APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice

1952 July 17

TRIMBAK SOPANA GIRME (ORIGINAL DEFENDANT), PETITIONER *v.* GANGARAM MHATARBA YADAV (ORIGINAL PLAINTIFF), OPPONENT.*

Bombay Tenancy and Agricultural Lands Act (LXVII of 1948) ss. 70 (b), 85 (1) †—Suit by plaintiff on the allegation that defendant is a trespasser—Defendant's plea that he is a protected tenant—Whether Civil Court has jurisdiction to try the suit.

In a suit filed in a Civil Court for recovery of possession of agricultural land on the ground that the defendant was a trespasser, the defendant contended that he was not a trespasser but a protected tenant. On the question whether the Civil Court had jurisdiction to try the suit in view of s. 85 of the Bombay Tenancy and Agricultural Lands Act, 1948.

Held, that the power given to the Mamlatdar under s. 70 (b) of the Act to decide whether the defendant is a protected tenant or not, included by implication the power to decide whether the defendant is or is not a trespasser, and therefore the Civil Court had no jurisdiction to entertain the suit.

Govindram Salamatrai Bachani v. *Dharmapal Amarnath Puri*,[1] referred to.

Civil Revision Application against the decision of R. K. Ranade, Assistant Judge, Ahmednagar, reversing the decision of S. R. Phatak, Joint Civil Judge (J. D.), Kopargaon.

On February 11, 1949, the plaintiff filed a suit for recovery of possession alleging that the defendant was a mere trespasser. The suit was filed in the Court of the Joint Civil Judge, J. D., at Kopargaon. The defendant contended, *inter alia*, that he was a protected tenant and that as the suit related to possession of agricultural land the Civil Court had no jurisdiction to try the suit in view of the Bombay Tenancy and Agricultural Lands Act, 1948.

The trial Court held that it had no jurisdiction to try the suit and returned the plaint for presentation to the proper Court.

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* Civil Revision Application No. 875 of 1951.

[1] (1951) 53 Bom. L. R. 386.

† Section 85 (1) reads as under:—

"No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal, a manager, the Collector or the Bombay Revenue Tribunal in appeal or revision or the Provincial Government in exercise of their powers of control."

The plaintiff having appealed, the learned Assistant Judge at Ahmednagar set aside the order of the trial Court and remanded the suit for being tried on merits.

The defendant applied to the High Court in Revision.

The application was heard.

Y. V. Chandrachud, for the petitioner.

V. M. Tarkunde, for the opponent.

CHAGLA C. J. A suit was filed by the opponent against the petitioner for possession in the Civil Court. The opponent's contention was that the petitioner was a trespasser. The defence taken up by the petitioner was that he was not a trespasser, but a protected tenant. The learned Civil Judge, Junior Division, came to the conclusion that the issue as to whether the defendant was a trespasser or a protected tenant was an issue which was triable under s. 70 (*b*) of the Bombay Tenancy Act by the Mamlatdar, and he had no jurisdiction to try the issue. Therefore, he ordered the plaintiff to present the suit to the proper Court. In coming to this conclusion, the learned Judge expressed an opinion that he was convinced that the defendant was a trespasser, but inasmuch, in the view of the learned Judge, he had no jurisdiction, he did not pass any decree in favour of the plaintiff. The matter was taken in appeal to the learned Assistant Judge, Ahmednagar, and the learned Assistant Judge held that the Court had jurisdiction to decide whether the defendant was a tenant or a trespasser, and he remanded the matter for disposal to the trial Court.

Now, the jurisdiction of the Civil Court is ousted under s. 85 of the Tenancy Act, and that section provides that no Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar (I am quoting the material part of the section); and under s. 70 (*b*), one of the duties and functions of the Mamlatdar is to decide whether a person is a tenant or a protected tenant. A very interesting argument has been advanced by Mr. Tarkunde, and his contention is that a suit against a trespasser is only cognizable by the Civil Court, and, therefore, if an issue arises in such a suit as to whether the defendant is a trespasser or a protected tenant, it is for the Civil Court to decide that issue; if the defendant is a trespasser, the Civil Court has jurisdiction to pass a decree for possession; if, on the other hand, the Civil Court comes to the conclusion that the defendant is a

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protected tenant, then the Court would have no jurisdiction and the suit would have to be dismissed or sent to the Mamlatdar to dispose of it according to law. Mr. Tarkunde's further contention is that it is only to those issues which the Mamlatdar is required to determine in a proceeding which should be filed before the Mamlatdar that s. 70 (*b*) has any application. Now, under s. 29 (*2*), no landlord shall obtain possession of any land or dwelling house held by a tenant except under an order of the Mamlatdar. Therefore, if a landlord wants to obtain possession from his tenant, he cannot approach a Civil Court, but must go to the Mamlatdar. Mr. Tarkunde says that, when a landlord files such an application, the Mamlatdar has jurisdiction to decide any issues that arise in such an application, but that, when a person files a suit against a trespasser, that is not a proceeding of which the Mamlatdar can take cognisance, and as it is only the Civil Court that can take cognisance, any issue that arises in such proceedings or such suit can legitimately be tried by the Civil Court without offending the provisions of s. 29 (*2*). Now, if this argument was sound, really no occasion would ever arise for the Mamlatdar to decide the issue as to whether a person is a tenant or a protected tenant, because, if a person could only go to the Mamlatdar in those cases where he admitted that the defendant was a protected tenant, then the issue as to whether the person was a tenant or a protected tenant would not arise. Such an issue can only arise when there is a dispute as to the status of the particular person, and it is only when an allegation is made that the person is not a tenant or a protected tenant that the Mamlatdar would be called upon to try such an issue. Now, it is clear that the question whether a person is a tenant or a protected tenant is not a jurisdictional fact as far as the Mamlatdar is concerned, but is a fact in issue. The jurisdiction of the Mamlatdar does not depend upon the person being a tenant or a protected tenant. On the contrary, the Mamlatdar himself has been given the jurisdiction to try the question as to whether a person is a tenant or a protected tenant. Reference may be made to a decision of this Court in *Govindram Salamatrai* v. *Dharmpal*[1]. There we were considering s. 28 of the Rent Act, and we held that the High Court had the jurisdiction to decide whether a defendant was a licensee or a tenant when a suit was filed by the plaintiff to eject a licensee and the defendant

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took up the contention that he was a tenant and not a licensee. We pointed out that it was not left to the Small Cause Court under s. 28 of the Rent Act to decide whether the defendant was a tenant or not; that, on the contrary, the special jurisdiction conferred upon the Small Cause Court emanated from the fact that the relationship between the plaintiff and the defendant was that of landlord and tenant, and that, if that relationship did not exist, the Small Cause Court had no jurisdiction at all, and therefore the High Court had the jurisdiction to determine the issue whether the defendant was a tenant or not, and it was only if the defendant was a tenant that the matter had to be sent to the Small Cause Court to be disposed of under s. 28. Now, it will be immediately realised that there is a vital distinction between the position in law under s. 28 of the Rent Act and s. 70 (*b*) of the Tenancy Act. Section 28 of the Rent Act confers jurisdiction upon the Small Cause Court to try suits between landlord and tenant. S. 70 (*b*) of the Tenancy Act confers jurisdiction upon the Mamlatdar to determine whether a person is a tenant or a protected tenant. There is another very serious difficulty which would arise if Mr. Tarkunde's view were to be accepted. Assuming that the Civil Court was to hold that the defendant was a protected tenant, Mr. Tarkunde concedes that, under those circumstances, the Civil Court would have no jurisdiction to pass a decree in favour of the plaintiff or to deal further with the suit and the matter will have to go to the Mamlatdar. Suppose in the proceeding taken before the Mamlatdar by the landlord the Mamlatdar came to the conclusion that the defendant was not a protected tenant. We would then have one decision by the Civil Court and a contrary decision on the same point by the Revenue Court, and the question would arise which view was to prevail. It is in order to avoid such a conflict that the Bombay Tenancy and Agricultural Lands Act has ousted the jurisdiction of the Civil Court to determine the issue as to whether the defendant is a protected tenant or not. Mr. Tarkunde says that the issue before the Civil Court is not whether the defendant is a protected tenant or not, but the issue is whether the defendant is a trespasser or a protected tenant. In my opinion, when the Legislature has left it to the Mamlatdar to decide the issue whether the defendant is a protected tenant or not, it implies that he must decide that the defendant is not a trespasser in order to hold that he is a tenant or a protected tenant and he must also hold

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that he is a trespasser in order to determine that he is not a tenant or a protected tenant. I agree with Mr. Tarkunde that the provisions in law which oust the jurisdiction of the Civil Court must be strictly construed. But considering it as strictly as I can, looking to the language used by the Legislature in s. 70 (*b*) of the Tenancy Act, and looking to the scheme of the Act, it seems to me clear that all questions with regard to the status of a party, when the party claims the status of a protected tenant, are left to be determined by the Revenue Court, and the jurisdiction of the Civil Court is ousted.

In my opinion, therefore, the trial Court was right and the learned Assistant Judge was in error.

The result is the order of the Trial Court must be restored and the order of the lower appellate Court set aside. Rule absolute with costs.

Rule absolute

K. B. S.

APPELLATE CIVIL

Before Mr. Justice Bhagwati and Mr. Justice Dixit.

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THE JALGAON BOROUGH MUNICIPALITY (ORIGINAL DEFENDANT), APPELLANT *v.* THE KHANDESH SPINNING AND WEAVING MILLS CO. LTD. (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Bombay Municipal Boroughs Act (XVIII of 1925) s. 206—Notice under—When Notice to the Municipality necessary—Illegal acts and acts "done or purported to have been done under the Act"—Distinction between.

The plaintiffs gave notice to the Jalgaon Municipal Borough on May 2, 1947 under s. 206 of the Bombay Municipal Boroughs Act, 1925, stating that the levying of the octroi duty by the Municipality on the fuel oil imported by the plaintiffs within the Municipal limits was illegal, *ultra vires* and wrongful and that the Municipality was bound to refund the amount of Rs. 15,008 recovered by it. On July 15, 1948, the plaintiffs filed a suit in the Jalgaon Court for recovering a sum of Rs. 37,000 and odd by including in the claim the payments made by them after the notice. On the question whether the claim made in the suit in respect of subsequent payments which was not covered by the terms of the notice, was sustainable, it was contended by the plaintiffs that the levying of the Octroi duty on fuel oil was illegal and could not be said to be anything done or purported to have been done in pursuance of the Act and that, therefore, the operation of s. 206 of the Act was not attracted,

* First Appeal No. 502 of 1949.