

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

**SECOND APPEAL NO.703 OF 2017 WITH
CIVIL APPLICATION NO.13678 OF 2017**

Uda Maharu Koli,
Deceased through his Legal Heirs

1. Jaising Uda Koli,
Rge 69 years, Occu. Agriculturist,
R/o Purushottam Nagar,
Tal. Shahada, Dist. Nandurbar

Since deceased, through his Legal Heirs

- 1-A) Meerabai Jaising Koli,
Age 62 years, Occu. Household
- 1-B) Chandrasing Jaising Koli,
Age 38 years, Occu. Service,

Both R/o Kamaravad,
Tq. Shahada, Dist. Nandurbar
- 1-C) Roshni Manish Salve,
Age 35 years, Occu. Household,
R/o Aashti, Tal. Shirpur,
District Dhule
- 1-D) Jyoti Prashant Salve,
Age 33 years, Occu. Household,
R/o Wathoda, Tal. Shirpur,
District Dhule
- 1-E) Vaishali Jitendra Salve,
Age 30 years, Occu. Household,
R/o Jagtapwadi, Nandurbar,
Dist. Nandurbar
2. Pandit Uda Koli
Age 59 years, Occu. Agriculturist

R/o Kamaravad, Tal. Shahada,
Dist. Nandurbar

3. Bhagwan Uda Koli,
Age 43 years, Occu. Agriculturist,
R/o as above
4. Sukadev Uda Koli,
Age 41 years, Occu. Agriculturist
R/o as above.
5. Smt. Indubai d/o Uda Koli,
Age 51 years, Occu. Household
R/o At Post Khapar,
Tal. Akkalkuwa, Dist. Nandurbar

... APPELLANTS

VERSUS

1. Puna Maharu Koli,
Since deceased, through Legal Heirs
- 1-A) Maka Puna Koli,
age 64 years, Occu. Retired
R/o At Post Pratappur,
Tal. Taloda, Dist. Nandurbar
- 1-B) Smt. Dhudabai d/o Puna Koli,
Age 74 years, Occu. Household
R/o as above.
- 1-C) Smt. Sumanbai d/o Puna Koli,
Since deceased, through her Legal Heir
- 1C-1) Bhika Chintaman Koli,
Age 42 years, Occu. Labourer,
R/o At Post Pratapur,
Tal. Taloda, Dist. Nandurbar
- 1-D) Sakhubai d/o Puna Koli,
Age 56 years, Occu. Household
R/o At Post Selamba, Tal. Sagbara,
Dist. Narbada (Gujarat State)
2. Soma Maharu Koli,
Since deceased, through Legal Heirs

2-A) Hiralal Soma Koli,
Age 47 years, Occu. Agriculturist
R/o At Post Moyada, Ta. Pansemal,
Dist. Badwani (M.P.)

2-B) Raghunath Soma Koli,
Age 51 years, Occu. Agriculturist
R/o as above.

2-C) Mathurabai Soma Koli,
Age 75 years, Occu. Agriculturist
R/o as above.

3. Bajirao Soma Koli,
age 83 years, Occu. Agriculturist
R/o at Post Dondavade,
Tal. Shindkheda, Dist. Dhule

... RESPONDENTS

.....
Shri Shailesh P. Brahme, Advocate for appellants
Shri S.S. Gangakhedkar, Advocate for respondents
.....

CORAM : R. G. AVACHAT, J.

DATE : 8th JUNE, 2022.

J U D G M E N T :

This Second Appeal is admitted and taken up for final hearing with the consent of learned counsel for the parties thereto, on the following substantial questions of law :

- (1) Whether both the Courts below committed grave error of jurisdiction in holding that the suit lands were not exclusive properties of Udaysing despite

the conclusive evidence of the certificate issued in his favour under Section 32(M) of the Bombay Tenancy and Agricultural Lands Act ?

- (2) Whether Civil Court had jurisdiction to decide the nature of tenancy as it was adjudicated by the trial Court in deciding issue No.7 which was confirmed by the learned lower appellate Court in paragraph No.27 and 28 ?

2. The appellants herein are the unsuccessful defendants before both the Courts below. The respondents filed the suit, being Regular Civil Suit No.77/2010 for partition and separate possession of the agricultural lands particularly described in paragraph No.1 of the plaint. It is the case of the respondents/ plaintiffs that, Maharu (deceased) was the common ancestor. He was survived by his four sons namely Puna, Soma, Bajirao and Uda and daughters as well. Late Maharu was tenant, in possession of the suit lands. On his demise, name of his one of the sons namely Puna was mutated in the revenue record of the suit lands as a Karta of the joint family. Enquiry under Section 32-G of the Bombay Tenancy and Agricultural Lands Act (BT & AL Act for short) was held. Purchase price was fixed. The joint family did not have source of income other than income from the suit lands.

32(M) Certificate was issued in the name of Uda (original defendant No.1) since on the demise of Puna, his children were minors and Uda was managing the affairs of the joint family.

3. The trial Court accepted the case of the plaintiffs and decreed the suit. The first appellate Court confirmed the judgment and the decree passed by the trial Court. Hence the present appeal.

4. Shri Shailesh P. Brahme, learned counsel for the appellants/ defendants would submit that, the suit lands had been purchased by Uda. He was in possession of the suit lands from the year 1957 to 1992. The 32(M) Certificate is a conclusive proof of the title to the land of the person in whose favour the certificate was issued. Whether Uda alone was the tenant – purchaser of the suit lands was a question falling under the provisions of the BT & AL Act. It is the Mamlatdar, who has exclusive jurisdiction to decide such question. The Civil Court did not have jurisdiction to decide, settle or deal with any question which is by or under the BT & AL Act, is required to be settled, decided or dealt with by the Mamlatdar or Tribunal. By virtue of Section 85-A of the Act, the Civil Court ought to have referred such issue to the decision by the

Mamlatdar. According to learned counsel, the decision given by both the Courts below, holding that deceased Uda was a tenant for and on behalf of the joint family, and the suit lands have, therefore, been purchased in his name, is without jurisdiction and, therefore, non-est. The learned counsel, relying on the judgments in case of **Sau. Saraswatibai Trimbak Gaikwad Vs. Damodhar D. Motiwale V. Damodhar D. Motiwale [2002 AIR (SC) 1568]** and **Bhima aba Rade & anr. Vs. Thaklubai Maruti Rade & ors. [2008 (1) Mh.L.J. 192]**, ultimately urged for allowing the Second Appeal.

5. Shri S.S. Gangakhedkar, learned counsel for the respondents, on the other hand, took me through the findings recorded by both the Courts below and ultimately submitted that the same is in consonance with the evidence on record. The learned counsel distinguished both the authorities (supra) on facts. According to learned counsel, the substantial questions of law need to be answered in the negative with dismissal of the Second Appeal.

6. Considered the submissions advanced. Perused the impugned judgments. Gone through the authorities relied on and the provisions of the BT & AL Act referred to. Before adverting to address the questions of law raised in this

appeal, it is necessary to have a glance at the relevant provisions of the BT & AL Act. Section 2(18) defines the term 'tenant' to mean 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 is protected tenant; and
- (c) a person who is permanent tenant.

7. The term 'person' has been defined under clause (11) of Section 2 to include a joint family, meaning thereby a joint family can hold a land as a tenant. Clause 7(a) defines the term 'joint family' to mean an undivided Hindu family and in case of other persons, a group of Unit, the members of which are by custom, joint in estate or residence.

Section 27(1) of the Maharashtra Tenancy and Agricultural Lands Act reads as under :-

“27. Sub-division, sub-letting and assignment prohibited:

- (1) Save as otherwise provided in Section 32-F no sub-division or sub-letting of the land held by a tenant or assignment of any interest therein shall be valid.

Provided that nothing in this sub-section shall prejudicially affect the rights of a permanent tenant.

“Provided further that, if the tenant dies –

(i) if he is member of a joint family, the surviving members of the said family, and

(ii) if he is not a member of a joint family, his heirs,

shall be entitled to partition and subdivide the land leased subject to the following conditions:-

.....”

8. Section 32(M)(1) reads thus :

“32M. Purchase to be ineffective on tenant purchaser’s failure to pay purchase price.

(1) On the deposit of the price in lump sum or 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. Such certificate shall be conclusive evidence of purchase in the event of failure of recovery of purchase price as arrears of land revenue under sub-section (3) of Section 32K, the purchase shall be ineffective and the land shall be at the disposal of the Tribunal under Section 32P and any amount deposited by such tenant-purchaser towards the price of the land shall be refunded to him.

9. The phraseology of Section 32-M referred to above

would indicate that the 32(M) Certificate shall be conclusive evidence of the purchase. It does not speak that the person named in the certificate as a holder thereof shall be deemed to be an exclusive owner of the land in respect of which the certificate has been issued.

10. Section 70 of the Act speaks of duties of Mamlatdar. Clause (b) thereof speaks of his duties or functions to decide whether a person is, or was at any time in the past, a tenant or a protected tenant or a permanent tenant. Section 85 of the Act speaks of bar of Civil Court's jurisdiction. Section 85 reads thus :

“85. Bar of jurisdiction :-

(1) No Civil Court shall have jurisdiction to settle, decide or deal with any question (including a question whether a person is or was at any time in the past a tenant and whether any such tenant is or should be deemed to have purchased from his landlord the land held by him) which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal, a Manager, the Collector, or the Maharashtra Revenue Tribunal in appeal or revision or the State Government in exercise of their powers of control.

(2) No order of the Mamlatdar, the Tribunal, the Collector or the Maharashtra Revenue Tribunal or the State Government made under

this Act shall be questioned in any Civil or Criminal Court.

Explanation :- For the purposes of this section a Civil Court shall include a Mamlatdar's Court constituted under the Mamlatdar's Courts Act, 1906."

11. Thus, it is to be seen that a civil court does not have jurisdiction to decide matters which are required to be dealt with by the tribunal under the said Act. Thus it is only the tribunal which can decide whether a person is deemed to be a tenant and whether he is entitled to purchase the land held by him. The civil court has no jurisdiction to decide such a question. Even if such a question was to be raised in a proceeding before it, the civil court would have to refer the issue to the authority under the said Act. The suit would then have to be disposed of in accordance with the decision of the authority. Thus if the tribunal fixes a purchase price and issues a certificate then that certificate would be conclusive proof of purchase. The civil court would then be bound to give effect to the certificate and cannot ignore it. (Saraswati bai's case – supra).

12. Let us now advert to the factual matrix referred to by the trial Court in its judgment. For want of documentary

evidence on record to refer to the same, the observations made by the trial Court are adverted to. This is an undisputed factual matrix.

Learned trial Court observed in paragraph Nos.9 to 13 as under :

“9. The plaintiff No.1-A, Maka has filed affidavit in evidence vide Exh.19. His affidavit in evidence is replica of the plaint. The defendant No.1 Jaising Uda Koli has filed his affidavit in evidence vide Exh.61 and he has also stated as per his pleading. In the cross-examination of defendant he has admitted that occupation of his father namely Uda Maharu was only agriculture and he has no other agricultural land except the suit properties. This witness also admitted that the plaintiffs have also no other agricultural land. This witness further admitted in cross-examination that, the installments of purchase price have been paid out of the income of suit properties. From these admissions of this defendant it is clear that except the suit properties there are no other agricultural land belonging to the family of the plaintiffs and defendants and the income out of the suit properties is the only source to pay the installment of the price determined under section 32(G) of the suit properties. The plaintiffs have produced on record various documents vide Exh.27 to 46 and the various 7/12 extract of the suit properties produced vide Exh.47 to 57. These documents consist various mutation entries and the 7/12 extracts of the suit property right from year 1954-55 up to 1994-95.

The mutation entry Nos.342, 429, 497 and 268 are in respect of field survey No.9. The

mutation entry Nos.388, 429, 460, 29, 268 and 353 are relating to field survey No.74, present Gut No.132.

10. On perusal of mutation entry No.342 (Exh.30), it appears that on 20/3/1954 name of Puna Maharu Koli was mutated in the record of right of field Survey No.9 as a ordinary tenant. It shows that on 20/3/1954 Puna Maharu and Rajmal Motiram were cultivating field Survey No.9. On perusal of mutation entry No.429, it appears that, Puna Maharu Koli died on 12/2/1960 at village Kumrawad, leaving a son namely Maka, aged 8 years, three daughters namely Dhudki, Suman and Sakhu and wife namely Kashibai. At the time of his death, there was joint family of him and his three brothers namely Udesing Maharu, aged 30 years, Soma Maharu, aged 25 years and Bajirao Maharu, aged 22 years. On behalf of the entire joint family, name of Udesing @ Uda Maharu came to be mutated as a Kara of Hindu joint family. Effect of this mutation has been given to the field survey No.9 as well as 74. On perusal of mutation entry No.497 it appears that, this mutation has been certified on 12/8/1963. Enquiry under section 32(G) of the B.T. & A.L. Act 1948 was held and Tribunal has determined purchase price and given Survey No.9 to Maka Puna as heir of deceased Puna Maharu. At the time of this enquiry, Maka Puna was minor and Uda Maharu Koli was shown as guardian of the minor. This documentary evidence clearly shows that field Survey No.9/2, area 11 acre 4 gunthas came to be given to Maka Puna as legal heir of deceased Puna Maharu.

11. On perusal of mutation entry 268 (Exh.42), it appears that after death of Uda Maharu Koli names of his legal heirs came to be mutated in the revenue record of Gut Nos.10 and 132 i.e. suit properties. Here it is pertinent to note that, on the Tillar's Day, Puna Maharu Koli was deemed to be

the purchaser of this suit properties and due to his death, name of his son Maka, who was minor, came to be mutated with the name of Uda Maharu as a guardian of minor, but by mutation entry No.268, names of the heir of the guardian of the minor came to be mutated as owner. In fact, Maka Puna Koli was the tenant, and in the enquiry under Section 32(G) of the Act, the then Survey No.9 (present Gut No.10/2) came to be allotted to the Maka Puna Koli. In such circumstances, merely due to mutating names of the defendant as a guardian of the minor, they cannot extinguish the right and title of the minor. The 7/12 extracts produced on record vide Exhs.47 to 52 also show that Puna Maharu Koli was deemed purchaser and name of Uda Maharu Koli came to be mutated as Manager of the Hindu joint family. This documentary evidence on record clearly establishes fact that the field Survey No.9 i.e. suit property Gut No.10/2 is joint family property of all the four brothers.

12. *So far as field Gut No.132 is concerned, on perusal of mutation entry No.388 (Exh.31), it appears that, the name of Puna Maharu Koli came to be mutated in the revenue record of this property on 21/8/1956 as "ordinary tenant". This shows that, on the Tillar's day, Puna Maharu Koli was cultivating Survey No.74. In such circumstances, as per the provisions of Section 32 of the B.T. & A.L. Act, 1948, Puna Maharu Koli is deemed to have purchased the land on the Tillar's day i.e. on 1/4/1957. The mutation entry No.429 (Exh.33) (which is already discussed), shows that, on 12/2/1960 Puna Maharu Koli died, leaving behind a son, 3 daughters, wife and three brothers and there was joint family of all these persons and the name of Uda Maharu Koli came to be mutated as Manager of Hindu joint family. On perusal of mutation entry No.460 (Exh.35), it appears that, at the time of enquiry under Section 32(G), it is*

disclosed that, landlord is minor. Hence the proceeding of purchase was postponed till 18/2/1967 i.e. till the landlord attained majority. On perusal of this mutation entry, it is clear that, Ambarsing Harsing and Puna Maharu were declared as tenants, but their right to purchase was postponed till the landlord attained majority. On perusal of mutation entry No.29 (Exh.40), it appears that, on 5/1/1971 Uda Maharu Koli paid the price determined under section 32(G) of the B.T. & A.L. Act, 1948. So his name came to be mutated to the old Survey No.132. On perusal of mutation entry No.268 (Exh.42), it appears that, Uda Maharu Koli died on 23/6/1992 and the names of his legal heirs came to be mutated in the record of rights of field Guts No.10 and 132. On perusal of mutation entry No.353 (Exh.45), it appears that the certificate under section 32(M) of the B.T. & A.L. Act, 1948 has been issued in the name of Uda Maharu Koli as he has paid the price determined under Section 32(G) of the said Act. So names of his heirs came to be mutated to the Gut No.10/2. Here it is pertinent to note that though as per mutation entry No.29 and 268 (Exhs.40 and 42) (certified on 05/1/1971 and 09/7/1992), the names of Uda Maharu and his sons came to be mutated as owners, but as per mutation entry No.429 dated 23/6/1960 and mutation entry No.460 dated 13/1/1962, Puna Maharu was deemed purchaser of the suit properties. The right to purchase was postponed only as landlord was minor and not on any other ground. In such circumstances, merely on the basis of mutation entry Nos.29 and 268, Uda Maharu and his legal heirs alone cannot get status of purchaser.

13. *To sum up, the documents on record clearly show that, on the Tillar's day Puna Maharu Koli was cultivating both the suit properties on behalf of joint family. Puna Maharu Koli was representing joint family of himself as well as of*

his three brothers namely Soma, Bajirao and Uda and the four brothers have joint interest in the suit properties. On the Tillar's day Puna Maharu Koli was declared as deemed purchaser. Though as per the case of the defendants the purchase certificate under section 32(M) of the B.T. & A.L. Act, 1948 has been issued in the name of defendant Uda, the defendant No.1-A Jaising himself has admitted that except the suit properties there was no other property to the family of all the four brothers and the purchase price has been paid out of income of suit properties. This shows that the suit properties are the joint family properties of all the four brothers and each brother has right, title and interest in the suit properties. Hence, though the name of deceased Udesing was shown as purchaser on purchase certificate, the suit properties are purchased by him representing Hindu joint family of him and other three brothers i.e. Puna, Soma and Bajirao as well as in the capacity as a guardian of minor Maka Puna.”

13. Both the authorities relied on by learned counsel for the appellants are quite distinguishable on facts. In case of Saraswatibai (supra), the dispute was between a tenant in possession of the land and landlord (landlady). Whereas the facts in Bhima Aba Rade's case (supra), though in first blush appear to be identical with the facts of the present case, the close reading would indicate that the said judgment is also quite distinguishable on facts. It has been observed by the learned Single Judge of this Court in Bhima Aba Rade's case (supra) as under :-

“10. The First Appellate Court completely ignored statutory conditions enumerated at bottom of the certificate would show that the suit land was impartible estate in the hands of original defendant No. 1. He could not have subjected the suit land to partition without prior permission of the Collector. The decree for partition could not be rendered as it would cause breach of Section 43 of the BT & AL Act. The Civil Court has no jurisdiction Page 2437 to examine the questions which are required to be dealt with and settled under provisions of the BT & AL Act. There is bar of jurisdiction under provisions of Section 85 of the BT & AL Act to deal with any question, including a question whether a person is or was at any time in the past a tenant and whether any such tenant is or should be deemed to have purchased from his landlord, the land held by him. Obviously, the Civil Court could not have gone into the question as to whether deceased defendant No.1 alone was entitled to purchase the suit land or that it was purchased by him for and on behalf of joint Hindu family for himself and his brothers. The Civil Court could not have examined whether it was a joint tenancy of the four brothers or that it was exclusive tenancy created in favour of deceased defendant No. 1 - Bhima.”

14. In view of this Court, the aforesaid observations have been made in the light of the facts obtainable in the said case. The facts enumerated in paragraph No.18 of the said judgment make all the difference. For better appreciation, the same are reproduced below :-

18. The record clearly reveals that prior to his death in 1950, somewhere in 1947-48, deceased Abu @

Aba Rama Rade surrendered tenancy rights in respect of the suit land. The surrender of his rights was duly verified and his name was deleted from the revenue record. The surrender of tenancy rights could be effected as provided under Section 15 of the BT & AL Act. The name of deceased defendant No.1 Bhima was later-on recorded in the revenue record as ordinary tenant. He was cultivating the suit land as tenant of the owner-Dinkar Deshpande from 1950 onwards. He alone was found in possession of the suit land on the tillers day. There is legal presumption available as regards correctness of due procedure followed by the Mamlatdar while accepting surrender of rights of deceased Abu @ Aba Rama Rade. It has to be presumed that the concerned authority had acted in accordance with the provisions of law. The question of appropriateness of the surrender of rights by deceased Abu @ Aba Rama Rade cannot be reagitated in the Civil proceedings. Needless to say, deceased defendant No.1 Bhima became exclusive owner of the suit land as a statutory purchaser thereof. The suit land was no more available for partition. Therefore, partition decree could not have been rendered by the First Appellate Court against provisions of Section 43 of the BT & AL Act.

15. In short, the facts of the present case would undoubtedly indicate that Maharu was tenant, in possession of the suit lands. On his demise, his four sons (original plaintiffs No.1 to 3 and defendant No.1) inherited the said lands. The name of one of the sons namely Puna came to be recorded in the revenue record. On the Tillar's day, he was in possession of the suit land. Since the date of deemed purchase was

postponed and in the meanwhile, Puna died, the names of his minor children came to be recorded in the revenue record, showing the defendant No.1 as a Manager of the family. Admittedly, except the suit lands, the family did not have any other source of income. The purchase price thus came to be paid out of the income of the suit lands. The 32-M Certificate issued in favour of original defendant No.1 Uda was necessarily for and on behalf of the joint family of all the brothers. When all this voluminous evidence was available on record, the inference drawn by the Civil Court in that regard could not be said to have been drawn without jurisdiction. In this factual backdrop, no issue was required to be referred to the tenancy authorities to solicit its finding whether deceased Uda alone was the tenant, in possession of the suit lands and then became owner thereof by virtue of grant of certificate under Section 32-M in his favour. In the peculiar facts and circumstances of this case, the courts below cannot be said to have travelled beyond their jurisdiction to decree the suit. The substantial questions of law referred to hereinabove are answered accordingly, that is, the first in the negative and second one in affirmative.

16. For the reasons given hereinabove, the Second

Appeal stands dismissed. Consequently, Civil Application stands dismissed.

17. The interim relief granted earlier to continue for next eight weeks.

**(R. G. AVACHAT)
JUDGE**

fmp/-