

Venkatesh Narahar Kattl vs Haji Saheb Khadir Saheb Mulla And ... on 13 October, 1965

Equivalent citations: 1966 AIR 1085, 1966 SCR (2) 215, AIR 1966 SUPREME COURT 1085, 1966 MAH LJ 436, 1966 2 SCR 215, 1966 2 SCJ 346

Author: R.S. Bachawat

Bench: R.S. Bachawat, J.R. Mudholkar

PETITIONER:
VENKATESH NARAHAR KATTL

Vs.

RESPONDENT:
HAJI SAHEB KHADIR SAHEB MULLA AND ANOTHER

DATE OF JUDGMENT:
13/10/1965

BENCH:
BACHAWAT, R.S.
BENCH:
BACHAWAT, R.S.
SUBBARAO, K.
MUDHOLKAR, J.R.

CITATION:
1966 AIR 1085 1966 SCR (2) 215

ACT:
Bombay Tenancy and Agricultural Lands Act (57 of 1948), s. 29(2) Application unde--Starting point of limitation.

HEADNOTE:
On 8th December 1956, the appellant served on the respondent three months' notice in writing under s. 14(1) (b) of the Bombay Tenancy and Agricultural Lands Act, 1948, terminating the tenancy on the ground of default in payment of rent. On 24th June 1957 the appellant filed an application under s. 29(2) for possession. The Tahsildar allowed he application and the order was confirmed on appeal. But in revision, the Revenue Tribunal set aside the order on the ground, that the application was barred by limitation, because, it was filed more than two years, after 20th May 1955, which was the date

of default. A petition by the appellant under Art. 227, was rejected by the High Court.

In the appeal to the Supreme Court, on the question whether the application was filed within the two year period of limitation prescribed by s. 29 (2).

HELD : Limitation for the application began to run from the date of the termination of the tenancy and not from the antecedent date of default in payment of rent and so, the application, filed within two years of the termination of the tenancy was not barred by limitation. [220 G]

The legislature could not have intended that limitation would commence to run before the right to apply under s. 29(2) accrues. The right to apply accrues to the landlord when the tenancy is terminated by notice under s. 14(1)(b). But in spite of the termination of the tenancy the landlord has no right to obtain possession without an order under s. 29(2). On the termination of the tenancy, the right to obtain possession, though in reality not accrued to the landlord, is, by a legal fiction, deemed to have accrued to him. Consequently, the date of termination of the tenancy is also the date when the right to obtain possession is deemed to have accrued to the landlord. Since the limitation for, the application under s. 29(2) commences to run from the date when the right to obtain possession is deemed to have accrued to the landlord, it would follow that limitation begins to run from the date when the tenancy is terminated by the notice under s. 14(1) (b). [218 A-B, C-D, F-G]

The history of the legislation also shows that both before and after the Amendment Act, 1951-which provided the two years' period of limitation-the date of the termination of the tenancy is the starting point of limitation. [218 H]

Ramachandra Anant v. Janardan, 64 Bom. L.R. 637 (F.B.) approved.

Chimanbai Rama v. Ganpat Jagannath, I.L.R. [1958] Dom. 917 (F.B.) overruled.

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 558 of 1963.

Appeal by special leave from the judgment and order dated January 19, 1961 of the Mysore High Court in Civil Petition No. 654 of 1960.

S. G. Patwardhan and K. R. Chaudhury, for the appellant. A. G. Ratnaparkhi, for respondent No. 1.

The Judgment of the Court was delivered by Bachawat, J. The appellant is the landlord and respondent No. 1 is the tenant of S. Nos. 180 and 182 of village Dhanyal, taluk Bijapur. Respondent No. 1 defaulted in payment of rent for the years 1951-52, 1953-54 and 1954-55. On December 8,

1956, the appellant served on respondent No. I three months' notice in writing under s. 14(1)(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 (Bombay Act No. 57 of 1948) hereinafter referred to as the Tenancy Act, terminating the tenancy on the ground of default in payment of rent. On June 24, 1957, the appellant filed an application under s. 29(2) read with s. 14(1) of the Tenancy Act for possession of the land. The Tahsildar, Bijapur allowed the application, and directed possession of the land to be delivered to the appellant. This order was affirmed on appeal by the Assistant Commissioner, Bijapur. On revision, the Mysore Revenue Appellate Tribunal set aside the order of the first two tribunals and dismissed the application. A petition by the appellant under Art. 227 of the Constitution was summarily rejected by the Mysore High Court. The appellant now appeals to this Court by special leave.

The Tribunals below concurrently found that respondent No. I defaulted in payment of the rent for the years 1951-52, 1953-54 and 1954-55, the last default took place on May 20, 1955 and the tenancy was properly terminated by the appellant. The first two Tribunals also held that the application was filed within the time, allowed by law. The Revenue Appellate Tribunal, however, held that the application being filed more than two years after May 20, 1955 is barred by limitation. The sole question before us is whether the application was filed within the two years' period of limitation prescribed by s. 29(2) of the Tenancy Act. The appellant contends that the application was filed within the prescribed period of limitation because (1) the right of the appellant to obtain possession of the land is deemed to have accrued to him on the termination of the tenancy by the notice given on December 8, 1956, (2) in any event, in computing the two years' period of limitation, the period of the three months' notice should be excluded in view of s. 15(2) read with s. 29(2) of the Indian Limitation Act, 1908. We are of the opinion that the first contention of the appellant should be accepted. In view of this conclusion, we do not think it necessary to express any opinion on the second contention advanced on behalf of the appellant. Sections 14(1) and 29(2) of the Tenancy Act, as they stood- at the relevant time, are as follows :

"14. (1) Notwithstanding any law, agreement or usage, or the decree or order of a court, the tenancy of any land shall not be terminated-

(a) unless the tenant-

(i) has failed to pay the rent for any revenue years. before the 31st day of March thereof;

(ii) has done any act which is destructive or permanently injurious to the land;

(iii) has sub-divided, sub-let or assigned the land in-, contravention of section 27;

(iv) has failed to cultivate it personally; or

(v) has used such land for a purpose other than agriculture or allied pursuits; and

(b) unless the landlord has given three months' notice in writing informing the tenant of his decision to terminate the tenancy and the ground for such termination, and, within that period the tenant has failed to remedy the breach for which the tenancy is liable to be terminated."

29(2) No landlord shall obtain possession of any land, or dwelling house held by a tenant except under an order of the Mamlatdar. For obtaining such order he shall make an application in the prescribed form and within a period of two years from the date on which the right to obtain possession of the land or dwelling house, as the case may be, is deemed to. have accrued to him."

At first sight, it may appear that the Act gives no indication of the time when the right to obtain possession of the land or dwelling house is deemed to have accrued to the landlord as contemplated by s. 29(2). But on a close scrutiny of the Act we are satisfied' that this right must be deemed to have accrued to him on the date of the termination of the tenancy.

It is to be noticed that limitation for the application under s. 29 (2) commences to run from the date when the right to obtain possession of the land or dwelling house is deemed to have accrued to the landlord. 'Now, the legislature could not have intended that,, limitation would commence to run before the right to apply accrues. It is reasonable to think that the right to apply also accrues to the ,landlord on the date when limitation for the application begins to run. But the right to apply under S. 29(2) read with S. 14(1) accrues to the landlord when the tenancy is terminated by the notice under S. 14 (1) (b). In Raja Ram Mahadev Paranjype v. Aba Maruti Mali(1), this Court observed :

"The statute having provided for the termination of the tenancy would by necessary implication create a right in the landlord to recover possession. The statute recognises this right by providing by S. 29(2) for its enforcement by an application to the Mamlatdar."

It would follow that limitation for the application under s. 29(2) read with S. 14(1) begins to run from the date when the tenancy is terminated, by the notice under S. 14(1)(b). Consequently, the date of the termination of the tenancy is also the date when the right to obtain possession is deemed to have accrued to the landlord. But it is argued that on the date of the termination of the tenancy, the right to obtain possession of the land actually accrues 'to the landlord, and, therefore, the legislature could not have intended that on that date this right is deemed to accrue to him. This ,argument must be rejected.

In spite of the termination of the tenancy, the landlord has no right to obtain possession of the land without an order of the Mamlatdar under s. 29(2). Between the date of the termination of the tenancy and the date of the order for possession under S. 29(2), the tenant continues to be in lawful possession of the land and is liable to pay rent and not mesne profits, see Ramchandra Avant v. Janardan(2). Thus, on the termination of the tenancy, the right to obtain possession of the land, though in reality not accrued to the landlord, is, by a legal fiction, deemed to have accrued to him so that he may immediately apply under S. 29(2) for an order for possession.

This conclusion is reinforced if we look at the history of the legislation. The Tenancy Act, as originally passed in 1948, did not provide for a special period of limitation for the application to the Mamlatdar under s. 29. But it was thought that s. 72 of the Tenancy Act attracted the period of limitation prescribed (1) [1961] 1 Supp. S.C.R.730,747.

(2) 64 Bom. L.R. 635 (F.D.) 637, 641.

by sub-ss. (3) and (4) of s. 5 of the Mamlatdars' Courts Act, 1906 (Bombay Act No. 2 of 1906), which are as follows :

"5(3). No suit shall be entertained by a Mamlatdar's Court unless it is 'brought within six months from the date on which the cause of action arose.

5 (4). The cause of action shall be deemed to have arisen on the date on which the impediment to the natural flow of surface water or the dispossession, deprivation or determination, of tenancy or other right occurred, or on which the impediment, disturbance or obstruction, or the attempted impediment or disturbance or obstruction, first commenced."

The Bombay Revenue Tribunal, therefore, ruled that an application under s. 29(2) must be made within six months from the date when the cause of action accrues, see A. S. Desai's Bombay Tenancy and Agricultural Lands Act, Second Edn., pp. 137-38, 287-88; and in view of s. 5(4) of the Mamlatdars' Courts Act, 1906, this cause of action was deemed to accrue on the determination of the tenancy. The six months' period of limitation led to hardship, and the legislature decided to extend the period of limitation and enacted the Bombay Tenancy and Agricultural Lands (Third Amendment) Act, 1951 (Bombay Act No. 45 of 1951), which amended s. 29 by providing for two years' period of limitation and also s. 72 by inserting the words "save as provided in section 29". Thus, the Amending Act extended the period of limitation from six months to two years, but both before and after the Amending Act, the date of the termination of the tenancy is the starting point of limitation; formerly because the right to apply was then deemed to accrue to the landlord and now because the right to obtain possession is then deemed to have accrued to him. The Tenancy Act was amended from time to time. The requirement of a notice for terminating the tenancy under s. 14(1) was introduced by Bombay Act No. 33 of 1952, and is repeated in the new s. 14 substituted for the original section by Bombay Act No. 13 of 1956. Before the tenancy can be terminated under the new s. 14(1), two conditions must be fulfilled. Firstly, the tenant must be guilty of one of the breaches mentioned in s. 14(1)(a). Secondly, the landlord must give three months' notice in writing under s. 14(1)(b) and within that period the tenant must have failed to remedy the breach. The tenancy is not terminated unless both these conditions are fulfilled. Neither failure to pay rent nor sub-letting nor any C.I./66-15 other breach is sufficient. The breach must be followed by the requisite notice terminating the tenancy. It is on the termination of the tenancy and not earlier that the right to obtain possession of the land is deemed to accrue to the landlord and limitation for the application under s. 29(2) read with s. 14(1) begins to run.

In *Chimanbai Rama v. Ganpat Jagannath*(1), a Full Bench of the Bombay High Court held that the period of limitation under s. 29(2) for applying to the Mamlatdar for possession of the land on the ground that the tenant had sub-let it, began from the date of sub-letting, and that though the right to obtain possession actually accrues to the landlord on the date when he terminates the tenancy, under S. 29(2) it is fictionally deemed to accrue as from an antecedent point of time, viz., the date of the sub-letting. With respect, we are unable to agree with this judgment. On the termination of the tenancy by the notice under S. 14 (1) (b) and before the order for possession under s. 29(2), the landlord has no right to obtain possession of the land; nevertheless, this right is then deemed to accrue to him, so that he may apply immediately for an order for possession under s. 29(2). The sub-letting alone does not give him' this right to apply under s. 29(2). He may, if he likes, ignore the breach. But where the breach is followed by a notice terminating the tenancy he acquires the right to apply under s. 29(2). It is difficult to impute to the legislature the intention that limitation would begin to run against the landlord immediately on the sub-letting, though he is not aware of the breach and takes no steps for terminating the tenancy in consequence of the breach. In our opinion, limitation, for the application under s. 29(2) begins to run from the date of the termination of the tenancy and not from the date of the sub-letting or the date of default in payment of rent.

In the instant case, three months' notice in writing under s. 14(1)(b) terminating the tenancy was given on December 8, 1956. The application under s. 29(2) read with s. 14(1) being filed on June 24, 1957 within two years of the termination of the tenancy is not barred by limitation. In the result, the appeal is allowed with costs, the order of the Mysore Revenue Appellate Tribunal, Belgaum Branch dated July 27, 1960 is set aside and the orders passed by the Tahsildar, Bijapur and the Assistant Commissioner, Bijapur are restored.

Appeal allowed.

(1) I.L.R. 1958 Bom. 917.