

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

FIRST APPEAL NO. 916 OF 1991

Vithu C. Agaskar

(Since deceased through
Legal heirs)

1/1 Shri Shravan Vithu Agaskar
(Since deceased through
his Legal heirs)

1/1/1 Shantibai Shravan Agaskar

1/1/2 Kashinath Shravan Agaskar

1/1/3 Parshuram Shravan Agaskar

1/1/4 Ajay Shravan Agaskar

1/1/5 Sanjay Shravan Agaskar

All R/of : Koparkhairne,
Tal & Dist. Thane.

1/2 Shri. Kanha Vithu Agaskar
Age 62 years, Occu.: Nil

1/3 Shri. Janardan Vithu Agaskar
(Since deceased through
his Legal Heirs)

1/3/1 Vishranti Janardhan Agaskar

1/3/2 Vijay Janardhan Agaskar

1/3/3 Priyanka P. Veta

All R/of : Koparkhairne,
Tal & Dist.: Thane.

1/4 Shri. Gopinath Vithu Aaskar
Age 52 years, Occu.-Busniess

- 1/5 Shri. Balkrishna Vithu Agaskar
Age 47 years, Occu.-Nil
Applicant No. 1/1 to 1/5 are resident
of Koparkhairne, Tal & Dist.-Thane.
- 1/6 Smt. Nirmala Sakharam Madvi
Age 55 years, Occu.-Housewife
R/at-Gothavali,
Tal & Dist.-Thane.
- 1/7 Smt. Changunabai Ramesh Patil
Age 51 years, Ocu.-Housewife
R/at-Jugaon, Tal & Dist.-Thane
- 1/8 Smt. Reshma Ramdas Gauri
Age 48 years, Occu.-Housewife
R/at-Khgarigaon, Kalwa (W),
Tal & Dist.-Thane
- 1/9 Smt. Ranjana Govardhan Salvi
Age 45 years, Occu.-Housewife
R/at-Kalwa, Tal & Dist.-Thane

..Appellants
(Ori. Claimants)

v/s.

1. Shri. Rama Gajanan Agaskar
2. Shri. Harishchandra G. Agaskar
3. Shri. Budhaji Gajanan Agaskar

All residing at Koparkhairne,
Thane Belapur Road,
Taluka & District-Thane.

4. Shri. Ganesh Gajanan Agaskar,
(Since deceased by his heirs &

legal representatives)

4(a) Smt. Gulab Ganesh Agaskar

4(b) Shri. Girish Ganesh Agaskar.

4(c) Kum. Darshana Ganesh Agaskar

4(a) to 4(c) all residing at Kaul Ali,
Ghansoli, Post : Ghansoli, Konidhale,
New Bombay – 400 701.

..Respondents
(Counter Claimants)

Mr. Sandesh Patil for the Appellant

Mr. Kailas Dewal a/w. Digvijay S. Sarangdhar for the Respondents.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : JUNE 15, 2018.

JUDGMENT.

1. The appellants have challenged the judgment dated 24th January, 1990, in Land Reference No. 75 of 1996 whereby the learned Joint District Judge, Thane has apportioned 50% of compensation in favour of the petitioner and the balance 50% in favour of the respondents.

2. The Government had acquired land admeasuring 1 Acre 26 Gunthas and 8 Annas from Survey No. 26/9 of Village Koparkhairane, Thane. By Award dated 9th April, 1973, the Land Acquisition Officer had awarded compensation of Rs.57,523.70 paise in respect of the said land. Upon receipt of the notice, the original claimant Vithu had appeared before the

Land Acquisition Officer and claimed that he was the exclusive tenant/purchaser of the acquired land and hence he was entitled to receive the entire compensation. The respondents had claimed that their father Gajanan was a co-tenant of the acquired land and that they were entitled for 50% of the compensation. In view of the dispute relating to the apportionment of the compensation, the Land Acquisition Officer by letter dated 23rd October, 1986 referred the dispute to the decision of the Court under Section 30 of the Land Acquisition Act, 1894.

3. The original claimant Vithu filed his statement of claim wherein he claimed that he was the sole tenant of the acquired land. He claimed that he had purchased the said land in the proceedings under Section 32(G) of the Bombay Tenancy & Agricultural land Act. He further claimed that upon paying the purchase price, Certificate of purchase under Section 32 M was issued in his favour on 20th July, 1966. He has stated that his name was recorded in the survey records after deleting the name of the landlord Fazal Karmali, under Mutation Entry No. 1019 dated 30th August, 1972. The original claimant therefore claimed that being the exclusive owner, he was entitled to receipt the entire compensation.

4. The respondents claim that as on tiller's day Changa Agaskar was in possession of the said land as a tenant thereof. After the death of Changa, the land was jointly cultivated by his sons Vithu and Gajanan. The respondents, who are the children of Gajanan, claim that the land was never partitioned and that even after the death of Changa and Gajanan, they continued to cultivate the land as a Joint Family Property. The respondents have denied that Vithu was the sole tenant/purchaser of the property. They have stated that the Vithu had paid the purchase price of the acquired land out of the sale proceeds of the joint family land. The respondents therefore claimed that being the co-tenants of the property, they are entitled to 50% of the compensation.

5. Upon considering the evidence adduced by the respective parties, the reference Court held that the original claimant Vithu had failed to establish that he is the sole tenant in possession of the acquired land. The reference Court further held that Changa, the deceased father of Vithu and Gajanan was the tenant of the acquired land, and after the death of Changa, his sons Vithu and Gajanan continued to cultivate the property as tenants. The learned Judge therefore held that the acquired land was a joint family

property. Hence, the Certificate of purchase issued in favour of the original claimant Vithu under Section 32M of the Bombay Tenancy & Agricultural Land Act (hereinafter referred to as BT&AL Act) would not confer exclusive title on the appellants. The Reference Court therefore held that the respondents, being the co-tenants of the property were entitled for 50% of the compensation. Being aggrieved by this judgment, the appellants, who are the legal representatives of Vithu have preferred this appeal.

6. Shri Sandesh Patil, the learned Counsel for the appellants has submitted that the original claimant Vithu had purchased the land under Section 32G of the BT&AL Act. He submits that the certificate of purchase which is being issued in favour of Vithu under Section 32M of BT&AL Act conclusively proves that he was the sole tenant/purchaser of the said property. Ld. Counsel Shri Patil further contends that neither Gajanan nor the respondents had participated in 32G proceedings. They had not challenged the mutation entry and or the purchase certificate. The above facts prove that the original claimant Vithu was the exclusive owner of the acquired land. He therefore contends that the reference court has

erred in holding that the respondents were the co-tenants or that the acquired land was the joint family property.

7. Mr.Dewal, the learned Counsel for the respondents submitted that it is not in dispute that Changa, the father of the appellants and Gajanan was a tenant of the property since prior to 1st April, 1957. After the death of Changa, names of his children i.e. Vithu, Gajanan and their sisters were recorded in the Survey records vide Mutation Entry No. 729. He further claims that after the death of Changa, Vithu and his brother Gajanan being the members of the joint family, became the tenants in possession of the acquired land. He submits that the acquired land being joint family property, the Certificate under Section 32M, which was otherwise obtained on behalf of all the members of the joint family, cannot confer exclusive right and title on the appellants.

8. I have perused the records and considered the submissions advanced by the learned Counsels for the respective parties. In order to appreciate the controversy involved in the present appeal, it would be advantageous to make a brief reference to the relevant provisions of the BT&AL Act. The

term "tenant", as defined under Section 2(18) means a person who holds land on lease and includes, (a) a person who is deemed to be a tenant under Section 4; (b) a person, who as a protected tenant; and (c) a person who is a permanent tenant.

9. The word “person” which is defined under Section 2(11) includes a joint family. Section 2(7A) defines "joint family" to mean an undivided Hindu family, and in the case of other persons, a group or unit and the members of which are by custom joined in estate or residence.

10. It is clear from the above definitions that the word "person" in Section 2(18) includes a "joint family" which in terms of Section 2(7A) means an "undivided hindu family". From a plain reading of these sections, it is clear that an undivided hindu family can be a tenant within the meaning of Section 2(18) of the Act.

11. Section 32 inter alia provides that on the 1st day of April 1957, referred to as “Tillers Day” every tenant shall be deemed to have purchased from his landlord free of all encumbrances subsisting thereon, on the land

held by him as tenant, if he meets the requirements stated in clauses A and B of said Section.

. Section 32G prescribes the procedure to be followed by the Tribunal in conducting an enquiry and determining the price of the land. Under this Section the Tribunal is required to publish or cause to be published a public notice in the prescribed form in each village within its jurisdiction calling upon all the tenants who under Section 32 are deemed to have purchased the land, to the landlords and to all other persons interested therein, to appear before it on the date specified in the notice. The Tribunal is also required to issue notices individually to each such tenant, landlord and other interested persons.

. Under sub-section 2 of Section 32 the Tribunal is required to record the statements of the tenants in the prescribed manner and ascertain whether such tenant is or is not willing to purchase the land held by him as a tenant. If a tenant is willing to purchase the land, in terms of sub-section (4), the Tribunal, after hearing the landlord and the other interested persons is required to determine the purchase price in accordance with the provisions of Section 32H and of sub-section (3) of Section 63A.

. Once the purchase price is fixed, Section 32K prescribes the mode of

payment of price by tenant-purchaser, and further provides that in the event of failure to pay the purchase price within the time specified, the same shall be recoverable as arrears of land revenue.

. Section 32M provides that on the deposit of the purchase price either in lump sum or by deposit of the last installment of such price, the Tribunal shall issue a Certificate of Purchase in the prescribed form to the tenant-purchaser in respect of the land. This Section further stipulates that the Certificate issued under Section 32M shall be conclusive evidence of purchase.

12. Reverting to the facts of the present case, it is not in dispute that the acquired land was owned by Fazal Karamali. Changa Agaskar, the late father of Vithu and Gajanan was in possession of the said land as a tenant thereof. His name was recorded in the survey records as a tenant from the year 1958-1959 to 1969-1970. It is thus evident that as on tillers day i.e. 1st day of April, 1957, Changa was in possession of the said land as a tenant thereof. Hence, by virtue of Section 32 he was a deemed purchaser of the land held by him as a tenant.

13. The Claimant Vithu had claimed that the property was partitioned during the lifetime of Changa. He has stated that his father had given 20 gunthas of land to Gajanan and 15 gunthas of land to him. He claims that the acquired land is part of the land which was allotted to him. It is to be noted that this witness has admitted that the land that was allegedly given to him was not transferred in his name. The Claimant Vithu has not adduced any other evidence to prove that during his lifetime Changa had partitioned, transferred or assigned the land in his favour or that he was in exclusive possession of the land. On the contrary, his own witness PW2 Chandrarao Patil has admitted in his cross-examination that Changa was in possession of the land under survey no.26/9 as a tenant.

14. It is also pertinent to note that upon the death of Changa the names of Vithu, Gajanan and their sisters were recorded in the survey records under mutation entry number 729 dated 15.2.1962 at Exh.20. The mutation entries do not support the claim of oral partition. On the contrary, these entries substantiate that the Vithu and Gajanan had inherited the tenancy rights after the death of Changa. The mutation entry at Exh. 20 therefore negates the claim of oral partition during the lifetime of Changa.

15. It is thus clear that the original claimant Vithu was not a tenant of the said land in his personal or individual capacity but had only inherited the tenancy rights upon the death of Changa. The original claimant Vithu had therefore failed to prove that he was the sole tenant of the said property. The claimant had also not adduced evidence to prove that the subject property was partitioned during the lifetime of Vithu and Gajanan or that they were cultivating the property or their respective shares separately. The reference court was therefore perfectly justified in holding that the acquired land was a joint family property.

16. The records reveal that the original claimant Vithu had subsequently got his name entered in the survey records, by bracketing the name of Gajanan. He had also purchased the property under Section 32G and a certificate of purchase was issued in his name. It is to be noted that no notice was given to the respondents before deleting/bracketing the name of Gajanan from the survey records. Furthermore, notice under section 32 G of the BT&AL Act was not served on the respondents but was served only on Vithu, whose name was recorded in the revenue records. Vithu had expressed willingness to purchase the land and upon making the payment,

the certificate of purchase was issued in his name. As stated earlier, Vithu had no independent tenancy right but held the property as a tenant in common on behalf of the joint family. Under such circumstances, the certificate of purchase issued in the name of Vithu, would be for and on behalf of the joint family. The said certificate would at the most be conclusive proof of purchase against the owner of the land. The tenancy rights of the joint tenants cannot be negated solely on the ground that the certificate of purchase was issued in favour of Karta of a joint family or any elderly person of a joint family. Hence, the certificate of purchase cannot be the conclusive proof of title, *vis-a-vis* the joint tenants.

17. Under the circumstances and in view of discussion supra, the appellants, cannot claim exclusive right to the property on the basis of the certificate of purchase. The reference court was perfectly justified in apportioning 50% of compensation in favour of the respondents. The appeal has no merits and is accordingly dismissed. No order as to costs.

(ANUJA PRABHUDESSAI, J.)