

AGK

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

WRIT PETITION NO.13924 OF 2022

Gangubai Malkappa Kattire,
deceased through LRs

Ranjeet Abaso Desai & Ors.

... Petitioners

V/s.

Ranjeet Abaso Desai & Ors.

... Respondents

Mr. Nikhil Pawar i/by Mr. Sarvajit B. Patil for the
petitioners.

Mr. Abbhay Thorat with Mr. Tanaji V. Jadhav for
respondent Nos.6 to 8.

CORAM : AMIT BORKAR, J.

DATED : MARCH 20, 2024

P.C.:

1. The petitioners are challenging order passed by the Maharashtra Revenue Tribunal rejecting petitioners' review application to recall order of setting aside abatement and bringing respondent Nos.6 to 8 on record.

2. The proceedings arise out of Section 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 ("1948 Act" for short). During pendency of the review application, the original applicant/tenant died. Therefore, as per Section 40 of the 1948 Act, the right will be devolved on those heirs who are willing to continue the tenancy. The applicant was married. She was survived

by her husband. Husband died on 13 April 2018. Husband is survived by his daughter. She filed an application for bringing heirs on record along with other children. The Maharashtra Revenue Tribunal by order dated 8 December 2021 allowed the application. The petitioner filed application for review which is dismissed by the impugned order.

3. Learned advocate for the petitioners submitted that the rights of original applicant's husband would be governed by the Mohammedan Law, 1937. It is not in dispute that the original applicant died intestate and her rights will be regulated by Section 4 of the Hindu Succession Act, 1956. The provisions of the Hindu Succession Act, 1956 applies to a person who is Hindu by religion. It is not in dispute that the original applicant was Hindu by religion. It is also not in dispute that her husband was living when she expired. Hence, by virtue of Section 15 clause (b) of the Hindu Succession Act, 1956, the heirs of husband are entitled to succeed to the estate of the deceased.

4. Learned advocate for the petitioners invited my attention to Section 15(2)(a) which starts with non obstante over sub-section (1) and confers right on heirs of father if the deceased inherited property from father. However, in the facts of the case as per the case of the applicant she was agricultural tenant on the Tillers Day, i.e. 1 April 1957. If that is so, by virtue of operation of law she became owner of the property subject to compliance of the provisions of the 1948 Act.

5. Therefore, in my opinion, the order passed by the Maharashtra Revenue Tribunal allowing heirs of the husband to be brought on record as legal representatives of original applicant does not suffer from legal infirmity.

6. The writ petition stands dismissed. No costs.

(AMIT BORKAR, J.)