

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3171 OF 1999

GURUNATH S. PATIL AND ANR. ... APPELLANTS

VERSUS

SIDRAM S. PATIL AND ANR. ... RESPONDENTS

O R D E R

The order dated 6.4.1999 made by the High Court in writ petition is under challenge in this appeal.

The appellants and the respondent No.1 are brothers and the deceased respondent No.2 was their mother. The family lands of the parties were partitioned on 17.2.1955. In that partition, the deceased respondent No.2 got the land in question being Gat No.219 to her share. It was alleged that respondent No.2 executed a lease deed in favour of her son, the respondent No.1.

The respondent No.1 filed an application before the Sub-Divisional Officer ('the SDO' for short), Solapur under Section 84 of the Bombay Tenancy & Agricultural Lands Act, 1948 (for short, 'the Act') seeking eviction of the appellants from the land in question summarily, contending that

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he was the tenant over the land and the appellants were in unauthorised occupation of the same. The SDO, having considered the material placed on record, rejected the application made by respondent No.1 on the grounds that the lease pleaded by the respondent No.1 was not proved; the period of lease itself had expired and also having regard to the close relationship between the parties. The respondent No.1, aggrieved by and not satisfied with the said order of the SDO, filed a revision petition before the Maharashtra Revenue Tribunal ('the Tribunal' for short) under Section 76 of the Act. The said Tribunal, as can be seen from the order passed by it on 16.11.1998, re-appreciated the evidence placed on record and based on such re-appreciation, set aside the order passed by the SDO and allowed the application of the respondent No.1 directing the appellants to be evicted from the land. The appellants filed writ petition before the High Court questioning the validity and correctness of the order passed by the Tribunal. The High Court, by the order impugned in this appeal, summarily dismissed the writ petition concurring with the findings recorded by the Tribunal. Hence this appeal.

Shri V.A. Mohta, learned Senior counsel for the appellants urged that the High Court committed a serious error in not considering the several contentions raised in the writ

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petition, including the questions of law as to the scope of the revisional power of the Tribunal to interfere with the order made by the SDO; having regard to the close relationship between the parties, the SDO was right in rejecting the application made by the respondent No.1, particularly in the absence of any entry in the revenue record to show that the respondent No.1 was a tenant. He added, above all the appellants and respondent No.1, during the pendency of

f the proceedings before the Tribunal, arrived at a settlement and based on the settlement, order was passed under Rule 85 of the Maharashtra Land Revenue Code, 1966 in which the land in question has been divided between the appellants and the respondent No.1 specifying their portions of the land allotted to and held by them. According to the learned counsel, the Tribunal exceeded its jurisdiction in setting aside the order of the SDO exercising revisional jurisdiction under Section 76 of the Act.

Shri U.U. Lalit, learned counsel for the respondent No.1 made submissions supporting the impugned order. According to him, the impugned order rightly affirmed the order made by the Tribunal. He pointed out that the SDO committed manifest error in rejecting the application made by the respondent No.1.

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In that, he submitted that after expiry of the period of lease, the rights of the respondent No.1 were not lost, the partition of the other properties between the parties had no bearing on the land in question as to the tenancy rights. He went on to say that the Tribunal had taken note of the fact that the lease deed was not proved, looking to the oral evidence given by the respondent No.1 and that the sisters of the appellants and the respondent No.1 admitting the lease in favour of the respondent No.1. Further, the mother, during her life time, did not deny at any time that such lease was not executed in favour of the respondent No.1. As to the settlement, learned counsel stated that the settlement only deals with regard to the owners' rights and it has no bearing on the tenancy rights of the respondent No.1.

The relationship between the parties is not disputed and it is also not disputed that in the revenue records at no point of time, the name of the respondent No.1 was shown as a tenant. The respondent No.1 filed civil suit seeking permanent injunction against the appellants restraining them from interfering with his possession. The said suit was dismissed for default on 7.7.1993. This fact is also not in dispute. Further a joint application was made by the appellants and the respondent No.1 to the Tehsildar under Rule 85 of the Maharashtra Land Revenue Code, 1966 to record the settlement on

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the basis of the will executed by the deceased respondent No.2. An order was passed showing the appellants and the respondent No.1 in possession of respective portions specified in the said order of the Tehsildar dated 19.6.1996. This settlement came into existence during the pendency of the revision petition before the Tribunal. On instructions, the learned counsel for the respondent No.1 did not dispute the existence of the settlement and the order passed by the Tehsildar, but, he only tried to make a distinction, as already noticed above, that this settlement has nothing to do with the tenancy rights claimed by the respondent No.1. It is clear from the order passed by the Tribunal that it re-appreciated the evidence as if it was the original authority and based on such appreciation, set aside the order passed by the SDO. Having regard to the scope of Section 76 of the Act as to revisional jurisdiction, we hold that the Tribunal exceeded its jurisdiction in re-appreciating the evidence to set aside the order passed by the SDO. Even assuming that such a lease deed was in existence, having regard to the facts stated above, it appears that it was not acted upon. If respondent No.1 really happened to be lessee of the land, his name ought to have been entered in the revenue records. At any rate, if he was claiming tenancy rights, then nothing prevented him to mention

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about his tenancy rights in the settlement arrived at between the appellants and the respondent No.1 and which settlement was recorded by the Tehsildar, as already noticed above, during the pendency of the proceedings before the Tribunal. Further the close relationship between the parties is also an additional factor to negative the claim of respondent No.1. Under these c

ircumstances, in our considered view, the Tribunal committed a serious error and exceeded its jurisdiction in setting aside the order made by the SDO and the High Court did not examine the contentions raised in the writ petition on merits, but concurred with the order passed by the Tribunal. In this situation, the appeal is entitled to succeed. Accordingly, it is allowed. The impugned order passed by the High Court, affirming the order made by the Maharashtra Revenue Tribunal is set aside and that of the SDO is restored.
No costs.

[SHIVARAJ V. PATIL]J.

New Delhi, [D.M. DHARMADHIKARI]J.
April 28, 2004.
ITEM No.104 Court No.8 SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.3171/1999

GURUNATH S. PATIL AND ANR. APPELLANT (S)

VERSUS

SIDRAM S. PATIL AND ANR. RESPONDENT (S)
(With appln.(s) for permission to submit addl. documents and exemption from filing O.T. and from filing affidavit and exemption from filing supporting affidavit and with office report)

Date : 27/04/2004 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s)Mr. V.A. Mohta, Sr.Adv.
Mr. Shivaji M. Jadhav, Adv.
Mr. S.R. Patil, Adv.
Mr. Himanshu Gupta, Adv.
Mr. Brij Kishor Shah, Adv.

For Respondent (s)Mr. U.U. Lalit, Adv.
No.10

UPON hearing counsel the Court made the following
O R D E R

Mr. V.A. Mohta, learned Senior counsel for the appellants started his arguments at 2.45 p.m. and concluded at 3.25 p.m. Then, Mr. U.U. Lalit, learned counsel for the respondents was on his legs till 4.00 p.m. when the Court rose for the day.
The matter remained part-heard.

Sarita (Shelly Sengupta)
Court Master

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ITEM NO.101 (PH) COURT NO.8 SECTION IX

DATED : 28/04/2004 This appeal is called on for hearing today.

CORAM AND APPEARANCE : AS ABOVE.

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UPON hearing counsel the Court made the following
O R D E R

Mr. U.U. Lalit, learned counsel for the respondents resumed his arguments at 10.50 and concluded at 11.25 a.m.

The appeal is allowed with no costs in terms of the signed order.

Sarita (Shelly Sengupta)
Court Master

(Signed order is placed on the file)