

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 654 OF 1998

1. Shripati Aba Patil,
(Since deceased through heirs and L.Rs)

1a. Balaso Shripati Patil, Age : 60 years,

1b. Babaso Shripati Patil,
(Since deceased through heirs and L.Rs)

1b(i) Smt. Sushila Babaso Patil, Age : 60 years

1c. Bajirao Shripati Bogar
(Since deceased through heirs and L.Rs)

1c(i) Smt. Suvarna Bajirao Bogar-Patil,
Age : 45 years

1c(ii) Tushar Bajirao Bogar-Patil,
Age : 21 years

1c(iii) Aakash Bajirao Bogar-Patil,
Age : 15 years
[Minor, through mother-Pet.1c(i)]

Nos.1c(i) to 1c(iii) R/o. Yelur,
Tal. Walwa, Dist. Sangli

1d. Subhash Shripati Bogar, Age : 46 years

1e. Savitri Bhagwan Bogar, Age : 62 years

1f. Anjani Balaso Bogar, Age : 58 years

1g. Chaaya Subhash Bogar, Age : 43 years

(Amendment in respect of Pet. Nos.1 & 2
as per Court's order dated 09.06.2014
passed in CA-1549/09 & 1551/09)

2. Sakharam Aaba Bogar,
(Since deceased through heirs and L.R.s)

2a. Shankar Sakharam Bogar, Age : 60 years

2b. Kisabai Sakharam Bogar, Age : 77 years
Nos. 2a and 2b R/o. Yelur,
Tal. Walwa, Dist. Sangli

2c. Smt. Kusum Baban Patil, Age : 55 years
R/o. Kapuskhed, Tal. Walwa, Dist. Sangli

2d. Sou. Sajabai Vishwas Patil, Age : 50 years
R/o. Tung, Tal. Miraj, Dist. Sangli.

2e. Shobha Sakharam Patil, Age : 43 years
R/o. Yelur, Tal. Walwa, Dist. Sangli
(Amendment in respect of Pet. Nos.1 & 2
as per Court's order dated 09.06.2014
passed in CAW-1552/09)

.....Petitioners
(Orig. Tenants)

V/s.

1. Vasant Waman Kulkarni
(Since deceased through heirs and L.Rs)

1A. Vilas Vasant Kulkarni, Age : 62 years,

1B. Vishwas Vasant Kulkarni, Age : 57 years,

Nos.1A and 1B, residing at :
Flat No.23A, Sarita Society,

Mayur Colony, Kothrud, Pune 38

1C. Vijaya Vasant Kulkarni,
(Since deceased through heirs and L.Rs.
(Since deceased through heirs and L.Rs
i.e. Resp. Nos.1A and 1B above)

2. Balwant Waman Kulkarni

.....Respondents
(Orig. Landlord)

* * * * *

Mr. Pratap Patil, Advocate for the petitioners.

Mr. Vijay Patil, Advocate for respondent no.2.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 24TH JUNE, 2016.

JUDGMENT :-

1). This petition under Article 227 of the Constitution of India, challenges the judgment and order dated 15th January, 1998 passed by the Maharashtra Revenue Tribunal in the Revision Application preferred before it by the petitioners. The petitioners are agricultural tenants in respect of the land in dispute i.e. land at Survey No.237 admeasuring 4 Acres and 25 Gunthas and the land at Survey No.244/2 admeasuring 2 Acres and 21 Gunthas situate at Yellur, Wawal, Islampur. The respondents are the landlords of the property.

2). The brief factual background of the petition is that, one Govind Kulkarni, the grandfather of the respondents was the original owner of the property in dispute. He had two sons namely, Damodar and Waman. Damodar died in the year 1924 leaving behind his widow, Dwarkabai as his only heir. In the year 1927, Dwarkabai filed Regular Civil Suit No. 185 of 1927 against Waman for maintenance out of the joint family property. That suit was decreed in her favour and she was awarded maintenance of Rs.90/- per month. In the year 1949, she filed another suit being Regular Civil Suit No. 69 of 1949 against Waman for enhanced maintenance of Rs.390/- per year. In that suit, Waman instead of paying enhanced maintenance to Dwarkabai agreed to $\frac{1}{2}$ share in the properties of the joint family i.e. the properties in question. The suit was decreed in the year 1951 whereby Dwarkabai was held entitled to recover $\frac{1}{2}$ share in the properties in question for her maintenance from Waman after an equitable partition. The partition was directed to be effected through Collector under Section 54 of the Civil Procedure Code. Later, Dwarkabai filed execution proceedings being Darkhast No.22/51 for partition and in this Darkhast, the Collector of Satara passed final orders and the Collector partitioned the land by metes and bounds and the constructive possession was given to Dwarkabai on 28th Feb, 1951. The mutation entry 7581 was accordingly effected and the name of Dwarkabai came to be recorded in the revenue records w.e.f. 28th February, 1959.

3). Dwarkabai died in the year 1966. Waman died in the

year 1979. Thereafter, the respondents herein succeeded to the properties in dispute alongwith the property fallen to the share of Waman. Under the decree, as per the law prevailing on that day, Dwarkabai had limited rights to the properties in question for maintenance during her lifetime. However, her limited right became the absolute right in view of the amendment to Section 14 of the Hindu Succession Act, which came into force on 17th June, 1956. As such she became the absolute owner of the properties in question.

4). On 1st April, 1957 i.e. the Tillers Day, the petitioners and their predecessors in title, by virtue of the operation of law, became statutory owners of the properties in question of which they had been agricultural tenants. Thereafter the proceedings under Section 32-G of The Bombay Tenancy and Agricultural Lands Act ('Tenancy Act', for short) had commenced. But the same were postponed because Dwarkabai was a widow. The case was again fixed for enquiry on 29th January, 1994, and the proceedings were completed by the order of Tahsildar passed on 18th March, 1994 by which he held the purchase ineffective since the tenants had not given statutory notice under Section 32F (1) (a) of the Tenancy Act and directed inquiry under Section 32P for disposal of the lands in question. The Tahsildar held that, after the death of Dwarkabai, the tenants have admittedly not given intimation to the landlords as required under Section 32F (1) (a) of the Tenancy Act within the time prescribed therein i.e. one year from the expiry of the period during which such landlord is entitled to terminate the tenancy

under Section 31. Since no such notice was given, the right to purchase was lost and the purchase became ineffective. Being aggrieved by the order, the tenants preferred an appeal under Section 74 of the Bombay Tenancy Act to the Assistant Collector, Walwa, Division-Islampur. The Assistant Collector, by his order dated 30th September, 1995 dismissed the appeal holding that Dwarkabai had become the owner of the properties in question on the date of the decree. It was contended on behalf of the tenants before the Assistant Collector that, Dwarkabai had become the owner of the properties in question in the year 1959 on execution of the decree of maintenance in her favour and not on 1st April, 1957 i.e. the date on which decree in her favour was passed. This contention was rejected by the Assistant Collector holding that, she became owner on the date of the passing of the decree, although she may have taken actual possession later. It was also noted by the Assistant Collector that, admittedly since the date of the decree the tenants had paid rent to Dwarkabai. He further took note of the failure on the part of the tenants to give notice under Section 32F (1) (a) of the Tenancy Act within a period of one year. The petitioners then approached the Maharashtra Land Revenue Tribunal by way of revision on 30th November, 1985. The Tribunal has also confirmed the decision of the Courts below for the reasons stated therein and for the additional reason that on 1st April, 1957 when the decree was passed in favour of Dwarkabai, she had become absolute owner of the properties in question in view of Section 14 (1) of the Hindu Succession Act, 1957, which became applicable on 17th June, 1956.

5). Mr. Patil, the learned Advocate appearing for the petitioner submits that, the fact of Dwarkabai becoming the absolute owner in respect of the properties in question on coming into force of the amendment to Hindu Succession Act w.e.f. 17th June, 1956 was considered for the first time by the Tribunal and it was not one of the contentions taken by any of the parties. In my opinion, that would make no difference since the effect of the change in the law by way of amendment was automatic conversion of limited rights to the properties into full ownership. The Revenue Tribunal had merely taken cognizance of this legal position. Mr. Patil, then argues that, though Dwarkabai became full owner of the properties in question, that by itself did not change either the status of the property as the joint family property or the status of Dwarkabai as a member of the joint family. In that circumstance, Section 32F (1) (a) became applicable only on the happening of the event of partition of the joint family property by metes and bounds prior to 31st March, 1958 as mentioned in the proviso to the Section.

6). The provision of Section 32F (1) (a) reads as under :-

“32F. Right of tenant to purchase where landlord is minor, etc. (1) Notwithstanding anything contained in the preceding sections,-

(a) where the landlord is a minor, or a widow, or a person subject to any mental or physical disability, the tenant shall have the right to purchase such land under section 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under section 31 and for enabling the tenant to

exercise the right of purchase, the landlord shall send an intimation to the tenant of the fact that he has attained majority, before the expiry of the period during which such landlord is entitled to terminate the tenancy under Section 31.

Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before the 31st day of March, 1958 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property and not in a larger proportion.”

7). Mr. Patil submits that the amendment to Hindu Succession Act though conferred absolute ownership upon a woman in respect of a property in which she had a limited interest that by itself does not change the status of a woman from being a member of joint family. A woman can be a member of joint family having absolute ownership over her share in joint family property. He reiterates that Section 14 speaks of the nature of ownership and not of status of member in joint family. It is his argument that if section 14 is interpreted to mean that after 17th June, 1956 because of the conversion of her limited interest into full interest, a Hindu woman automatically ceases to be a member of joint family, it would mean that after 17th June, 1956 there will not be any Hindu woman who is

member of joint family because all Hindu women have become absolute owner of their respective properties. Such interpretation is impermissible. As an illustration he submits that if a Hindu male dies intestate after 17th June 1956 leaving behind sons and daughters as members of joint family, the daughters though remaining to be members of joint family will become absolute owners of their respective share in the property inherited by them from father. Therefore, according to him even if it is assumed that on 17th June 1956 Dwarkabai became absolute owner of her share in the property, still it will not affect her status as a member of Joint family. Mr. Patil argues that proviso to clause (a) of sub-section (1) of Section 32F of the Tenancy Act was added by way of amendment vide the Bombay Act 38 of 1957. By adding the proviso, time to obtain possession by metes and bounds was granted till 31st March, 1958. Section 32F (1) is clog on the tenant's right to purchase the tenanted land. For operating this clog, it was made mandatory to obtain possession by metes and bounds latest by 31st March, 1958. In the other words, if a widow fails to obtain possession by metes and bounds by 31st March, 1958, the clog under Section 32F (1) of the tenants right will not operate and in such a case it will not be necessary for tenant to give notice under Section 32F (1) (a) of the Tenancy Act. The addition of the proviso to clause (a) of Sub-section 1 of Section 32F was in the year 1957 i.e. after coming into force of the amendment to the Hindu Succession Act, 1956. Hence, Section 14 of Hindu Succession Act cannot be interpreted to make proviso to Section 32F (1) (a) of the Tenancy Act redundant.

8). The four requirements of the proviso to Section 32F (1) (a) for its application are (i) the person should fall in the category of minor, widow or a person subject to any mental or physical disability is a member of the joint family, (ii) atleast one member of the joint family should be outside these categories, (iii) on/or before 31st March, 1958 the share of such person is separated by metes and bounds and (iv) the Mamlatdar on enquiry is satisfied that the share of such person in the land is separated in proper proportion and not in a large proportion. In the facts and circumstances of the case, the requirements of the proviso cannot be said to be satisfied. With the decree passed in the year 1951 in Civil Suit No.69 of 1949, half share in the joint property was given to Dwarkabai in lieu of maintenance till her lifetime. There were only two members of the joint family i.e. Dwarkabai as the heir of her husband Damodar and her brother-in-law Waman. Therefore the decree passed in favour of Dwarkabai receiving half share in joint property in lieu of maintenance coupled with Section 14 (1) of the Hindu Succession Act resulted into severance of the joint family. The illustration given by Mr. Patil would be valid only in the case of absence of decree of the court which is not of general partition but of giving specific property to Dwarkabai. Therefore the exemption claimed by the petitioners from the application of the proviso on the ground that the property received by Dwarkabai was separated by the metes and bounds by execution of the decree subsequent to the date of 31st March, 1958 is not available to them. As such the clog on the tenants right to purchase the tenanted land continued to operate and consequentially it was necessary for the petitioners to issue notice to

the successors in title of Dwarkabai within a period of one year as prescribed under Section 32F (1) (a) of the Tenancy Act of their intention to purchase the property. In the circumstance, in my opinion, there is no infirmity whatsoever in the impugned judgment and order. Hence, the petition is dismissed.

9). Mr. Patil, the learned Advocate appearing for the petitioner, seeks extension of the interim order in the petition is passed on 11th June, 1998. The interim order passed was in terms of prayer clause (c) of the petition. By that prayer, the petitioners had sought stay of the impugned judgment and order. Since all the impugned judgments and orders are of dismissal of the proceedings, the interim order granted could be of no consequence. However, Mr. Patil, points out that after declaring the purchase by the petitioners ineffective, the Tahsildar had directed enquiry under Section 32P for disposal of the suit land to be conducted. As a result of the interim orders, this enquiry has not been conducted till date. In that circumstance, the enquiry under Section 32P for disposal of the suit lands pursuant to the order dated 15th January, 1998 is stayed for a period of 8 weeks from today i.e. till 19th August, 2016.

(SMT. R.P. SONDURBALDOTA, J)