

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL (ST) NO.6085 OF 2013**

**IN
WRIT PETITION NO.5236 OF 1989**

Baburao Mhasku Shenkar since
deceased through his heirs-
1A. Hanmant Baburao Shendkar & Ors.

...Appellants

Versus

Laxman Maruti Kolate & Anr.

...Respondents

...

Mr. Mohan N. Dhamal for the Appellants.
Mr. Rahul S. Kate for Respondent No.1.

**CORAM : A.S. OKA &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED: 15th NOVEMBER, 2016.

P.C. :-

Without going into the issue of maintainability of the appeal, we have heard the learned counsel appearing for the Appellants and the learned counsel appearing for the First Respondent.

2. The Appellants are the legal representatives of the original plaintiff and the first Respondent is the original defendant. The issue of tenancy was framed by the learned Civil Judge, Junior Division, Baramati in a civil suit filed by the present Appellants. Plea of tenancy

was raised by the First Respondent claiming that he was a tenant of the suit land since prior to 29th November, 1965. He claimed that he had a right to purchase the suit under section 32 (G) of the Bombay Tenancy and Agricultural Lands Act 1948 (for short 'the said Act of 1948') as he has complied with the provisions of Section 32F (1) (a) of the said Act of 1948. After framing the issues, the learned Judge made a reference under section 85 (A) of the said Act of 1948 to the Agricultural Land Tribunal, Baramati (for short 'ALT'). By the judgment and order dated 30th July, 1985 the ALT observed that Smt. Gajabai from whom the first Respondent was claiming tenancy had leased out the suit land to the first Respondent in 1956-1957 as seen from the 7/12 extracts. The finding recorded by the ALT is that Smt. Gajabai had created a tenancy in favour of First Respondent in respect of the suit land. However, ALT observed that as per registered deed of settlement dated 11th September, 1952, the suit land was given to Smt. Gajabai only for her maintenance during her life time and therefore, she had no right to create tenancy. On the basis of the said finding, the ALT answered the reference. In an appeal preferred by the First Respondent/Defendant, the findings of the ALT were confirmed. The findings of the Appellate authority have been confirmed by the Maharashtra Revenue Tribunal in a revision application preferred by the first Respondent.

3. Being aggrieved by the aforesaid three decisions, the First Respondent preferred writ petition in this Court. By the impugned order, the learned Single Judge has allowed the writ petition by holding that the First Respondent was an agricultural tenant in respect of the suit land and that in view of the service of notice in accordance with the section 32 F of the said Act of 1948, the First Respondent is entitled to purchase the suit land. It was held that in view of sub section (1) of section 14 of the Hindu Succession Act, 1956 the said Gajabai became absolute owner of the suit land which was given to her in lieu of maintenance.

4. The first submission of the learned counsel appearing for the Petitioners is that as held by the authorities under the said Act of 1948, Smt. Gajabai had a limited interest in the suit land and therefore, she had no right to create a tenancy. He pointed out that in fact on 29th November, 1965 a mortgage by conditional sale was executed by the said Smt. Gajabai in favour of the first Respondent. His submission is that the first Respondent has not established his tenancy rights. He therefore, submitted that the learned Single Judge has committed gross error by interfering with the concurrent findings recorded by the three authorities under the said Act of 1948.

5. We have carefully considered the submissions. We may note here that there is a concurrent finding recorded by the three authorities under the said Act of 1948 that the suit land was granted to the said Smt. Gajabai under a deed dated 11th September, 1922, in lieu of her maintenance during her life time. All the three authorities proceeded on the footing that as evident from 7/12 extracts, Smt. Gajabai had leased out the suit land to the first Respondent in 1956-1957. Thus, there are concurrent findings that the suit land was granted to Smt. Gajabai for her maintenance during her life time and that there was a tenancy created by Smt. Gajabai in favour of the First Respondent.

6. Perusal of the impugned order of the learned Single Judge shows that the learned Single Judge has applied the law laid down by the Apex Court in the case of **Vaddeboyina Tulasamma Vs. Saddeboyina Sesha Reddi**¹ which interprets sub sections 1 and 2 of section 14 of the Hindu Succession Act of 1956. After applying the law laid down by the Apex Court to the facts of the case, the learned Single Judge in para 13 of the order observed as under:

¹ AIR 1977 SC 1944

“13. Applying the principle enunciated above to the fact of present case. I find that the suit property was allotted to deceased Gajrabai in lieu of her maintenance which was preexisting right, (ii) said Gajrabai had life interest in the suit property in view of the terms of the above settlement deed. (iii) despite above Gajrabai continued to be in possession of suit property till 1956 when the Hindu Succession Act, 1956 came into force and (iv) Gajrabai inducted the petitioner in the suit land as a tenant in the year 1956 after she had acquired absolute interest in the suit property by virtue of provisions of section 14(1) of the said Act.”

7. We find no error in the said view taken by the learned Single Judge when he held that the landlady of the first Respondent acquired absolute interest in the suit land by virtue of sub section 1 of section 14 of the Hindu Succession Act of 1956. The finding of the learned Single Judge is arrived at after applying the principles laid down by the Apex Court to the findings of fact recorded by the three Authorities under the said Act of 1948.

8. The learned Single Judge dealt with the argument based on the execution of mortgage by conditional sale deed by Smt. Gajabai in favour of the First Respondent on 29th November, 1965. The learned Single Judge relied upon section 25 A of the said Act of 1948, which reads as under:

“25A. If any land is mortgaged by a landlord by way of a usufructuary mortgage to a tenant cultivating such land, the tenancy of such land shall be in abeyance during the period the mortgage subsists. After the expiry of the said period it shall, notwithstanding any other law for the time being in force, be lawful to the tenant to continue to hold the land on the terms and conditions on which he held it before the mortgage was created.”

9. In the light of express provisions of section 25 A of the said Act of 1948, the learned Single Judge held that the execution of mortgage will not affect the first Respondent's tenancy right.

10. As regards the compliance of section 32 F of the said Act of 1948, the learned Single Judge perused the notice, which was on record of ALT and found that notice was received by the Appellants as well as by the ALT. Therefore, the learned Single Judge held that compliance has been made by the First Respondent with the requirement of sub section 1(a) of section 32 F of the said Act 1948.

That is the reason why the learned Single Judge interfered with the concurrent orders passed by the three authorities under the said Act of 1948. Completely erroneous view taken by the three authorities on admitted facts has been corrected by the learned Single Judge by interfering in writ jurisdiction. Accordingly, the effect of the impugned order of the learned Single Judge is that issue of tenancy framed under section 85 (A) of the said Act of 1948 has been answered in favour of the first Respondent.

11. We find no error in the view taken by the learned Single Judge. The Letter Patent Appeal is dismissed. No costs.

12. We however, make it clear that the findings recorded by the learned Single Judge as well as this Bench are confined to the issues raised under section 85(A) of the said Act of 1948 and no adjudication is made on the other issues arising in the pending Suit.

13. As the Suit is pending for a long time it will be open for the Appellants to move the learned Trial Judge for expeditious disposal of the said Suit.

(ANUJA PRABHUDESSAI, J.)

(A.S. OKA, J.)