

Shri D.M.Deshpande & Ors vs Shri Janardhan Kashinath Kadam (Dead) ... on 12 November, 1998

Bench: Sujata V. Manohar, A.P.Misra

PETITIONER:

SHRI D.M.DESHPANDE & ORS.

Vs.

RESPONDENT:

SHRI JANARDHAN KASHINATH KADAM (DEAD) BY LRS.

DATE OF JUDGMENT: 12/11/1998

BENCH:

Sujata V. Manohar, A.P.Misra

JUDGMENT:

DER The appellants 1 to 3 are the trustees of Appellant No.4 which is a public trust registered under the Bombay Public Trusts Act, 1950. The second respondent is a former trustee of the said trust while the first respondent claims to be a tenant of the lands belonging to the said trust. The land in dispute is Survey No. 14 situated at Warud Walidatpur, Yavatmal which belongs to the said trust. The present proceedings arise from an order in Revision passed by the high Court in Execution Proceedings.

The Deputy Charity Commissioner by his order dated 17th of January 1975, framed and settled a scheme for the management of the said trust and appointed certain trustees. The second respondent, who had throughout acted as a trustee of the said trust was also appointed as one of the trustees under the said order. The scheme was thereafter amended by the Charity Commissioner by his order dated 24th of Oct. 1980 in suo motu proceedings. He ordered substitution of certain new trustees by removing earlier trustees.

The second respondent, by this order was removed as a trustee and he was directed to handover possession of the trust property as well as management of the trust to the trustees appointed under the order of 24th of Oct., 1980. Since the second respondent did not handover possession of the properties of the said trust which consisted of the said land bearing Survey No. 14 and also did not handover management of the said trust, the trustees moved the Charity Commissioner. Chandrapur. The Assistant Charity Commissioner by his order dated 19th of July, 1984 held that the scheme which was framed by the order of 17th of January, 1975 and modified by the order of 24th of Oct., 1980 was a decree under the provisions of Section 50A(4) of the Bombay Public Trusts Act, 1950. Therefore, the trustees should ask for execution of the scheme as a decree.

Accordingly, the present trustees i.e. appellants 1 to 3 who were the trustees at the material time filed a Regular Execution Application No. 98/84 in the Court of the Civil Judge, Senior Division, Yavatmal against the respondents praying for cessation of the said scheme and asking for possession of land bearing Survey No. 14 from the respondents. On notice being issued, the respondents appeared in the Execution Proceedings. The respondents in the Execution Proceedings filed joint application dated 17th of January, 1985 being Exhibit No. 8. In the application filed jointly on behalf of both the respondents the following statement was made in Paragraph 2, "That the applicants did not obtain any decree of Competent Court against the non-applicants are the present appellants 1 to

3. Again in paragraph 4 of this application it is stated inter-alia, "moreover the non-applicant No. 2 is a tenant over the said field Survey No. 14 of Walidatpur and he is entitled to retain possession of the said land till the eviction order from Tenancy Court. Even the District Court has no jurisdiction to try any suit for possession against him". There are no particulars mentioned in this application as to when this alleged tenancy was created in favour of non-applicant No. 2 that is to say, the present 1st respondent. No date of creation of tenancy has been mentioned; nor is it mentioned as to who created this tenancy in favour of the 1st respondent or how this tenancy came into existence. Even the quantum of rent payable is not mentioned. No particulars are given about this alleged tenancy in Exhibit 8. The present appellants in their reply denied any tenancy in favour of the 1st respondent. They pointed out that the first respondent is the brother-in-law of the ex-trustee-second respondent and the tenancy was being claimed by both the respondents only to defraud the trust of this property. It was also submitted by the appellants that since Respondent No. 2 was removed as a trustee of the said trust an attempt was being made to claim right over the trust property in the form of an alleged tenancy in favour of the brother-in-law of the removed trustee - Respondent No.2.

This application of the respondents was rejected by the Executing Court by its order of 3rd of May. 1985. Thereafter, the decree was executed and on 15.6.85 the trust has taken possession of the said land.

The 1st respondent filed a Review Application before the Executing Court which was rejected by the Executing Court by its orders of 2nd July, 1985. An appeal was filed by respondents from the order of 3.5.85 and 2.7.85. It was dismissed by the District Judge by his order of 6.8.85. Thereafter, the 1st respondent filed a Civil Revision Application before the High Court. By the impugned judgment and order, the High Court has upheld the submission that the scheme could be validly executed as a decree. However, the Court went on to hold that the issue of tenancy arises and should be referred to the Tehsildar under Section 125 of the Bombay Tenancy and Agricultural Lands (Vidharbha Region) Act, 1958. The High Court has further directed that the trust should handover possession of the said land to the 1st respondent.

The present appeal has been filed by the appellants challenging that portion of the order of the High Court which directs the framing of an issue relating to tenancy of the 1st respondent and directing handing over of possession of the trust property to the 1st respondent.

It has been submitted by the appellants that the entire proceeding started by the respondents in Execution, claiming tenancy is a collusive proceeding between the former trustee and the 1st

respondent, who have joined hands to prevent the present trustees from obtaining possession of the trust property. It is also submitted that no material particulars relating to this alleged tenancy of the 1st respondent have been submitted anywhere in the application (Exhibit 8) before the Executing to this alleged claim of tenancy, on issue could have been framed or referred to the Tehsildar. A bare statement claiming tenancy is not enough for the purpose of raising an issue relating to the alleged tenancy of the 1st respondent. The appellants have relied upon Order 6 Rule 11 of the Civil Procedure Code which requires that every pleading shall contain a statement in a concise form of material facts on which the party pleading relies for his claims or defence. In the absence of any concise statement of material facts, the mere raising of a plea of tenancy is not enough for the purpose of raising an issue on the question.

Learned counsel for the appellants has relied upon three decisions in support of his contention that a vague plea does not justify an issue being framed. In this connection a reference was made to *Ram Sarup Gupta Vs. Bishun Narain Inter College & Others* (1987 (2) SCC 555, where the Court has held that all necessary and material facts should be pleaded by the party in support of the case set up by it. In the absence of pleading, evidence if any produced by the parties cannot be considered. The object and purpose of a pleading is to enable the adversary party to know the case of the opponent. In order to have a fair trial it is imperative that the parties should state the essential material facts so that the other party may not be taken by surprise. The Court has, however, cautioned against a pedantic approach to the problem and has directed that the Court must ascertain the substance of the pleading and not the form, in order to determine the case. The respondent have emphasised latter observations. In the present case, however, no material in support of the plea of tenancy has been set up anywhere in any form. In the case of *M/s Niles Construction Company & Anr. Vs. M/s Gangubai & Others* (AIR 1982 BOMBAY 491), the Court observed that before a reference to the Mamlatdar for deciding the issue of tenancy under the Bombay Tenancy and Agricultural Lands Act, 1948 is made the alleged tenant must disclose in his pleadings, details about the tenancy and the exact nature of the right which is claimed by him. An issue of tenancy cannot be raised on a vague plea.

Similarly in an earlier case of *Pandu Dhondi Yerudkar Vs. Ananda Krishna Patil* reported in 1947 (76) BLR

368. the High Court has observed that when inspite of particulars being asked for a Vague plea is made by the defendant contending that he is a tenant of the land the Court should hesitate to frame such an issue on such a vague plea. unless the defendant is able to give particulars showing the time when the tenancy was created, the person by whom it was created and the terms on which it was created. However, in that case since an issue regarding tenancy had already been raised, it was obligatory for the Court to refer this issue to the authorities under the Tenancy Act. The Court, therefore, held that the issue had to be so determined.

In the present case, on particulars have been given by the 1st respondent or the second respondent relating to this tenancy-how it was created, when it was created and the terms thereof. Learned counsel for the respondents, however has relied upon an order of the Agricultural Lands Tribunal dated 27.2.71 which was passed in suo motu proceedings taken under Section 49A of the Bombay

Tenancy and Agricultural Lands (Vidharbha Region) Act, under which proceedings for transfer of ownership to the alleged tenants of whom the 1st respondent was one, were dropped on the ground that properties belonging to the public trust were exempted under Section 129 of the said Act. We fail to see how this will help the 1st respondent because the question whether he was in fact a tenant over the said land or not, was not examined in those suo motu proceedings since, in any event the lands of the said trust were exempted from the operation of Section 37 of the said Tenancy Act.

In this view of the matter the Executing Court rightly rejected the objections of the respondents and handed over the possession of the trust lands to the trust on 15.6.85. The District Judge has also dismissed the appeal in a lengthy judgment. The High Court in Revision, in these circumstances ought not to have interfered in the absence of any factual basis in support of the plea of tenancy raised by the 1st respondent.

The appeals are therefore allowed and the impugned order of the High Court, insofar as it directs framing of an issue relating to the tenancy of the 1st respondent and directs this issue to be decided by the Tehsildar, is set aside. The direction in the impugned order directing possession of the trust properties to be handed over to the 1st respondent is also set aside. There will be no order as to costs.