

Mr. Vishal Kanade i/b. Nikita Hinger for Petitioners.
Mr. Girish R. Agrawal for Respondents No.1 to 4.

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Nashik (for short 'suit land').

4. In support of this Petition, Mr. Kanade strenuously contended that the original landlord of the suit land was one Ramkrishna Tanaji Mahajan (for short 'Ramkrishna'). Ramkrishna allegedly partitioned the properties and the suit land was allotted to the share of his minor son Uddhav Ramkrishna Mahajan (for short 'Uddhav'). The said change was recorded in the Record of Rights vide mutation entry No.936. No notice was given to Kalu Sayaji Bagul (for short 'Kalu'). Kalu was inducted in the suit land prior to tiller's day i.e. 01.04.1957 and was a protected tenant. Kalu instituted proceedings under Section 32-G of the Act for fixing purchase price. On 25.06.1962, order was passed to the effect that as the landlord was minor, until he attains majority, the purchase price cannot be fixed. On 10.12.1980, Kalu died leaving behind no heirs and legal representatives. However, during his lifetime, he had executed a registered Will on 06.05.1976 bequeathing his rights accrued to him under the Act to Sonibai Motiram Raut (for short 'Sonibai'). Sonibai died on 21.10.1991. After her death, the names of the petitioners and her husband (since deceased) were entered in the Record of Rights vide Mutation Entry No.236. In June, 2012, petitioners filed Tenancy Case No.6 of 2012 for fixing purchase price under Section 32-G of the Act. The said application was rejected by the Tahsildar on 30.01.2016 on the ground that the landlord was minor, and therefore, purchase price cannot be fixed. Appeal preferred against that order was dismissed by S.D.O. on 27.06.2016 and by M.R.T. on 18.08.2017.

5. In support of this Petition, Mr. Kanade submitted that the Authorities below failed to appreciate that Kalu was a protected tenant of the suit land. He continued to be in possession of the suit land as on 01.04.1957. In view thereof, Kalu became deemed purchaser on

01.04.1957 in view of Section 32-G of the Act. The Authorities below declined to fix the purchase price on the ground that petitioners cannot claim any right on the strength of Will dated 06.05.1976 executed by Kalu. If Kalu is accepted as an owner on account of his continuing in possession as on 01.04.1957, the finding recorded by the Authorities below that tenancy cannot be willed away will not come in the way of the petitioners. Kalu, being owner, can certainly transfer his interest in the suit land by way of Will in favour of the petitioners.

6. Mr. Kanade further submitted that basically, Ramkrishna fraudulently partitioned the properties and allotted it to the share of minor son Uddhav. Mutation Entry No.936 was certified without giving notice to Kalu. He submitted that if the theory of partition and that suit land was allotted to the share of minor son Uddhav is excluded, in that event, Ramkrishna continues to be the landlord and the disability under Section 32-F of the Act will not be attracted. In support of this submission, he relied upon the decision in ***Sudam Ganpat Kutwal Vs. Shevantabai Tukaram Gulumkar, (2006) 7 SCC 200***. Assuming that the partition is validly made and the suit land was allotted to the share of minor son Uddhav, he did not issue intimation as contemplated by proviso to Section 32-F(1)(a) after attaining the majority. He, therefore, submitted that the Petition requires consideration.

7. On the other hand, Mr.Agrawal supported the impugned orders. He submitted that partition was effected by Ramkrishna on 31.12.1956 that is much prior to 01.04.1957. The suit land was allotted to his minor son Uddhav in partition. Before certifying mutation entry, notices were issued to the interested parties. Ganpat, son of Kalu was present at the time of certifying the mutation entry. Extract of mutation entry No.936 shows that it is signed by Ganpat Kalu Bagul. As the landlord was

minor, mutation entry No.1170 postponing 32-G proceedings was certified on 11.07.1963. Extract of Mutation entry No.1170 is signed by Ganpat Kalu Bagul. He submitted that in 7/12 extract, in column of 'Kabjedar', entry was made on 04.11.1966 to the effect that Uddhav has attained majority and the entry (guardian Ramkrishna Tanaji) was circled. He submitted that at no point of time, partition was challenged either by Kalu or Ganpat.

8. Mr. Agrawal submitted that basically, petitioners are claiming interest on the basis of registered Will dated 06.05.1976. Tenancy cannot be willed away. In support of this proposition, he relied upon the following decisions:

- a. ***B. B. Deshpande Vs. D. N. Deshpande*, 1993 B. C. J. 626;**
- b. ***Kashinath Laxman Waghmare Vs. Ganpat Tukaram Kashmire*, 2003 (2) ALL MR 233; and**
- c. ***Sangappa Kalyanappa Bangi (decd) through LRs Vs. Land Tribunal, Jamkhandi*, AIR 1998 SC 3229.**

9. Mr. Agrawal submitted that once the partition effected by Ramkrishna is not challenged, one has to proceed on the premise that landlord Uddhav was minor as on 01.04.1957. He attained majority in the year 1966 and within one year, upon attaining majority, as the petitioner did not give intimation to purchase the land, the Authorities below rightly rejected the application for fixing purchase price. In support of this Petition, he relied upon ***Appa Narsappa Madgum (decd) through LRs Vs. Akubai Ganapathi Nimbalkar*, AIR 1999 SC 1963.**

10. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that Ramkrishna was the landlord of various properties including the suit land. On 31.12.1956, he effected partition

of properties. The suit land was allotted to the share of his minor son Uddhav. This is evident from mutation entry No.936, which was certified on 24.06.1957 after giving notices to the concerned parties. Extract of Mutation Entry No.936 shows that it bears signature of Ganpat Kalu Bagul. On 16.02.1962, Kalu had filed proceedings under Section 32-G for fixing purchase price. By order dated 25.06.1962 of A.L.T., purchase price was not fixed as the landlord was minor at the relevant time. Kalu died on 10.12.1980. The petitioners do not claim to be legal heirs of Kalu. The petitioners are claiming interest on the strength of registered Will dated 06.05.1976 executed by Kalu in favour of Sonibai. Petitioners are claiming to be heirs and legal representatives of Sonibai.

11. The moot question is whether Sonibai acquired any interest of Kalu on the basis of Will dated 06.05.1976. In the case of **Kashinath Laxman Waghmare** (*supra*), the learned Single Judge of this Court (Coram : S. A. Bobde, J., as His Lordship then was) referred to the decision of **B. B. Deshpande** (*supra*) and held that a tenant cannot assign tenancy rights in agricultural land by an instrument styled as a Will. Such an assignment would be in contravention of Section 27 of the Act. In the case of **Sangappa Kalyanappa Bangi** (*supra*), the Apex Court was considering Section 21 of the Karnataka Land Reforms Act, 1961. The Apex Court considered the question whether a devise under a Will would amount to an assignment of interest in the lands and, therefore, invalid under the provisions of Section 21. The Apex Court interpreted Sections 21 and 24 and held thus,

“6. If we bear in mind the purpose behind Section 21, it becomes clear that the object of the law is not to allow strangers to the family of the tenant to come upon the land. The tenanted land is not allowed to be sub-let, i.e. to pass to the hands of a stranger nor any kind of assignment taking place in respect of the lease held. If the tenant could assign his interest, strangers can come upon the land, and therefore, the

expression 'assignment' will have to be given such meaning as to promote the object of the enactment. Therefore, the deceased tenant can assign his rights only to the heirs noticed in the provision and such heirs could only be the spouse or any descendants or who is related to the deceased tenant by legitimate kinship. We must take into consideration that when it is possible for the tenant to pass the property to those who may not necessarily be the heirs under the ordinary law and who become heirs only by reason of a bequest under a 'Will, in which event, he would be a stranger to the family and imported on the land thus to the detriment of the landlord. In that event, it must be taken that a devise under a will also amount to an assignment and, therefore, not valid for the purpose of Section 21 of the Act. ...”

12. In view thereof, it has to be concluded that Sonibai cannot claim any right in the suit land on the basis of Will dated 06.05.1976. Once Sonibai cannot claim any right, petitioners, who claim to be her heirs and legal representatives, also cannot claim any right.

13. Mr. Kanade submitted that after attaining majority, Uddhav did not issue intimation as contemplated by proviso to Section 32-F(1)(a). As mentioned earlier, Uddhav attained majority in the year 1966. Amendment was made to Section 32-F(1)(a) by Maharashtra 49 of 1969, requiring landlord of sending an intimation to the tenant of the fact that he has attained majority. Thus, the law does not cast obligation requiring landlords attaining majority prior to Maharashtra 49 of 1969, which came into force with effect from 17.10.1969 to send an intimation about attaining majority. In view thereof, I do not find any merit in the submission of Mr. Kanade.

14. That apart, as mentioned earlier, during his lifetime, the tenant did not challenge the partition. In fact, as mentioned earlier, mutation entry was certified and the extract was signed by Ganpat Kalu Bagul, son of Kalu. In other words, the tenant was aware that the partition was

effected in the year 1956. In view thereof, I do not find that the Authorities below committed any error in dismissing the application for fixing purchase price. Hence, Petition fails and the same is dismissed.

15. At this stage, Mr. Kanade has tendered photocopy of notice dated 17.11.2018 issued by Assistant Collector / S.D.O., Kalvan informing Tahsildar that petitioners have instituted Petition in this Court and the date is fixed as 27.11.2018. S.D.O. informed Tahsildar, Kalvan not to take any action till 30.11.2018. He submitted that Tahsildar may be directed not to take any action for a period of 3 weeks from today. Mr.Agrawal opposes oral application on the ground that no interim order was operating during the pendency of the proceedings.

16. In view thereof, oral application made by Mr. Kanade is rejected.

(R. G. KETKAR, J.)

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