

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

WRIT PETITION NO. 11140 OF 2015

Smt. Bayakka w/o Jakoba Patil and Anr. ..Petitioners
V/s.

Shri. Ravindra Shamrao Deshpande
and Anr. ..Respondents

Mr. Vishwanath Talkute for the Petitioners.
Mr. Pradeep Dalvi for Respondent Nos. 1 and 2.

**SNEHA
NITIN
CHAVAN**

Digitally signed
by SNEHA NITIN
CHAVAN
Date: 2023.01.03
19:38:50 +0530

**CORAM : M.M.SATHAYE, J.
RESERVED ON : 9th DECEMBER 2022
PRONOUNCED ON : 3rd JANUARY 2023**

::JUDGMENT ::

1. Rule. Rule is made returnable forthwith. Learned counsel for the Respondents waive service. Heard finally by consent of parties.

2. This petition filed under Articles 226 and 227 of the Constitution of India, seeks to quash and set aside the Judgment and Order dated 30.10.2014 passed by the Member, Maharashtra Revenue Tribunal, Pune ('M.R.T.' for short) in Tenancy Revision No. TNC/REV/15/B/2000/KP by which, the Order dated 20.01.2000 passed by the Sub-Divisional Officer, Gadhinglaj Sub-Division, Gadhinglaj in

Tenancy Appeal No. 30 of 1996 is confirmed, by which Judgment and Order dated 30.10.1996 passed Additional Tahsildar and ALT Chandgad in Tenancy Case No. 32G-Dukkarwadi-188 is confirmed. In short, this petition seeks to challenge concurrent findings.

3. The matter arises out of Bombay Tenancy and Agricultural Land Act, 1948, which is hereinafter referred to as 'the said Act' for short. Land bearing survey No. 134, New Gat No. 587 admeasuring 67.8 Ares of village Dukkarwadi, Taluka Chandgad, District Kolhapur, is the subject matter property, which is hereinafter referred to as 'the said land' for short.

4. In view of arguments, which will be recorded below, I find it compelling to check facts necessary for deciding this petition, which are as below :

(i) The said land was originally owned by one Vitthal Nathu Deshpande who was the husband of Smt. Radhabai w/o Vitthal Deshpande. Said Vitthal expired on 29.01.1951, leaving behind widow Radhabai and son Shamrao. After the death of Vitthal, name of Shamrao was entered in the Revenue records vide Mutation Entry No. 1153 dated 15.06.1951. It is not disputed that said Shamrao had executed a registered maintenance deed in favour of his

mother Radhabai on 12.12.1956. Therefore, on tillers' day i.e. 01.04.1957, the subject matter land stood in the name of Radhabai alone, who was widow at the relevant time.

(ii) It appears that the concerned Tahsildar had suo moto started proceedings under Section 32G of the said Act in the year 1960, but as the landlady Radhabai was a widow at the relevant time, the said proceedings were dropped by order dated 31.10.1960. Thereafter, further inquiry was taken up by Tahsildar, Chandgad in the year 1974. However, it was revealed that both landlady and original tenant were dead by then and landlady had executed a Will in favour of her grand children, who are present Respondents. As both, grand children of the Radhabai were minors, the inquiry under Section 32 was postponed and it appears that the said inquiry was again revived in the year 1987, when the Additional Tahsildar and ALT proceeded to fix purchase price of suit land in favour of the present Petitioners.

(iii) Feeling aggrieved by the said order, Tenancy Appeal No. 13/1987 was preferred before the S.D.O, Gadhingalaj, who dismissed the same by order dated 17.04.1989.

(iv) Being aggrieved by this order, a Revision came to be filed by present Respondents in Maharashtra Revenue Tribunal Camp at Kolhapur. It was Revision Application

No. MRT-KP-77/1989, in which, a detailed order dated 15.02.1991 was passed considering all the facts on record, thereby remanding the matter to Tahsildar Chandgad for holding further inquiry under Section 32F(1)(a) of the said Act.

(v) Pursuant to remand, during inquiry, statements of said Shamrao and power of attorney holder of Petitioners (Ramu Zilu Turkewadkar) were recorded and by dated 30.10.1996, the Additional Tahsildar and ALT, Chandgad, declared the purchase of suit land as ineffective under Section 32G(3) of the said Act.

(vi) The present Petitioners alongwith one Smt. Rangubai Somana Varpe, (legal heirs of original Tenant), challenged the said order dated 30.10.1996 by filing Tenancy Appeal No. 30 of 1996 before the S.D.O., Gadhinglaj Sub-Division, Gadhinglaj under Section 74 of the said Act. This Appeal was dismissed by the Judgment and Order dated 20.01.2000.

(vii) It was challenged by Petitioners by filing Revision Application No. TNC/REV/15/B/2000/KP before the Maharashtra Revenue Tribunal and that is how the present impugned Order came to be passed on 30.10.2014 by Member, M.R.T., Pune. It appears that the said Rangubai Somana Varpe was deleted during pendency of the Revision application before the MRT.

5. In short, the scope of this petition is necessarily to check whether the Authority below has held proper inquiry as contemplated under Section 32F(1)(a) of the said Act, post / as per Order dated 15.02.1991 and whether there is any perversity or error apparent on the face of the record or jurisdictional transgression.

6. Heard both the sides in detail on 09.12.2022. Perused the record.

7. Learned counsel Mr. Talkute for the Petitioners, argued that the Authorities i.e. Tahsildar and ALT, Chandgad have not conducted inquiry as directed under the order of M.R.T. dated 15.02.1991. It is further argued that in order to give a go-by to the proceedings under the said Act and in order to save the land from being purchased by the agricultural tenant, Shamrao has executed the document in favour of Radhabai and as such on the tillers' day, Radhabai alone was not the owner and therefore, the right of tenant to purchase the said land could not have been postponed. It is further argued that the fact that suit land was subsequently transferred in the name of Radhabai and subsequently in the name of Respondents (who are her grand children), the real intention is clear, which was to by pass the provision of the said Act. It is also argued that in the statement recorded during inquiry, Shamrao has admitted that there is no

partition deed between him and his mother Radhabai and therefore, it should have been held that there existed another member in the family as contemplated under Section 32F of the said Act. It is argued that therefore, impugned Orders need interference.

8. On the other hand, the learned counsel Mr. Dalvi for the Respondents argued that the document executed by Shamrao in favour of his mother Radhabai is a registered document dated 12.12.1956 which is much prior to the tillers' day and there is nothing concrete as such, to conclude that the said act of the Shamrao is for by-passing the provisions of the said Act. He further argued that under Section 14(1) of the Hindu Succession Act 1956, a hindu woman holds any property possessed by her whether acquired before and after the commencement of that Act, as full owner and not as a limited owner. Learned counsel invited my attention to Section 14(1) of the Hindu Succession Act and contended that Radhabai cannot be held as limited owner in the teeth of provision of Section 14(1) of the Hindu Succession Act. He argued that Shamrao cannot be held to be 'member of joint family outside the category mentioned in sub section 1(a) i.e. widow in present case' as contemplated under Section 32F of the said Act. Learned counsel further invited my attention to full statement recorded by Shamrao and urged that a single line in his

statement or solitary portion thereof, should not be and can not be read out of context, as an admission on behalf of Shamrao about absence of partition or existence of joint family. He pointed out other portions from Shamrao's statement, where it is stated that after the execution of maintenance deed, Shamrao had no connection with the said land and the action of Radhabai of executing Will in favour of present Respondents is totally independent event and Shamrao had no connection thereto. Shamrao has also stated that he and his mother Radhabai was staying together only till execution of maintenance deed. He has further stated that he individually owned other properties, which are different from the present subject matter land. On these grounds, the learned counsel for the Respondents, urged that it cannot be said on re-appreciation of evidence that Radhabai was not exclusive owner on tillers' day and their existed other member of joint family as per Section 32F of the said Act.

9. I have carefully considered the submissions. After examining the record, as narrated above, in exercise of the limited jurisdiction, in my opinion, the conclusions drawn by the Authorities below are on the basis of material evidence available before it. There is nothing on record to show that Radhabai received the said land as restricted estate as provided in section 14(2) of the Hindu Succession Act, so

as to remove the same from the clutches of Section 14(1) thereof. In that view of the matter, the authorities below were justified in holding that on 12.12.1956 Radhabai became absolute owner of the said land and obviously therefore on tillers' day i.e. 01.04.1957 Radhabai, a widow, alone was the owner no other member of joint family had right therein. Obviously therefore there is no question of there being a partition by metes and bound so far that the said land is concerned. Therefore, the right of purchase was postponed, rightly so. It is not possible to go into intention of Radhabai while transferring the said land in favour of her grand children, as it falls within the realm of 'disputed question of fact' in view of rival claims about it. It will not be out of place to mention here that Radhabai indeed held the said land as absolute owner, when she dealt with it, as she pleased.

10. The learned counsel for both the parties have invited my attention to Section 32F of the said Act which reads thus:

“32F. Right to tenant to purchase where landlord is minor, etc:

(1) Notwithstanding anything contained in the preceding sections,—

(a) where the landlord is a minor, or a widow, or a person subject to any mental or physical disability, the tenant shall have the right to purchase such land under section 32 within one year from the expiry of the period during which such landlord is entitled to terminate the

tenancy under section 31 [and for enabling the tenant to exercise the right of purchase, the landlord shall send an intimation to the tenant of the fact that he has attained majority, before the expiry of the period during which such landlord is entitled to terminate the tenancy under section 31] :

[Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before the 31st day of March 1958 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property and not in a larger proportion].

(b) where the tenant is a minor, or a widow, or a person subject to any mental or physical disability or a serving member of the armed forces, then subject to the provisions of clause (a), the right to purchase land under section 32 may be exercised—

(i) by the minor within one year from the date on which he attains majority.

(ii) by the successor-in-title of the widow within one year from the date on which her interest in the land ceases to exist;

(iii) within one year from the date on which the mental or physical disability of the tenant ceases to exist;

(iv) within one year from the date on which the tenant ceases to be a serving member of the armed forces:

[Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before the 31st day of March 1958 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property and not in a larger proportion].

[(1A) A tenant desirous of exercising the right conferred on him under sub-section (1) shall give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period specified in that sub-section]:

[Provided that, if a tenant holding land from a landlord (who was a minor and has attained majority before the commencement of the Tenancy and Agricultural Lands Laws (Amendment) Act, 1969) has not given intimation as required by this sub-section but being in possession of the land on such commencement is desirous of exercising the right conferred upon him under sub-section (1), he may give such intimation within a period of two years from the commencement of that Act].

(2) The provisions of section 32 to 32E (both inclusive) and section 32G to 32R (both inclusive) shall, so far as may be applicable, apply to such purchase.”

11. Reading of the aforesaid provision shows, that if on the tillers' day, the land stood in the name of person with disability as stated therein (widow in present case), then the right to purchase was automatically postponed, which is the case in the present matter. So question remains as to whether there was "other member of the joint family" apart from Radhabai. It is not contended that apart from Shamrao & Radhabai, there was any other member of joint family. Perusal of statement of Shamrao, during inquiry, clearly shows that after the execution of registered maintenance deed, he had no connection with the said land, which became Radhabai's absolute property by operation of law, as explained above. Therefore it can not be subject matter of partition among him and Radhabai. Shamrao has also stated that he and his mother Radhabai was staying together only till execution of maintenance deed. There is no reason to disbelieve the same.

12. Learned counsel Mr. Talkute, relied upon the following judgments in support of his case.

*1) Khandu Daulat Dangade v/s. Jaywantrao Yadavrao Kharade and Ors.*¹

*2) Laxmi Rai v/s Dayanu Narayah Mohite (dead) through Lrs.*²

1 1996(1) Mh.L.J. 712

2 (1992) 1 SCC 53

*3) Anant Dattatraya Mali and Ors. v/s. Chintaman Govind Patil and Ors.*³

*4) Balkrishna Somnath and Ors. v/s. Sadu Devram Koli and Ors.*⁴

13. In the case of Khandu Daulat Dangade's case (supra) partition amongst the family members of landlord including landlady widow Anjanabai was considered. In the case of Laxmi Rai (supra), again a case of partition amongst the family of the landlady Laxmi and other members was pleaded and the same was not accepted as genuine by the authorities concerned. In the case of Anant Dattatraya Mali (supra) the facts were such that widow Laxmibai and two sons Anant and Balwant had executed a registered partition deed and it was checked whether share of the disabled person is separated by metes and bounds. In the case of Balkrishna Somnath (supra) also, it was the case of landlady widow claiming partition amongst herself and her sons in which share was allotted to the person claiming disability.

14. The propositions laid down by the Hon'ble Supreme Court in all above cases can not be disputed and I respectfully agree with them, however, in none of the above cases, landlord/landlady under disability (being widow) had become an absolute owner, by operation of law, before the

3 AIR 1969 Bom 210

4 (1977) 2 SCC 15

tiller's day as in the present case and therefore, these case laws are not useful to the Petitioners.

15. Three authorities i.e. Tahsildar, Sub-Divisional Officer and M.R.T. have concurrently held in favour of the Respondents, based on inquiry which was so directed to be held, and which has been done on the material available before them. Therefore, there is no perversity or error apparent on the face of the record in the orders impugned. There is neither jurisdictional transgression, nor it is argued to be so. Hence, no interference is warranted.

16. Writ Petition is accordingly dismissed. No order as to costs. Rule is discharged.

17. At this stage, the learned counsel for the Petitioners seeks continuation of ad-interim relief in terms of prayer clause (b) which was granted and continued from time-to-time. The learned counsel for the Respondents opposed the prayer.

18. In order to afford an opportunity to the Petitioners to challenge the order passed today, ad-interim relief is extended by a period of six weeks.

(M. M. SATHAYE, J.)