

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

916 CRA NO.14 OF 2022

SITARAM GAEKWAD DECEASED THR LRS BHAGWAN GAEKWAD THR
LRS JAGDISH B GAEKWAD (DEAD) RAMDAS S GAEKWAD
VERSUS
KAMALABAI PRAMOD ALIAS BABAN TAMBOLI

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Advocate for Petitioner : Mr. Sushil P Pandit
Advocate for Respondent Nos.1 to 4 : Mr. R. R. Sancheti

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CORAM : ARUN R. PEDNEKER, J.

DATE : 14/07/2023

PER COURT :

Heard the learned Advocates appearing on behalf of the respective parties.

2. The learned Advocate for the applicant is restricting his claim to the extent of the submission canvassed that the mesne profits should have not been directed against one of the legal heirs of the property, and that other legal heirs ought to have been made parties to the same. However, the Appellate Court in paragraph No.23 has specifically observed that Bhagwan and Ramdas were arraigned as the legal heirs of the original tenant and after appearance they filed written statement. In the written statement, in the opening paragraph itself it is pleaded, they are the legal heirs of the original tenant. In

addition, the original tenant had opportunity to contend that all the family members are running business with him at the time of giving reply, but no such case was advanced at that time, which was the first opportunity for the defendants to lay foundation for their defence.

3. It was further held by the Appellate Court in paragraph No.27 that, in cross-examination, the defendant categorically admitted that the defendant received the suit premises from the original landlord i.e. Jagannath. Thus, it was not necessary for plaintiffs to have arraigned any other legal heirs of deceased Jagannath merely to satisfy the untenable demand of the defendant.

4. In view of the same, the present applicants being the legal heirs who had received the suit property from the original tenant are alone liable for the mesne profits as held by the Appellate Court. Hence, the civil revision application stands dismissed.

(ARUN R. PEDNEKER, J.)

vj gawade/-.