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Court : Karnataka

Decided On : Jul-11-1951

Reported in : AIR1952Kant61; AIR1952Mys61

Judge : Mallappa and ;Vasudevamurthy, JJ.

Acts : Mysore Land Revenue Code - Sections 54

Appeal No. : Second Appeal Nos. 109 and 110 of 1948-49

Appellant : Krishna Murthy and ors.

Respondent : H.P. Subba Rao and ors.

Advocate for Def. : S. Rangaraj, Adv.

Advocate for Pet/Ap. : R.V. Sreenivasaiya, Adv.

Judgement :

Mallappa, J.

1. S. A. No. 109 and S. A. 110 of 48-49 are appeals against the Judgment and decrees of the Subordinate Judge, Hassan, in Regular Appeals Nos. 134 and 135 of 46-47, confirming those of the Munsiff, Kassar, in O. S. 549 and 543 of 45-46 respectively. Both these suits were dismissed by the learned Munsiff.

2. The plaintiffs who are the appellants in this Court filed the suits for partition and possession of the properties in dispute. They contend that they are the joint family properties of themselves, and of the first defendant, who was the Manager of their joint family. The other defendants in the two cases have only derived their title from the first defendant. The main contention of the contesting defendants is that the properties were forfeited to Government for default of payment of land revenue and as such the plaintiffs have no subsisting rights. It is unnecessary to consider other contentions of the contesting defendants, as the Courts below have upheld those contentions and dismissed the suits.

3. At the outset it has to be stated that the plaintiffs have not in their reply statement denied the allegations made in the written statement that the properties in dispute have been forfeited to Government on account of default of payment of land revenue. What is however contended is that under Law a mere order of forfeiture has no legal effect and that neither the first defendant nor the Plaintiffs have lost their right in the properties and it is only by a subsequent sale that these rights are affected. Section 54 of the Land Revenue Code has been relied on. It is particularly the last portion of that section that was contended by Mr. Sreenivasayya, the learned Advocate for the Appellants, to be of much help to the case of the appellants. Section 54 is as follows:

'Arrears of land revenue due on account of land by any land-holder shall be a paramount charge on the holding and every part thereof, failure in payment of which shall make the occupancy or alienated holding, together with all rights of the occupant or holder over all trees, crops, buildings and things attached to the land, or permanently fastened to anything attached to the land, liable to forfeiture, whereupon the Deputy Commissioner may levy all sums in arrear by sale of the occupancy or alienated holding, or may otherwise dispose of such occupancy or alienated holding under rules or orders made in this behalf under Section 233, and such occupancy, or alienated holding, when disposed of, whether by sale as aforesaid, or by transfer to another person or otherwise whosoever, except by restoration to the defaulter, shall, unless the Deputy Commissioner otherwise directs, be deemed to be freed from all tenures, rights, incumbrances and equities theretofore created by the occupant or holder or any of his predecessors In title or

in anywise subsisting as against such occupant or holder but so as not to affect the rights of kadim tenants or permanent tenants in alienated holdings.'

It will be noticed that the section begins by saying that arrears of land revenue shall be a paramount charge on the holding and every part thereof, it says that failure in payment of land revenue makes the occupancy or alienated holding liable to forfeiture. According to it, the Deputy Commissioner may sell or dispose of the occupancy or alienated holding to recover the sums due and it is only when the occupancy or holding is disposed of, in that manner that the disposal must be deemed to be freed from all tenures, rights, encumbrances and equities theretofore created by the occupant or holder or any of his predecessor-in-title. As explained in the decision in R. A. No. 157 of 46-47, in which the matter had to be considered at some length, the section refers to the rights created by the holders or subsisting against them being affected by a sale or other kind of disposal and from this it may be inferred that such rights are not affected by a mere order of forfeiture. There is nothing in the section by which it could be inferred that after an order of forfeiture and prior to the disposal of the holding by sale or otherwise, the rights of the holder remain unaffected. The suit is in respect of the right of the Jodidars and it is not a case where the right created by them or subsisting against them 13 attempted to be enforced. Thus while the last clause of the Section does not help the appellants, the point that arises for consideration is whether the order of forfeiture affects the rights of the joint family consisting of Plaintiffs and the first defendant, of whom the latter was the manager of the Joint family.

4. It is contended on the authority of 'Ganapar-shibai v. Timmaya Shivappa', 24 Bom 34, that the order of forfeiture does not by itself affect the right of plaintiffs who are Jodidars since 'the forfeiture in itself has no direct legal consequence under the Code', as held in a previous decision of that Court referred to in it. But as pointed in 'Amolak Benechand v. Dhondi', 30 Bom 466 by Sir Lawrence Jenkins, Chief Justice:

'No doubt in 'Mulchand Bhagwanji v. Shapurji Dadabhai', 1898 Bom P J 8, it is said that 'forfeiture in itself has no direct legal consequences under the Code', but it is conceded in Ganapar-shibai's case by Candy, J., who was a party to the decision

in 'Mulchand Bhagwanji v. Shapurji Dadabhai', that the cases on which this statement is based, 'may not have been quite apposite.' We agree with this comment, and, therefore, refrain from discussing those cases.'

Referring to the case reported in '24 Bom 34' the-learned Chief Justice observed:

'In support of his contention the appellant principally relies on 'Ganaparshibai v. Timmayya Shivappa Halepaik.' But while it is there said of the landlord, the plaintiff in that suit, that 'the forfeiture per se did not destroy the relations existing between him and his tenant', it is in the preceding sentence conceded that 'so it may have done as between him and Government.'

It will thus be seen from the two Bombay decisions that it is not correct to say that forfeiture in itself has no direct legal consequence.

5. As stated by Black stones in Chapter 18, of his Commentaries on Book II, page 267 :

'Forfeiture is a punishment annexed by law to some illegal act or negligence, in the owner of lands tenements or berditaments: whereby he loses all his interest therein and they go to the party injured as a recompense for the wrong which either he alone, or the public together with himself, hath sustained.' The learned Chief Justice in the Bombay case relied on this passage and observed that forfeiture ordinarily implies the loss of a legal right by reason of some breach of obligation. The learned Chief Justice saw no reason for not giving full significance of the meaning of the word forfeiture to cases of this kind. He observed that; 'If, by the phrase we have cited, it is meant that the Code does not define the consequences of a 'forfeiture in itself, then no exception can be taken to it, but we see in that no reason for withholding from the word forfeiture its ordinary legal significance.'

We may add here that as stated in Wharton's Law Lexicon :

'Forfeiture is a 'penalty' for an offence or unlawful act, or for some wilful omission of a tenant of property whereby he loses it, together with his title.'

The decisions relied on, do not help the appellants; in fact they make it clear that the first defendant and plaintiffs who are the other members of the family of which he was the manager lost their right to the property the moment there was an order of forfeiture on failure of payment of land revenue due on the holding.

6. This does not however mean that if the property is obtained by the defaulter later on from Government, equities subsisting against him cannot be enforced by other persons. In '*Amolak Benechand v. Dhondi*', 30 Bom 466 referred to above, it will be noticed that the defendant in that case mortgaged a Survey Number to the Plaintiff and passed a kabuliath in his favour. The plaintiff sued the defendant for possession of the land; the defence was that the mortgage and Kabuliath expired as the land had been forfeited to Government for arrears of assessment and that it had been thereafter released to the defendant free from all encumbrances. It will be noticed that the defendant who had prior to the order of forfeiture mortgaged the property and taken back the land on a Kabulayat was trying to cheat the mortgagee by taking advantage of a revenue sale. The case had to be remanded for ascertaining whether there were any equities in favour of the plaintiff in that case, subsisting against the defendant. The decision in '*Balkrishna Vasudev v. Madhaorav Karayan*', 5 Bom 73, was relied on in that case. We may here refer to that case as an instance where the existence of equities may be conceived. In that case :

'The plaintiff sued to recover possession of certain land and prayed to set aside the sale of it by the Revenue authorities for arrears of assessment, due on the land. He alleged that he had let the land to the defendant, on condition of the latter paying Government assessment and certain rent in cash and kind to the plaintiff, that the defendant having intentionally made a default in payment of the assessment, fraudulently caused the land to be sold by the Revenue authorities and purchased it himself.'

In cases of that kind the plaintiff can claim that the defendant be declared a trustee for the plaintiff. In the present case no circumstance has been alleged in the plaint or in the reply statement claiming such considerations.

7. As regards the decision in '18 Mys C C R 76', it has to be stated that both the decisions referred to above 'Ganaparshibai v. Timmaya Shivappa', 24 Bom 34 and 'Amolak Benechand v. Dhondi', 30 Bom 466 have been relied on in it. While there is no doubt that the rights and equities that are created by or subsisting against the defaulting Jodidar or occupant of the land are not affected by a mere order of forfeiture, prior to sale, the order of forfeiture affects the rights of the defaulting Jodidar or holder. It operates as a resumption of the holding by the Government, as observed in that decision. In that case some lands belonging to one Gururao, uncle of the plaintiff appellant, were in the khatha of the latter. The appellant failed to pay the arrears of assessment and the entire holding was sold. Later on, on the application of the plaintiff-appellant on payment of arrears, it was ordered that the Khatha must be restored. This order could not have conveyed to the Plaintiff-appellant any more right than what he had prior to his failure to pay the arrears of land revenue and the consequent order of forfeiture. It may be stated with respect therefore, that it was rightly decided in that case that the plaintiff was not entitled to get possession of the land which belonged to Gururao.

8. As observed in 'Amolak Benechand v. Dhondi', 30 Bom 466 the word forfeiture implies the loss of a legal right and it is clear that the plaintiffs have lost their right as Jodidars when the land was forfeited to Government on the Manager of their Joint family having failed to pay arrears of land revenue. They cannot therefore file a suit for partition and possession of the property after it is forfeited to Government as if they are still the owners of the property.

9. No other point arises for consideration in this case. The lower Courts were, therefore, right in dismissing as premature the suits filed for partition without getting the order of forfeiture cancelled. The appeals stand, therefore, dismissed. Parties will bear their own costs.

10. Appeal dismissed.