

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 809 OF 2001

- | | | |
|-----|-------------------------------------|---|
| 1. | Parsharam Khashaba Pawar |] |
| | (Since deceased through LRs.) |] |
| 1A. | Vinayak Parsharam Pawar |] |
| | Age about 40 years, |] |
| | Occupation : Agriculturist, |] |
| 1B. | Appa Parsharam Pawar |] |
| | Age about 35 years, |] |
| | Occupation : Agriculturist, |] |
| 1C. | Smt.Vimal Parsharam Pawar |] |
| | Age about 65 years, |] |
| | Occupation : Household, |] |
| | Nos.1A to 1C R/o. Palashi, |] |
| | Tal. Khatav, District : Satara. |] |
| 2. | Tukaram Khashaba Pawar |] |
| | Aged about 52 years, |] |
| | Occupation : Agriculturist |] |
| 3. | Baban Khashaba Pawar |] |
| | Age about 49 years, |] |
| | Occupation : Agriculturist |] |
| 4. | Smt.Sagubai w/o. Popat @ Kondiba |] |
| | Chorde @ Kadam, Age about 60 years, |] |
| | Occupation : Household |] |
| 5. | Smt.Sajabai Pandurang Jadhav |] |
| | (Since deceased through LRs.) |] |
| 5A. | Suresh Pandurang Jadhav |] |
| | Age about 43 years, |] |
| | Occupation : Agriculturist, |] |
| 5B. | Dilip Pandurang Jadhav |] |
| | Age about 42 years, |] |
| | Occupation : Service, |] |
| 5C. | Sanjay Pandurang Jadhav |] |
| | Age about 39 years, |] |

- Occupation : Service.]
- 5D. Mr.Satyawan Pandurang Jadhav]
 Age about 37 years,]
 Occupation : Agriculturist,]
 5A to 5D R/o. Gursale, Tal. Khatav,]
 District : Satara.]
6. Nana Shripati Pawar]
 (Since deceased through LRs.)]
- 6A. Dadaso Nana Pawar,]
 Age about 54 years,]
 Occupation : Service,]
 R/o. At Post Palshi, Tal. Khatav,]
 District : Satara.]
- 6B. Radhika Krushnat Chavan]
 Age about 52 years,]
 Occupation : Agriculturist,]
 R/o. At Post Kopardi, Tal. Karad,]
 District : Satara.]
- 6C. Ushatai Ashok Deokar]
 Age about 50 years,]
 Occupation : Agriculturist,]
 R/o. At Post Nimsod, Tal. Khatav,]
 District : Satara.]
- 6D. Vidya Ramchandra Salunkhe]
 Age about 48 years,]
 Occupation : Agriculturist,]
 R/o. At Post Upale Vangi,]
 Tal. Kadegaon, District : Satara.]
- 6E. Rukmini Dilip Thorat]
 Age about 46 years,]
 Occupation : Agriculturist,]
 R/o. At Post Korti, Tal. Karad,]
 District : Satara.]
- 6F. Anita Santosh Jadhav]
 Age about 44 years,]
 Occupation : Agriculturist,]
 R/o. At Post Padali, Tal. Karad,]
 District : Satara.]
7. Smt.Vaijanta Shankar Pawar,]

- (Since deceased through LRs.)]
- 7A. Hanmant Shankar Pawar]
 Age about 40 years,]
 Occupation : Agriculturist,]
 R/o. Palshi, Tal. Khatav,]
 District : Satara.]
- 7B. Bhagwan Shankar Pawar,]
 Age about 35 years,]
 Occupation : Service,]
 R/o. Palshi, Tal. Khatav,]
 District : Satara.]
- 7C. Smt.Anusaya Ghanuram Ghadge]
 Age about 45 years,]
 Occupation : Household,]
 R/o. Kalambi, Tal. Khatav,]
 District : Satara.]
- 7D. Smt.Raghubai Hanmant More]
 Age about 42 years,]
 Occupation : Household,]
 R/o. Nagzari, Tal. Koregaon,]
 District : Satara.]
- 7E. Smt.Vimal Govind Pawar]
 Age about 60 years,]
 Occupation : Household,]
 R/o. Palshi, Tal. Khatav,]
 District : Satara.]
- 7F. Vikas Govind Pawar]
 Age about 35 years,]
 Occupation : Agriculturist,]
 R/o. Palshi, Tal. Khatrav,]
 District : Satara.]
- 7G. Smt.Sangita Nawanath Kovbahde]
 Age about 28 years,]
 Occupation : Household,]
 R/o. Kalambi, Tal. Koregaon,]
 District : Satara.]
- 7H. Smt.Sunita Mohan Yadav]
 Age about 25 years,]
 Occupation : Household,]

- R/o. Limbachiwadi, Tal. Koregaon,]
District : Satara.]
- 7I. Smt. Shalan Dadaso Suryavanshi]
Age about 60 years,]
Occupation : Household,]
R/o. Landewadi, Tal. Khatav,]
District : Satara.]
8. Govind Shankar Pawar,]
(Since deceased through LR.s.)]
- 8A. Smt. Vimal Govind Pawar]
Age about 48 years,]
Occupation : Household,]
R/o. At post Palshi, Tal. Khatav,]
District : Satara.]
- 8B. Vikas Govind Pawar,]
Age about 22 years,]
Occupation : Agriculturist,]
R/o. At Post Palashi, Tal. Khatav,]
District Satara.]
- 8C. Sou. Sangeeta Navnath Khabale]
Age about 28 years,]
Occupation : Household,]
R/o. Kalambi, Tal. Khatav,]
District : Satara.]
- 8D. Sou. Sunita Mohan Yadav]
Age about 25 years,]
Occupation : Household,]
R/o. Limachiwadi, Post Nadgao,]
Tal. & District : Satara.]
- 8E. Sou. Shalan Dadaso Suryawanshi]
Age about 23 years,]
Occupation : Household,]
R/o. Landewadi, Post Trimli,]
Tal. Khatav, District : Satara.]
9. Hanmant Shankar Pawar]
Age about 33 years,]
Occupation : Agriculturist]
10. Bhagwan Shankar Pawar]
Age about 30 years]

- Occupation : Agriculturist]
11. Smt.Anusaya Dhondiram Ghadge]
Age about 38 years,]
Occupation : Household work]
12. Smt.Rangubai Hanmant More,]
Age about 35 years,]
Occupation : Household work]
13. Smt.Janabai Raghunath Pawar]
Age about 40 years,]
Occupation : Household work,]
Nos.1 to 3, 6 to 10 residing at]
Palashi, Taluka Khatav,]
District : Satara.]
No.4 residing at Chorade, Tal. Khatav,]
District : Satara.]
No.5 residing at Gursale,]
Tal. Khatav, District : Satara.]
No.11 residing at Kalambi,]
Tal. Khatav, District Satara.]
No.12 residing at Nagzari,]
Tal. Koregaon, District : Satara.]
No.13 residing at Ladegaon,]
Tal. Khatav, District Satara.]
- ... Appellants.**

Versus

1. Shrirang Bandu Pawar]
Age about 66 years,]
Occupation : Agriculturist]
2. Dnyanu Bandu Pawar]
(Since deceased through LRs.)]
- 2A. Dattatraya Dnyandeo Pawar]
(Since deceased through LRs.)]
- 2A(a) Smt.Lala w/o. Dattatraya Pawar]
Age about 40 years,]
Occupation : Household work,]
R/at.Pusewali, Tal. Khatav,]
District : Satara.]
- 2B. Shantaram Dnyandeo Pawar]

- Age about 35 years,]
Occupation : Driver,]
R/o. Palashi, Tal. Khatav,]
District : Satara.]
- 2C. Bhaskar Dnyandeo Pawar]
Age about 30 years,]
Occupation : Agriculturist,]
R/o. Palshi, Tal. Khatav,]
District : Satara.]
- 2D. Sou. Sharda Bhagwan Pol]
Age about 32 years,]
Occupation : Household,]
R/at. Nhavi Nimsod, Tal. Kadepur,]
District : Sangli.]
- 2E. Smt.Jagubai Dnyandeo Pawar]
Age about 65 years,]
Occupation : Household,]
R/o. Palashi, Tal. Khatav,]
District : Satara.]
3. Lala Bandu Pawar]
Age about 61 years,]
Occupation : Agriculturist.]
4. Dhanaji Bandu Pawar]
Age about 59 years,]
Occupation : Agriculturist.]
5. Smt.Manukabai w/o. Bandu Pawar]
(Since deceased by her legal heirs &]
representatives Respondent Nos.1 to]
4 and 6 to 9)]
6. Smt.Muktabai w/o. Mugutrao Sawant,]
(Since deceased through her legal]
heirs and representatives)]
- 6A. Smt.Pushpa Subhash Sawant]
Age about 40 years,]
Occupation : Household,]
R/o. Visapur, Tal. Khatav,]
District : Satara.]
- 6B. Smt.Hirabai Chandrakant Jadhav]
Age about 60 years,]

- Occupation : Household,]
R/o. Pusegaon, Tal. Khatav,]
District : Satara.]
- 6C. Smt.Parubai Balaso Chavan]
Age about 55 years,]
Occupation : Household,]
R/at. Ner, Taluka Khatav,]
District : Satara.]
7. Smt.Vithabai Baburao Shinde]
(Since deceased through her LRs.)]
- 7A. Shankar Baburao Shinde]
Age about 55 years,]
Occupation : Agriculturist,]
R/at. Khatav, Tal. & Dist. Satara.]
- 7B. Sou.Shakuntala Bapuso Nikam]
Age about 60 years,]
Occupation : Housewife,]
R/at. Nhavi, Tal. Koregaon,]
District : Satara.]
- 7C. Sou. Pingal Shivaji Nikam]
Age about 48 years,]
Occupation : Housewife,]
R/at. Nhavi, Tal. Koregaon,]
District : Satara.]
- 7D. Sou. Anusaya Janardan Nikam]
Age about 43 years,]
Occupation : Housewife,]
R/at. Nhavi, Tal. Koregaon,]
District : Satara.]
- 7E. Sou. Nanda Keshav Borge]
Age about 40 years,]
Occupation : Housewife,]
R/at. Khatav, Tal. & Dist. Satara.]
- 7F. Sou. Mangal Hanumant Sawant]
Age about 52 years,]
Occupation : Housewife,]
R/o. Krishna Sahakari Griha Rachana]
Sanstha Maryadit, Pratapgad, Sector]
No.27A, Nigadi, Pradhikaran,]

	Yamuna Nagar, Pune - 44.	]	
7G.	Sou. Sanjivani Vishwas Tupe	]	
	Age about 35 years,	]	
	Occupation : Housewife,	]	
	R/o. 2/3, New Teksara Colony,	]	
	Behind Municipal School,	]	
	Kanjur Village, Mumbai.	]	
8.	Smt.Hirabai Maruti Mane,	]	
	Age about 75 years,	]	
	Occupation : Household,	]	
9.	Pandurng Laxman Shinde	]	
	Age about 67 years,	]	
	Occupation : Agriculturist,	]	
	Nos.1 to 5 residing at Palshi,	]	
	Tal. Khatav, District : Satara.	]	
	No.6 R/at.Visapur, Tal. Khatav,	]	
	District : Satara.	]	
	Nos.7 and 9 R/at.Khatav,	]	
	Tal. Khatav, District : Satara.	]	
	No.8 R/at.Rajache Kurle,	]	
	Tal. Khatav, District : Satara.	]	<u>... Respondents.</u>

- Mr.Dilip Bodake for the Appellants.
- Mr.Vishwanath Talkute a/w. Mr.S.R. Moray and Mr.Graham Francis for Respondent Nos.1, 3, 4, 6A to 6C, 8 and 9.
- Mr.R.S. Alange for Respondent Nos.2A to 2C, 6A to 6C and 7A to 7G.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

RESERVED ON : 14th AUGUST, 2018.

PRONOUNCED ON : 21st AUGUST, 2018.

JUDGMENT :-

1] This Second Appeal is preferred by Original Defendants being aggrieved by the judgment and decree dated 04/05/2001 passed by the 2nd Additional District Judge, Satara, in Regular Civil Appeal No.294 of 1991; which was preferred against the judgment and decree dated 22/01/1991 passed by the Civil Judge, Junior Division, Vaduj, in Regular Civil Suit No.68 of 1964.

2] The said suit was originally filed by deceased Bandu Raju Pawar. Respondent Nos.1 to 5 are his legal heirs. It was his case that the suit land was belonging to Damodar Kashinath Sambare, the resident of Palashi and it was given on tenancy basis to him and his two brothers, namely, Shripati and Rama; each one having equal 1/3rd share therein. The Appellants are the legal heirs of Shripati and Rama. According to the Plaintiff-Bandu, as regards all other joint family properties held by him along with his two brothers, the partition was effected long back. However, in respect of the suit land, it being a tenanted land, no such partition was effected and it was kept in common. However, the Plaintiff, being an illiterate person, taking disadvantage thereof his two brothers, Shripati and Rama, deleted his name without his knowledge and mutated their names alone to the record of rights. The Plaintiff came to know about the same in the

month of December-1963, when his two brothers - the original Defendants caused obstruction to his possession. The Plaintiff therefore demanded partition of the suit land. As the Defendants avoided to do so, he was constrained to file this suit.

3] The Defendants had resisted the suit by raising several pleas. In the first place, it was submitted that the Plaintiff has, by executing the document dated 06/01/1936 relinquished his tenancy rights in the suit land by accepting the amount of Rs.250/-. Since then the Plaintiff's 1/3rd share in the suit land was extinguished and tenancy rights of Defendant Nos.2 and 3 alone remained in the suit land. Thereafter, in the year 1939, when the "Phalni Measurement" was carried out, the names of Defendant Nos.1 and 2 alone came to be entered into the record of rights. They had made improvements in the suit land by constructing two wells by spending the amount of Rs.2,000/-. They had also constructed 7 Tals upon the said land by spending the amount of Rs.3,000/-. It was submitted that since the year 1936, after relinquishing his share, the Plaintiff was never in possession of the suit land and therefore, there is a clear case of his ouster and hence, as the suit is not filed within 12 years from the said ouster, the title of the Defendants over the suit land has become perfect by way of adverse possession. In the alternate, it was

submitted that as the Defendant Nos.2 and 3 had acquired the rights of "Mirasi Kul" from the Plaintiff, they have become sub-tenants of the Plaintiff in respect of his 1/3rd share in the suit land. Therefore, the Civil Court cannot have the jurisdiction to decide the dispute. It was further submitted that Defendant Nos.1 and 2 had become "deemed purchasers" on "Tiller's Day". During the pendency of the suit, the written statement was amended and a plea was raised that as by accepting the amount of Rs.250/-, the Plaintiff has relinquished his 1/3rd share in the suit land in favour of Shripati. Therefore, Shripati became original tenant of the landlord to the extent of 2/3rd share and Defendant No.1 became tenant in respect of 1/3rd share of the suit property. Thereafter, they have also purchased the suit property and thus the Plaintiff has no title over the suit land.

4] In support of their respective contentions, the Plaintiff Shrirang examined himself and on behalf of the Defendants, Nana, son of Shripati and one Sidhu Jadhav were examined. Much emphasis was laid before the trial Court to prove the document dated 06/01/1936 by which the Plaintiff has allegedly relinquished or released 1/3rd share of the suit land in favour of Defendant Nos.1 and 2. However, as the said document was found to be not properly stamped, nor registered, the trial Court refused to accept the same in evidence. Accordingly, it

was held by the trial Court that the Plaintiff is tenant in common or co-sharer or co-owner of the suit property. However, the trial Court was further pleased to hold that, considering the long standing possession of the Defendants over the suit property, coupled with the fact that the Certificate issued under Section 32-M of the Tenancy Act also stands in the name of Defendants and the Defendants had also made substantial improvements in the suit land to the knowledge of the Plaintiff, these facts prove the Defendants' plea of adverse possession and accordingly, the trial Court dismissed the suit.

5] When the Plaintiff challenged this judgment of the trial Court before the First Appellate Court, the First Appellate Court however held that mere long standing possession, especially when such possession is permissive one, cannot be sufficient to prove the plea of adverse possession and accordingly, the First Appellate Court allowed the Appeal and decreed the suit.

6] This Second Appeal was admitted on following substantial questions of law :-

1. Whether the lower Appellate Court erred in ignoring that defendants 1 and 2 have established their title to the suit land?

2. Whether the finding of the Tenancy Court that the defendants 1 and 2 have become the deemed purchasers of the suit land could be ignored by the Civil Court?
3. Whether the lower Appellate Court was wrong in not considering the effect of the document dated 6.1.1936 after payment of requisite stamp duty thereon?
4. Whether the lower Appellate Court has committed a substantial error of law in totally ignoring the authorities on the point of adverse possession considered and relied upon by the Trial Court?

7] A very short question that arises for consideration in the present case is whether the Plaintiff has relinquished his 1/3rd share as a tenant in the suit land in favour of the Defendant Nos.1 and 2? Admittedly, the document which is alleged to be executed by the Plaintiff on 06/01/1936 was neither stamped properly, nor it was registered. The trial Court has therefore rightly refused to accept it in evidence. It is however a matter of record that during the pendency of the First Appeal, the said document was sent to the Superintendent, Stamp Vendor and the deficient stamp thereon was paid. The fact however remains that the said document still remains unregistered.

8] According to learned counsel for the Appellants, such unregistered document, after the deficit stamp duty is paid thereon,

can be considered for the collateral purpose for proving that the Plaintiff is no more in possession of the suit land. According to learned counsel for the Appellant, even if on the basis of this unregistered document relinquishment of share by the Plaintiff is not proved, the said document does prove that the possession of the suit land was delivered by the Plaintiff to the Defendants in the year 1936 itself.

9] In support of this submission, learned counsel for the Appellants-Defendants has placed reliance on the judgment of this Court in the case of *Asset Reconstruction Company (India) Limited V/s. M/s. Alpha & Omega Diagnostics (India) Ltd. & Ors.*¹, wherein it was held that, “when the document is insufficiently stamped, the Court can impound such document and send it for adjudication to the Competent Authority. Only after the stamp duty is adjudicated and paid by such person, such document becomes admissible in evidence”. It was further held that, even if, instead of sending the document to the Competent Authority, the document is returned to the Applicant with a direction to presenting the same after it was duly stamped, and hence the proper procedure for impounding of document is not followed, however as the purpose of securing interest of revenue is served, it was not necessary to remand the matter back to follow the

1 2017(2) All MR 29

proper procedure of impounding”. Here in the case, it is submitted that, the Appellate Court has sent the document to the Competent Authority for payment of deficit stamp duty. Accordingly, the Appellant has paid such deficit stamp duty. Therefore, even if the document is unregistered, it needs to be considered for collateral purpose of delivery of possession.

10] Learned counsel for the Appellants has then relied upon the judgment of this Court in the case of *Mahendra Kumar Modi & Anr. V/s. Gujrat State Fertilizers & Chemicals Ltd.*², wherein it was observed in paragraph No.10 that even “if the document is insufficiently stamped, it can always be read in evidence by paying the deficit stamp duty and penalty in accordance with Section 34 of the Maharashtra Stamp Act”.

11] Learned counsel for the Respondents has in this respect placed reliance on the judgment of the Hon'ble Apex Court in the case of *M/s. K.B. Saha & Sons Pvt. Ltd. V/s. M/s. Development Consultant Ltd.*³, wherein after considering the provisions of Section 49 of the Registration Act, 1908, the various Principles laid down by the Hon'ble Apex Court and the High Courts are summarized in paragraph

² 2017(1) ALL MR 5933

³ 2008(5) ALL MR 485

No.21 as follows:-

“21. From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that :-

1. A document required to be registered is not admissible into evidence under Section 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to Section 49 of the Registration Act.

3. A Collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an

important clause would not be using it as a collateral purpose.”

12] Clause No.3 of these Principles thus makes it clear that collateral purpose must be independent of, or divisible from the transaction to effect which the law required registration. Clause No.1 of these Principles also makes it clear that a document required to be registered is not admissible into evidence under Section 49 of the Registration Act. Clause No.5 of these Principles further makes it further clear that if a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.

13] In the present case, admittedly, the document is unregistered, even after payment of the insufficient stamp duty. One of the purpose for which the Appellants want to rely upon the said document is that the possession of his 1/3rd share in the land was relinquished by Respondent-Plaintiff to the Appellants under this document. Now, the delivery of possession by way of relinquishment is undisputedly an important clause in the said document. If the Clause No.5 as laid down in the above said judgment of the Hon'ble Apex

Court is considered, then this document cannot be admitted to prove this important aspect of ouster of Plaintiff from the suit land. Therefore, in my considered opinion, this document cannot be of any help to the Defendants to prove that under this document they had received the possession, as the Plaintiff has relinquished his share by accepting the amount of Rs.250/- or otherwise.

14] In my considered opinion, even if this document is taken into consideration for proving the collateral purpose of delivery of possession, it will not advance Appellant's case any further, to prove the plea of adverse possession, mere long standing possession is not sufficient but such possession has to be hostile. In regard to this plea of adverse possession, however, it has to be observed at the outset itself that the Appellants have damaged their own case by taking inconsistent pleas, which are mutually destructive. The Appellants have even raised the plea that they are claiming the tenancy qua the Plaintiff as they are the sub-tenants. As observed by the First Appellate Court, this claim runs totally contrary to the claim of adverse possession because when the claim of tenancy is made, it pre-supposes permissive possession. In case of permissive possession, the burden lies heavily upon the person claiming adverse possession, to prove when this possession became hostile, as against the real owner.

In this case, there is no date and time mentioned, when such permissive possession became hostile. Law is well settled that, mere long standing possession, even for years and decades together, cannot become adverse possession, unless there is *Animus Possessendi*. The Appellants were required to prove that the Plaintiff has intention of relinquishing his share in the suit land or by his conduct he has admitted the hostile title of the Appellants over the suit land. There is absolutely no evidence on record to that effect.

15] As held by this Court in the case of *Nargisbai D.B. Acidwala V/s. Jehangir Homusji Mody*⁴ relied upon by learned counsel for the Respondents, in the case of joint property mere exclusive possession and enjoyment by one co-owner is not enough to constitute adverse possession against other co-owners, unless there is denial of title justifying the presumption of ouster of the latter. Hence, merely because the Appellants-Defendants are in possession may be long standing, it will not make such possession adverse or it also cannot perfect their title by adverse possession, when all three of them were to be in common joint possession of the suit land as tenant.

16] Here in the case, as a matter of fact, the Appellants

4 1943(45) BOMLR-104

themselves are not sure about their own case. At one stage of the suit, they had even sought the reference to the Tenancy Authorities, on the count that they are the sub-tenants of the Plaintiff; only when the finding to that issue was negative, they came with a case that they are in possession by way of adverse possession, as they have carried out some improvements in the land or 32-M Certificate is issued in their name alone.

17] In respect of 32-M Certificate, though learned counsel for the Appellants has relied upon the judgment of the Hon'ble Apex Court in the case of *Saraswatibai Trimbak Gaikwad V/s. Damodhar D. Motiwale & Ors.*⁵, to advance their submission that the Certificate issued under Section 32M is a conclusive proof of purchase of land, there cannot be any dispute or two opinions about the same but in this respect this Court has clarified in the judgment of *Vithu C Agaskar V/s. Rama Gajanan Agaskar & Ors.*⁶ that it would at the most be a conclusive proof of purchase against the owner of the land; so far as the joint tenants are concerned, their tenancy rights cannot be negated solely on the ground that the certificate of purchase was issued in favour of a "karta" of a joint family or any elderly person of a joint family. Hence, the certificate of purchase cannot be the

5 2002(3) Mh.L.J. 69

6 MANU/MH/1441/2018

conclusive proof of title vis-a-vis the joint tenants. Hence, as far as joint tenants are concerned, it has to be held that the purchase was for the benefit of all the tenants and not necessarily only in favour of the tenant whose name is standing in the said Certificate. As held by this Court in the case of *Sarjerao Maruti Sathe V/s. Pralhad Laxman Sathe & Ors.*⁷, “tenancy is a right which is heritable and it devolves upon such of the heir or heirs of the deceased tenant who are willing to continue the tenancy.”

18] Here in the case, there is nothing on record to show that the Plaintiff has expressed his unwillingness or communicated his unwillingness in writing to continue the tenancy. Hence, the tenancy rights of the joint tenant cannot be negated solely on the ground that the Certificate of purchase was issued in favour of one member of the family. As held by this Court in the above-said judgment of *Vithu C. Agaskar & Ors. V/s. Rama Gajanan Agaskar & Ors.*, such certificate of purchase cannot be a conclusive proof of title vis-a-vis the co-tenant. Here in the case, therefore merely because 32-M Certificate stands in the name of the Appellant, the tenancy right of Respondent-Plaintiff cannot be denied to him.

19] The result of discussion therefore is that admittedly under “Miras Patrak” dated 26/06/1924, all the three brothers had taken the land in joint tenancy. The document on the basis of which it was contended that the Plaintiff has relinquished his share, being not admitted in evidence for want of registration, it has to be held that the Plaintiff still has his share in the suit land. By taking mutual destructive pleas, the Appellants-Defendants have spoiled their own case. As to the plea of adverse possession, permissive possession, unless proved to have become hostile, the rights cannot accrue on the basis of the mere long standing possession. The Appellate Court has considered all these aspects in their proper perspective and thereafter decreed the Plaintiff's suit.

20] In the Second Appeal, therefore, no interference is warranted. The Second Appeal hence stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]