction and restraining them from disturbing his

possession. The appellant will be hereinafter referred to as plaintiff, the State of Maharashtra as defendant no.1, Sub-Divisional Officer, Rajura, as defendant no.2 and the legal representatives of Madhao as defendant no.3.

3] The plaintiff – non-tribal came up with a case that he purchased suit land, i.e., an agricultural land bearing Survey No. 158, admeasuring 7 acre 25 gunthas, a Class-II occupancy land, situated at Village – Pachgaon, from defendant no.3 for a consideration of Rs.2,000/-. The sale deed was executed on 10/3/1970.

4] Later on, the defendant no.3 initiated proceedings under the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (for short “Act of 1974”). Defendant no.2, vide order dated 28/1/1977, had directed the plaintiff to restore the possession of the suit land to defendant no.3. The plaintiff preferred revenue appeal before the Maharashtra Revenue Tribunal, which came to be dismissed. The defendant nos. 1 and 2, on 1/3/1977, handed over the suit

land to defendant no.3. Defendant no.3 was not interested in cultivating the suit land and allowed the plaintiff to remain in possession.

5] It is further the case of the plaintiff that in the year 1996, on the basis of advice of the then M.L.A., defendant no.3 filed an application with defendant no.2 and thereby requested to handover the possession of the suit land. Defendant no.2 found that the possession was already handed over in the year 1977 and, therefore, dismissed the subsequent revenue proceedings. The trial Court vide judgment and decree dated 23/8/2005 was pleased to dismiss the suit on merits as also on the count that it is hit by the provisions of the Act of 1974.

6] The plaintiff unsuccessfully challenged the decree passed by the trial Court in Regular Civil Appeal No. 194/2005. The plaintiff relied upon document Exh. 75, a letter written by defendant no.3 to the Revenue Inspector stating therein that he was not interested in cultivating the suit land. Defendant no.3 has allegedly conveyed that he is not interested in taking

possession of the suit land because he has sold it to the plaintiff by accepting consideration and further that he has another field for his livelihood.

7] The First Appellate Court found that the letter does not bear any date. The plaintiff's second witness, who was the scribe of the said letter, however, stated that it was written in the year 1979. The First Appellate Court noted that this letter, even if accepted on face value, will be contrary to the object of the Act of 1974 and will be, thus, of no help to the plaintiff. The First Appellate Court further relied upon Section 10 of the Act of 1974 to hold that the question as to the legality of possession of plaintiff can only be settled, decided or dealt with by the Collector. The First Appellate Court also referred to Section 36A of the Maharashtra Land Revenue Code, 1966 (for short "M.L.R. Code"), which bars transfer of property to non-tribal by tribal, except with permission of the competent authority. Accordingly, the First Appellate Court held that possession of the plaintiff, being illegal, cannot be protected.

8] In the aforesaid background, the substantial questions of law fall for my consideration. The learned Counsel for the plaintiff submits that there is no dispute as regards the registered sale deed executed by defendant no.3 in favour of the plaintiff by which the suit land was transferred. This sale deed was executed in the year 1970. Thereafter, defendant no.3 initiated proceedings against the plaintiff claiming restoration of the suit land. The revenue authority, i.e., defendant no.2 directed the plaintiff to restore possession, which the plaintiff had done. Defendant no.3 executed possession receipt. It is further undisputed that defendant no.3 was not interested in taking over possession of the suit land and allowed the plaintiff to retain possession. Defendant no.3 has issued letter Exh. 75 to that effect.

9] The learned Counsel submits that once the possession was handed over, subsequent act of defendant no.3, permitting the plaintiff to continue possession, will favour the plaintiff, particularly when subsequent proceedings initiated in the year 1996 by defendant no.3 before the revenue authority

seeking restoration of land, has been dismissed. Thus, according to the learned Counsel, document Exh. 75 coupled with the previous sale deed would lead to no other conclusion except that the suit land was transferred in favour of the plaintiff.

10] The learned Counsel for defendant no.3 states that the letter Exh. 75 by itself will not amount to subsequent transfer. He then focused on the bar to entertain the suit in terms of Section 10 of the Act of 1974.

11] Section 10 provides that no Civil Court shall have jurisdiction to settle, decide or deal with any question which in this Act is required to be decided or dealt with by the Collector, the Commissioner, the Maharashtra Revenue Tribunal or the State Government. Thus, what is impermissible is to settle, decide or deal with the question, which under the Act of 1974 is required to be decided or dealt with by the revenue authorities. A specific query was made to the learned Counsel for defendant no.3 as to which provision under the Act of 1974

requires the revenue authorities to decide or deal with the question of protection of possession of non-tribal where he claims possession under the sale deed executed by the tribal. The learned Counsel had no clue. Hence, for the time being, I will skip the issue of bar of jurisdiction of Civil Courts in terms of Section 10.

12] What is important is whether document Exh. 75 could be treated as document of transfer within the meaning of Section 36A of the M.L.R. Code. The answer would be certainly in the negative for the following reasons.

13] This document is a letter addressed to the Revenue Inspector by defendant no.3 stating therein that he has not taken possession of the suit land despite being ordered by the revenue authority because he has sold it for consideration which he has received. He has further stated that he owns another field for his livelihood. Accordingly, he made a request to the State Government to give suit land to the purchaser. Thus, the letter indicates that defendant no.3 has not taken

possession.

14] Section 3 of the Act of 1974 if read with Sections 36 and 36A of the M.L.R. Code, what transpires is that the occupancy of person belonging to Scheduled Tribes cannot be transferred except with previous sanction of the Collector and where the occupancy has been so transferred in contravention with sub-section 2 of Section 36, then on the application made by the tribal to the Collector, the land so transferred would be restored to the tribal. Section 3 of the Act of 1974 provides that the land of tribal-transferor if is held by non-tribal-transferee under a transfer deed and the land is in the possession of non-tribal-transferee and has been not put up in non-agricultural use, the Collector shall either suo motu at any time, or on the application of a tribal-transferor restore the possession to the tribal-transferor. Sub-section 4 of Section 36A provides that where any occupancy is transferred in contravention of sub-section 1 of Section 36A, the Collector shall, either suo motu or on an application of any person interested in such occupancy, hold an enquiry in prescribed manner and decide the matter.

15] A careful reading of Section 3 of the Act of 1974 read with Sections 36 and 36A of the M.L.R. Code will clearly show that the land belonging to tribal, even if transferred to non-tribal, such transfer, except with previous sanction of the Collector, will be invalid and, thus, the non-tribal-transferee will be not entitled to retain possession of the property. The Collector will suo motu or on an application of tribal-transferor restore the possession to the tribal-transferor.

16] The plaintiff before this Court is a non-tribal-transferee and his holding possession in contravention to the provisions of the M.L.R. code as also the Act of 1974. The document Exh. 75, which is a letter written by tribal, if read in the light of the aforesaid provisions, cannot be treated as document of transfer. Even otherwise the said letter is short of necessary ingredients of valid transfer in terms of the Transfer of Property Act, 1882 read with the Registration Act, 1908. The plaintiff, therefore, is not entitled to retain the possession.

17] The aforesaid provisions further indicate when the

occupancy/possession is transferred in contravention of the provisions of Section 36A of the M.L.R. Code or Section 3 of the Act of 1974, the Collector shall suo motu or on an application by any person interested in such occupancy shall hold enquiry and decide the matter. Thus, the issue of occupancy/possession of non-tribal-transferee will be decided by the Collector. Consequently, the Civil Court shall have no jurisdiction to entertain the suit in terms of Section 10 of the Act of 1974.

18] The substantial questions of law are accordingly answered in the negative, meaning thereby that the appeal is without any substance. The same is accordingly dismissed.

JUDGE

Sumit