Dhondiram Tatoba Kadam vs Ramchandra Balwantrao Dubal on 27 July, 1993

Equivalent citations: 1994 SCC (3) 366 JT 1993 SUPL., 603, 1994 AIR SCW 2181, 1994 (3) SCC 366, (1994) MAH LJ 1284, 1994 UJ(SC) 1 371, (1995) 1 GUJ LR 344, (1994) 1 RENTLR 210

Author: R.M. Sahai

Bench: R.M. Sahai, T.K. Thommen

PETITIONER:
DHONDIRAM TATOBA KADAM

Vs.

RESPONDENT:
RAMCHANDRA BALWANTRAO DUBAL

DATE OF JUDGMENT27/07/1993

BENCH:
SAHAI, R.M. (J)
BENCH:
SAHAI, R.M. (J)
THOMMEN, T.K. (J)
RAMASWAMI, V. (J) II

CITATION:
1994 SCC (3) 366 JT 1993 Supl. 603
1994 SCALE (1)329

ACT:

HEADNOTE:

JUDGMENT:

The Judgments of the Court were delivered by SAHAI, J. (for Thommen, J. and himselj)- The short question of law that arises for consideration in this appeal, by grant of special leave under Article 136 of the Constitution of India, is if a tenant under the Bombay Tenancy & Agricultural Lands Act, 1948 Thereinafter referred to as 'the Act') who surrendered the tenancy can be said to have been

dispossessed so is to claim benefit under Section 32(1- B) of the Act added, in 1969 in chapterIII, dealing with 'Special Rights and Privileges of Tenants and Provisions for Distribution of Land for Personal Cultivation'.

2.For this purpose it is necessary to state facts in brief. A suit was filed by Respondent 1 plaintiff (referred to as plaintiff) against Respondent 2 defendant (referred to as the defendant) and the appellant-defendant 2 (referred to as the appellant), on the allegation that a conditional mortgage was executed by the plaintiff in favour of defendant in 1952 after getting the land surrendered from the appellant but since the defendant was not willing to hand over possession despite offer of paying the mortgage amount, a declaration may be granted that he was the owner of the land in dispute on payment of the mortgage amount to the defendant. In the written statement filed by the defendant it was claimed that he was the owner of the land in dispute. Apart from that, one of the pleas raised was that the land in dispute was let out by him to the appellant who was in possession since then. On the pleadings one of the questions that arose was whether the appellant was the tenant of the land in dispute. Since the question of tenancy could be decided by the revenue authorities only, two issues were framed to the following effect:

> 1.Does defendant 2 prove that he was a tenant over the suit land since prior to mortgage transaction dated June 23, 1952.
>
> 2.Does defendant 2 (present applicant) further prove that he is the tenant of defendant I over the suit land since 1952.

The issues were referred for decision to the Sub-Divisional Officer. They were decided in favour of the plaintiff against which the appeal filed by the defendant and appellant was dismissed. The appellate authority held that the appellant was the tenant even in 1949 but he surrendered his tenancy at the time of mortgage by the plaintiff. It was further held that he was not the tenant from 1952 to 1968. And his claim was falsified by absence of his name in revenue records from 1956 to 1968. It was supported by drawing an inference against the appellant as the defendant did not refer to his tenancy in the reply sent by him to the notice sent by the plaintiff in 1969. The Revenue Tribunal, however, allowed the revision, setting aside the order passed by the two authorities and answered the issues referred to it in the affirmative in favour of the appellant. It found that the appellant had not surrendered in 1952. It was held that there was no iota of evidence to support it. In respect of second surrender in 1956 the Tribunal even after recording the finding that there was little doubt that the appellant had surrendered the possession held that the relationship of landlord and tenant between the appellant and the defendant did not cease. It was further held that surrender having been entered in revenue records in December 1956 and the law having been amended in August by Act XIII of 1956 making it obligatory for surrender to be in writing the surrender by the appellant was invalid. Consequently it found that as appellant was in possession of the land as tenant on June 15, 1955 and was dispossessed before April 1, 1957 otherwise than in the manner and by an order of the Tahsildar as provided in Section 29 he was entitled to benefit of Section 32(1-B) of the Act. The two issues were answered thus:

> "Issue No. 1. Defendant 2 (i.e. the present revision applicant) does prove that he was a tenant over the suit property since prior to the mortgage transaction dated June 23, 1952.
>
> Issue No. 2. He further proves that he is undisputably the present tenant of the land and further he had not ceased to be so, despite his alleged surrender of possession in December 1956."

Against this order the plaintiff filed a civil miscellaneous application before the High Court which was allowed and the order of the Tribunal was set aside. The High Court found that it was not disputed that the appellant was the tenant under registered lease deed executed on June 15, 1949 nor was there any dispute that there was a conditional sale deed in favour of the defendant. Therefore, even though there was no evidence to support the surrender but since, under the provisions of the Act, no transfer of interest was possible without the consent of the tenant, as he alone was entitled to purchase the land, an inference in law arose that when conditional mortgage was executed the tenant must have surrendered the land in dispute in favour of the plaintiff. This finding was supported by the statement of the appellant who, appears to have, admitted in his deposition that there was a surrender and the defendant was put in possession of the land. It was further held that appearance of appellant's name in revenue records did not negative surrender. The appellant was tenant of plaintiff since 1949 till surrender and of defendant from 1952 till he surrendered again in 1956. The High Court found it as a fact that the appellant continued in possession of the land till he surrendered in 1956. The High Court held that surrender was proved by entry in December 1956. When was the actual surrender made could have been proved by the defendant. In absence of any evidence led by defendant the Court inferred that it must have been made prior to August 1956. The factum of surrender stood proved by follow-up action of not only deletion of appellant's name from record but its absence till the plaintiff gave notice in 1969. Since the Tribunal in recording finding on both the surrender misdirected itself by not adverting to relevant material and drawing on conjectures the High Court was well within its jurisdiction to set aside the order. The High Court found that the entry having appeared in 1968-69 it was clear that the tenant was not in possession from 1956-57 till 1968-69. Further since the appellant did not move any application within two years under Section 29 of the Act, his remedy to recover possession became barred by limitation. It also held that since the remedy was lost the right of the appellant extinguished. The High Court disagreed with the Tribunal on collusion between the appellant and the defendant and held that it exceeded its jurisdiction in setting aside the finding of the two authorities on this score.

3.Two questions arise in this appeal, one if the High Court was right, in law, in negativing claim of the appellant under Section 32(1-B) and other if the Tribunal in setting aside the finding on collusion in revision exceeded its jurisdiction. Out of the two it is proposed to take up legal issue on applicability of Section 32(1-B) as if the appellant cannot successfully assail this finding then the finding on collusion becomes academic only. Section 32(1-B) of the Act is extracted below:

> "Where a tenant who was in possession on the appointed day and who on account of his being dispossessed before the 1st day of April 1957 otherwise than in the manner

> and by an order of the Tahsildar as provided in Section 29, is not in possession of the land on the said date and the land is in the possession of the landlord or his successor-in-interest on the 3 1st day of July 1969 and the land is not put to a nonagricultural use on or before the last mentioned date, then, the Tahsildar shall, notwithstanding anything contained in the said Section 29, either suo motu or on the application of the tenant, hold an inquiry and direct that such land shall be taken from the possession of the landlord or, as the case may be, his successor-in-interest, and shall be restored to the tenant; and thereafter, the provisions of this section and Sections 32-A to 32-R (both inclusive) shall, insofar as they may be applicable, apply thereto, subject to the modification that the tenant shall be deemed to have purchased the land on the date on which the land is restored to him:
>
> Provided that, the tenant shall be entitled to restoration of the land under this sub-section only if he undertakes to cultivate the land personally and of so much thereof as together with the other land held by him as owner or tenant shall not exceed the ceiling area."

The section entitles a tenant to restoration of possession provided he was in possession on the appointed date, i.e., June 15, 1955 and was dispossessed before April 1, 1957 and his landlord was in possession on July 31, 1969. The section is, thus, in two parts one creating right and other entitling restoration of possession. Proceedings for restoration could take place either at the instance of the tenant or suo motu by the Tahsildar. But the order could be passed only if the primary requirements of tenant being in possession on the appointed date and his dispossession before April 1, 1957 were satisfied. The language of the latter part of the section directing the Tahsildar to take possession of the land from the landlord and restore it to the tenant who on restoration by operation of law becomes purchaser from the date of restoration are clear legislative indications to construe the section liberally in favour of the tenant. What happens if a tenant who satisfied the requirements as provided in the section is found to be in possession on July 31, 1969. Could he be evicted in any proceeding even though he satisfied the requirement of being in possession on appointed date and was evicted before April 1, 1957. Would such construction of the section be in consonance with the spirit of the Act. On the language the sub-section does not grant any protection to a tenant who was in possession on July 31, 1969. But reading the section in such a narrow manner would be defeating the legislative objective of enacting a beneficent legislation endeavouring to make the tillers of soil as purchaser and owner. This is clear from amendments made in Section 32 from time to time between 1957 to 1969. When Section 32 was renumbered and sub-section (1) was added in 1957, April 1, 1957 was declared as tillers' date and it was provided that every tenant who was one of those mentioned in the sub-section and was cultivating the land personally was entitled to become purchaser of such land from his landlord free of all encumbrances subsisting on that date. In 1958 similar rights were granted by sub-section (1-A) added to Section 32, to those tenants who had been evicted prior to the tillers' date and were not in possession but had made an application for possession of the land under sub-section (1) of Section 29. In 1969 yet another right was granted by Section 32(1-B) which has been extracted above. There can, thus, be no doubt that the legislature intended not only to grant rights to those tenants who were in possession but also to restore the land from which the tenant had been evicted prior to 1957 on satisfying the conditions mentioned in

Section 32(1-A) and (1-B) and make such a person on restoration of possession, purchaser of the land. What happens if a tenant who is otherwise entitled to restoration of possession due to operation of the first part of the section is found to be in possession after July 31, 1969 either with permission of the landlord or in any other manner? Is such a tenant liable to eviction? The answer should be in the negative as it would result in conferring higher rights on a person who is not in possession than a person who is in possession. In our opinion, Section 32(1- B) should be construed in a manner which must effectuate the legislative objective of making every tenant purchaser of the land if he satisfies the conditions laid down in Section 32(1-B) of the Act whether he was in possession or not.

4.Even then the question is if the appellant on facts found is entitled to the declaration that he became a purchaser of land by operation of law under Section 32(1-B). It has been found by the High Court that the appellant was in possession from 1952 to 1956, thus, he satisfied the first requirement of being in possession on the appointed date. But that alone was not sufficient as a tenant should have been dispossessed before the 1st day of April 1957. It was found by the High Court that the appellant surrendered sometime before August 1956 which was established by an entry in the revenue records made in December 1956. The Tribunal too found that the appellant had surrendered his possession as was clear from the mutation entry supported by absence of entries in favour of appellant from 1957-58 to 1968-69. The difference between the Tribunal and the High Court was in construction of the nature of surrender. The Tribunal found it to be invalid as no oral surrender could be effected after Amendment Act 13 of 1956 whereas the High Court was of opinion that in absence of any evidence as to the actual date of surrender, there was no reason not to accept the case of plaintiff that surrender was before December 1956 and, therefore, it was in accordance with law. In any case both the Tribunal and the High Court concurred on the surrender by the appellant. The effect of surrender was that the appellant ceased to be tenant. Assuming that surrender was invalid and the appellant left the possession over land of his own accord, was he dispossessed as contemplated in Section 32(1-B) of the Act? Voluntary giving up of possession does not amount to dispossession unless the law provides for it. 'Dispossess' according to Black's Law Dictionary means: "To oust from land by legal process; to eject, to exclude from realty." The dispossession should have been, therefore, either by legal process or by physical act of exclusion. It would not include leaving possession voluntarily or by surrender. If the words would have been that if such a person was not in possession before April 1, 1957 then a tenant who surrendered or left the possession voluntarily could be included in it. But the legislature having used a stronger word it should, in absence of any indication to the contrary, be understood in its normal sense. A tenant surrendering the land either in accordance with the provisions of law or leaving possession voluntarily would not be covered in the expression 'dispossessed'. The appellant, on the finding of the High Court, therefore, was not dispossessed. Even if the surrender was not valid as found by the Tribunal then the appellant shall be deemed to have left possession voluntarily. In either case it was not dispossession. The appellant therefore did not satisfy the second requirement. Consequently he did not become purchaser of the land under Section 32(1-B) of the Act.

5.In the result this appeal fails and is dismissed. Parties shall bear their own costs.

V.RAMASWAMI, J. (dissenting)- In my view on the facts the interpretation of the provision in Section 32(1-B) of Bombay Tenancy & Agricultural Lands Act, 1948 does not arise for consideration. On facts with great respect I am unable to agree either on the assessment of facts or on the ultimate conclusion in the judgment.

7.One Ramchandra Balwantrao Dubal, Respondent 1 in this appeal (since dead and is now represented by his legal representatives) filed a suit for redemption of a mortgage by conditional sale dated June 23, 1952 against the second respondent who was shown as first defendant in the suit. The appellant herein was impleaded as a second defendant. The case of the first respondent-plaintiff in the suit was that the said deed dated June 23, 1952 was a mortgage by conditional sale, that the property was to be in possession of the second respondent (first defendant in the suit) till the mortgage is redeemed and that the plaintiff was entitled to redeem the same without payment of any money and get possession of the property from the first defendant. Alternatively, he pleaded that the six years' period of redemption stipulated in the deed having expired he is entitled to get executed a deed of re-conveyance from the second respondent (defendant 1). He further stated in the plaint that with an intention of creating some obstruction, if possible, the second respondent (defendant 1) had made an entry of the appellant's name in the column of tenant in the records in collusion with the Talathi and that it was a bogus entry. He further contended that the second defendant had no concern with the land nor was he ever a tenant in the suit property. The first defendant (second respondent herein) filed a written statement stating that the deed dated June 23, 1952 was not a mortgage by conditional sale but that it was an absolute sale and that under that document he purchased the property from the plaintiff and had become the owner of the same. He further stated that after he purchased the property the second defendant (the appellant herein) became his tenant and has been in the possession of the property as his tenant since the year 1952.

8.The second defendant (appellant herein) filed a separate written statement contending that he was a tenant in respect of the suit property under a registered lease deed dated June 15, 1949 executed in favour of the plaintiff and that after the purchase of the suit property by the first defendant (second respondent herein) he executed another registered lease deed in favour of the purchaser and that he had continued in the possession and enjoyment of the property ever since 1949 and the suit for possession against him is liable to be dismissed.

9.When the suit was taken up for trial in the view that a question of tenancy is involved, the matter was referred to the revenue authorities constituted under the Bombay Tenancy and Agricultural Land Act, 1948. The two issues that were referred to the authorities were:

> 1.Does defendant 2 (appellant) prove that he was a tenant over the suit property since prior to the mortgage transaction dated June 23, 1952.
>
> 2.Does he further prove that he is the tenant of defendant I (second respondent) over the suit land since 1952.

Though the original authority and the first appellate authority under the Act answered both the issues in the negative and held that the appellant was neither a tenant before June 23, 1952 nor was he a tenant after that, the Revenue Tribunal in its order dated March 31, 1975 held that the appellant was a tenant under a registered rent note dated June 15, 1949, that he had never surrendered possession though he executed a registered rent deed again in favour of the first defendant (second respondent herein) after the transaction dated June 23, 1952. The Tribunal also held that there was no surrender by the second defendant subsequent to 1952 and the entries in the relevant register showed that since 1950-51 to 1956-57 the appellant cultivated the land without any break or without any interruption. Though from 1957-58 to 1968-69 the entries do not show the name of the second defendant as tenant it reappeared in the register since 1969-70 and that therefore the plaintiff (first respondent) had no right to deny the appellant's status as a tenant of the land and in that view answered the two issues referred to by the civil court in favour of the appellant and held that the appellant was a tenant over the suit property since prior to the transaction dated June 23, 1952 and that he continued to be the tenant and had not ceased to be so.

10.The plaintiff filed a petition before the High Court under Article 227 of the Constitution against this finding of the Tribunal. The High Court accepted that the appellant was a tenant under a registered lease deed executed on June 15, 1949 but in the view that the transaction of conditional sale dated June 23, 1952 could not have come into existence without the surrender of tenancy rights by the tenant, took the view that the appellant should have surrendered the land to the plaintiff before June 23, 1952. The High Court then observed that since the Talathi had made an entry in the register to the effect that on the basis of an intimation dated December 14, 1956 given by the appellant herein the name of the appellant had been deleted from the tenancy column, came to the conclusion that there was a surrender by the appellant- tenant sometime before December 14, 1956. I am unable to see how the High Court could have interfered with the findings on facts given by the Revenue Tribunal in exercise of its power under Article 227 of the Constitution in this regard. Even without going into the jurisdiction the inference drawn by the High Court is not warranted by the facts. The execution of the registered lease deed in favour of the first defendant (second respondent herein) on June 30, 1952 might not necessarily lead to the conclusion that there was a surrender of possession. The tenant might have agreed to accept the first defendant-purchaser from the original owner as his landlord and in token thereof attuned the tenancy and executed the registered rent deed. In fact the High Court concurred with the findings of the Tribunal that the tenant was in possession and cultivation during the years 1950-51 to 1956-57. Even if, it is to be assumed that there was a legal surrender of the original tenancy right, a fresh tenancy right has been created by the alleged purchaser if the deed dated June 23, 1952 is to be treated as a sale deed. Even if it is a mortgage by conditional sale the first defendant was entitled to lease the property to the second defendant. There was no plea in the suit that subsequent to 1952 there was any oral surrender by the tenant. It is not also possible to infer from the entry made by the Talathi as to when the surrender of possession, if any, was made. One could infer that on the date of intimation, namely, December 14, 1956 there was a surrender. If it is to be a date earlier than that there should be a positive evidence to that effect. In the absence of any positive evidence as to when actual surrender was effected it is not possible to infer that it was effected prior to August 1, 1956. The Revenue Tribunal has found that the appellant had continued to be in possession right from 1949 and in fact the suit itself is for possession. The plaintiff has not stated that because of any surrender of possession the tenant had

lost his right to be in possession. Therefore, the provisions of Section 29(2) (sic) is not applicable to this case. There is no clear finding as to the nature of the document dated June 23, 1952 either. If it is a sale deed as contended by the first defendant then the plaintiff's suit will have to be dismissed. If it is to be held a mortgage by conditional sale it has to be treated as subject to the tenancy right and the plaintiff would be entitled only to whatever right, title or interest that was conveyed under the document dated June 23, 1952. In fact as already stated the plaintiff did not even plead that before he executed the deed dated June 23, 1952 the second defendant surrendered his possession or his tenancy right. In either case, therefore, on the facts the findings of the Revenue Tribunal were correct and could not have been interfered with. The High Court therefore erred in setting aside the order of the Revenue Tribunal. In the result appeal succeeds and the order of the High Court is set aside and that of the Revenue Tribunal is restored. However, there will be no order as to costs.