

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CIVIL APPELLATE JURISDICTION****SECOND APPEAL NO. 284 OF 2019  
WITH  
CIVIL APPLICATION NO. 563 OF 2019**

1. Shri Ramakant Ganesh Naik, ]  
Age : 54 years, Occ. : Agriculture ]  
Residing at Bhatwadi, Sawantwadi, ]  
Taluka Sawantwadi, District Sindhudurg. ]
  2. Nirmala Gurunath Tari, ]  
Since deceased through her legal heirs ]  
2A) Shri Chandrashekhar Gurunath Tari, ]  
Age : 40 years, Occ. : Agriculture ]  
2B) Shri Umesh Gurunath Tari, ]  
Age : 38 years, Occ. : Agriculture ]  
Nos.2A and 2B are residing at Aronda, ]  
Shipetuwadi, Taluka Sawantwadi, ]  
District Sindhudurg. ]
  3. Smt. Sujata Babaji Pednekar, ]  
Age : 56 years, Occ. : Agriculture ]  
Residing at Nirwade, Taluka Sawantwadi, ]  
District Sindhudurg ]  
Sr.Nos.2A to 2B and 3 through Power of ]  
Attorney holder and for himself and Sr.No. ]  
Shri Ramakant Ganesh Naik ]  
Age : 54 years, Occ. : Agriculture ]  
Residing at Bhatwadi, Sawantwadi, ]  
Taluka Sawantwadi, District Sindhudurg. ]
- ... Appellants /  
Orig. Defendants**

**Versus**

1. Smt. Anusaya Shantaram Naik ]  
Age : 79 years, Occ. : Housewife ]
2. Shri Shankar Shantaram Naik ]  
Age : 52 years, Occ. : Agriculture, ]  
Nos.1 and 2 are residing at Bhatwadi, ]  
Taluka Sawantwadi, District Sindhudurg. ]
3. Mrs. Sanjivani Sandip Namnaik, ]  
Age : 49 years, Occ. : Housewife, ]  
Residing at Niwaje, Near Bus Stop, ]  
Taluka Kudal, District Sindhudurg ]
4. Mrs. Susmita Sudhakar Patkar, ]  
Age : 44 years, Occ. : Household ]  
Residing at Kamleveer, Patkarwadi, ]  
Taluka Sawantwadi, District Sindhudurg ]
5. Shri Dinesh Gurunath Tari, ]  
Age : 34 years, Occ. : Service, ]  
Residing at Indira Vikas Seva Sangh Chawl ]  
No.7, Kannamwar Nagar No.2, Opposite ]  
Building No.180, Vikhroli East, ] **... Respondents /**  
Mumbai – 400 083. ] **Orig. Plaintiffs**

**WITH****SECOND APPEAL No.390 OF 2019**

Shri Ramakant Ganesh Naik, ]  
Age : 54 years, Occ. : Agriculture ]  
Residing at Bhatwadi, Sawantwadi, ] **... Appellant /**  
Taluka Sawantwadi, District Sindhudurg. ] **Orig. Plaintiff**

Versus

Shri Shankar Shantaram Naik ]

Age : 53 years, Occ. : Pigmy Agent, ]  
Residing at Bhatwadi, Sawantwadi, ]... **Respondent /**  
Taluka Sawantwadi, District Sindhudurg. ] **Orig. Defendant**

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***Mr. Vikram Walawalkar*** a/w *Mr. Amey Sawant, Ms. Sayali Gangal, Ms. Iqra Qureshi & Mr. Viren Tapkir* for Appellants in both Appeals.

***Mr. Nachiket Khaladkar*** for Respondents in both Appeals.

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**CORAM :- SANDEEP V. MARNE, J.**  
*Reserved On : 19 January 2024.*  
*Pronounced On : 6 February 2024.*

## **JUDGMENT :**

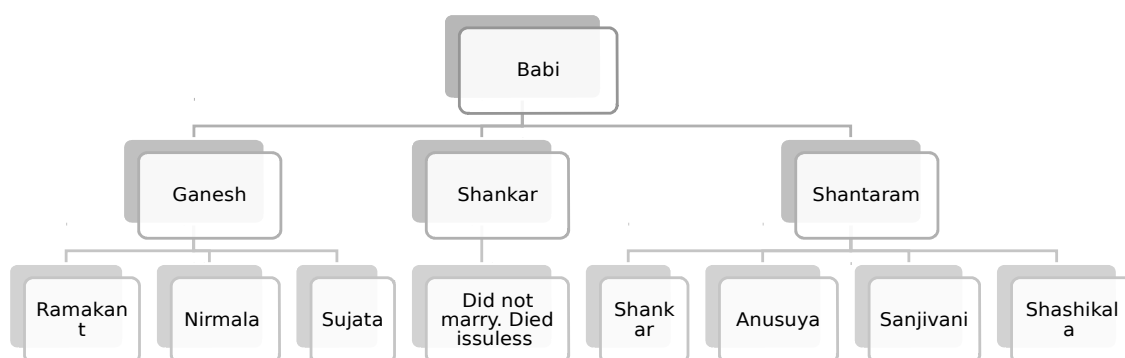
### **A. THE CHALLENGE**

1. These two Appeals are filed by the Appellants challenging separate Judgments delivered by the District Court, Sindhudurg in Regular Civil Appeal No. 81/2015 and Regular Civil Appeal No.108/2015. The District Court has proceeded to dismiss both the Appeals filed by the Appellant and has confirmed the decrees of the Trial Court. Resultantly, Regular Civil Suit No.14/2003 filed by the Appellant No. 1 seeking declaration of title and possession of land bearing Survey No. 170, Hissa No.2 is dismissed whereas Regular Civil Suit No.52/2003 filed by the

Respondents for partition of suit property including the land at Survey No.170, Hissa No.2 is decreed. In short, the Appellants are aggrieved by the decisions of the Trial and the first Appellate Court in not treating the lands purchased by their father-Ganesh Babi Naik under the provisions of Section 32G and 32M of The Maharashtra Tenancy and Agricultural Lands Act, 1956 (**‘Tenancy Act’**) to be his self-acquired property.

## B. FACTS

2. Briefly stated, facts of the case are one Babi Naik was originally cultivating the lands at Village Kolgaon (i) bearing new Survey No.170 (old No.274) Hissa No.2, and (ii) bearing Survey No.37, Hissa No.31. Additionally, there is a house property in one of those lands bearing Municipal House No. 211-C together with an extension which is referred by the parties as a ‘*mangar*’. Babi Naik’s family tree is as under:



3. Ramakant Ganesh Naik filed Regular Civil Suit No.14/2003 only against his cousin Shankar Shantaram Naik in respect of only 2 properties viz. (i) land at Survey No.170, Hissa No.2 and (ii) Municipal House No.C-211. Ramakant claimed that the said two properties are exclusively owned by him and that Defendant-Shankar did not have any right, title or interest in the same. Ramakant's claim of exclusive ownership to land at Survey No. 170, Hissa No.2 was premised on purchase of the same by his father-Ganesh in his exclusive name vide 32M certificate issued under the Tenancy Act in the year 1975. Ramakant, therefore, claimed that on account of issuance of 32M certificate in his father's sole name, Shankar does not have any claim in respect of the land bearing Survey No.170, Hissa No.2 and also in the house property. Apparently, Ramakant was residing in House No.C-211 and therefore claimed ownership in respect thereof. Ramakant claimed that Shankar forcibly got his name mutated to the suit properties as a co-sharer. That, House No.C-211 is constructed by Ramakant at his own expense but he allowed Shankar to occupy 2 rooms on the western side of the house on temporary basis without rent. Ramakant therefore prayed for vacant possession of the suit property from Shankar.

4. Immediately after filing of Regular Civil Suit No.14/2003 by Ramakant on 30 January 2003, Anusaya, Shankar, Sanjivani and Susmita filed Regular Civil Suit No.52/2003 in the

Court of Civil Judge Junior Division, Sawantwadi on 03 April 2003 seeking partition and separate possession of shares in respect of the 4 suit properties bearing (i) Survey No.170, Hissa No.2, (ii) Survey No.37, Hissa No.31, (iii) Sawantwadi Municipal House No.C-211 and (iv) constructed portion adjoining the House. Plaintiffs in Regular Civil Suit No.52/2003 claimed that the suit properties are joint family properties as their grandfather Babi Naik was cultivating agricultural lands, but their elder uncle Ganesh (Ramakant's father) got his name exclusively recorded in the 32G and 32M proceedings. In the Suit, Ramakant and his sisters Nirmala and Sujata were impleaded as Defendants.

5. The Trial Court took up Ramakant's suit bearing Regular Civil Suit No.14/2003 for hearing and by Judgment and Order dated 24 December 2010, dismissed the same holding that Ramakant was not the exclusive owner of the suit properties therein. The Trial Court held that the suit property was tenanted properties of the entire family and not of Ganesh or Ramakant alone.

6. The Trial Court thereafter took up Regular Civil Suit No.52/2003 filed by Anusaya, Shankar, Sanjivani and Susmita and by Judgment and Order dated 20 March 2015, decreed the same holding that all the 4 properties are ancestral properties of Plaintiffs and Defendants. The Court held that all 4 Plaintiffs have

$\frac{1}{2}$  share in suit properties and Ramakant and his sisters Nirmala and Sujata have  $\frac{1}{2}$  share together in the suit property.

7. Ramakant filed Regular Civil Appeal No.108/2015 before District Court, Sindhudurg challenging the decree dated 24 December 2010 dismissing his Regular Civil Suit No.14/2003. Regular Civil Appeal No.81/2015 was filed by Ramakant, Nirmala and Sujata challenging decree passed in Regular Civil Suit No.52/2003. The District Court, Sindhudurg has decided both the Appeals on 23 November 2018 by delivering 2 separate Judgments and has proceeded to dismiss both the Appeals. Aggrieved by the Judgments and Orders passed by the first Appellate Court on 23 November 2018, Ramakant has filed the present Appeals. Second Appeal No.390/2019 arises out of the decree passed in Regular Civil Suit No.14/2003 and Regular Civil Appeal No.108/2015. Second Appeal No.284/2019 arises out of the decree passed in Regular Civil Suit No.52/2003 and Regular Civil Appeal No.81/2015.

**C. QUESTIONS OF LAW FORMULATED**

8. This Court has admitted both the Appeals vide Order dated 22 January 2024 on following substantial questions of law:

i) *Whether previously cultivated lands by Plaintiffs as tenants but purchased by only one of the coparceners under provisions of Section 32-G and 32-M of the Maharashtra Tenancy and Agricultural Lands Act become exclusive property of such coparcener or whether it continue to remain the joint family property ?*

ii) *Whether Civil Court has jurisdiction to decide entitlement of coparceners for shares in property purchased by one of the coparceners under provisions of Section 32-G and 32-M of the Maharashtra Tenancy and Agricultural Lands Act, 1948 ?*

9. Private paper-books have been placed on record on behalf of Appellants. The learned counsel appearing for rival parties have canvassed extensive submissions, which are recorded in the paragraphs to follow.

#### **D. SUBMISSIONS**

10. Mr. Walawalkar, the learned counsel appearing for Appellants would submit that Appellant's father-Ganesh was the sole owner in respect of the land bearing Survey No.170, Hissa No.2 on account of purchase thereof on payment of purchase price determined under Section 32G of the Tenancy Act and issuance of certificate under Section 32M thereof. That the said certificate under Section 32M issued in the year 1975 was never challenged by Respondents. That for the first time after Ramakant filed Regular Civil Suit No.14/2003 that Anusaya, Shankar, Sanjivani and

Shashikala thought of raising claim in respect of the said land by filing Regular Civil Suit No.52/2003. That, certificate issued in favour of Ganesh Naik has attained finality. That, even the property bearing Survey No. 37, Hissa No.31 is purchased by Appellant's father-Ganesh vide 32M certificate dated 31 July 1980. That thus since 32M certificates in respect of both the agricultural lands are issued solely in the name of Ganesh Babi Naik, the other 2 brothers Shankar and Shantaram or their children do not have any right, title or interest in the said agricultural lands.

11. Mr. Walawalkar would submit that certificate issued under Section 32M of Tenancy Act confers title on person in whose name the same is issued. That, in absence of any challenge to 32M certificate, no person can claim any right, title or interest in the property purchased vide such certificate. That, only the person in whose name certificate is issued is entitled to own and possess the land so purchased. That, there is a separate mechanism under the Tenancy Act to set up a challenge to 32M certificate and jurisdiction of Civil Court is barred to determine validity of 32M certificate. That, if other family members are aggrieved by issuance of 32M certificate only in the name of Ganesh Babi Naik, they ought to have challenged the same by adopting remedies under the Tenancy Act. That, the Civil Court could not have gone into the issue of correctness of issuance of certificate solely in the name of Ganesh Babi Naik. In support of his contentions, Mr.

Walawalkar would rely on the following Judgments.

- (i) ***Sau. Saraswatibai Trimbak Gaikwad Vs. Damodhar D. Motiwale and others***<sup>1</sup>,
- (ii) ***Cheeranthoodika Ahmmedkutty and Another Vs. Parambur Mariakutty Umma and Others***<sup>2</sup>,
- (iii) ***A. Samikkutty and Another Vs. P. V. Chandran and Another***<sup>3</sup>,
- (iv) ***Pushpalata Narayan Thorbole Vs. Purshottam Dattatray Prabhu (since deceased through Lrs.) Baliram Purshottam Prabhu Tendolkar and others***<sup>4</sup>.
- (v) ***Mudakappa V/s. Rudrappa and others***<sup>5</sup>,
- (vi) ***Mudakappa V/s. Rudrappa & Ors.***<sup>6</sup>,
- (vii) ***Rajaram Totaram Patel V/s. Mahipat Mahadu Patel***<sup>7</sup>,
- (viii) ***Shrikant Gangaram Teli V/s. Bhaskar Narayan Kuvalekar and Ors.***<sup>8</sup>
- (ix) ***Bhima Aba Rade, since deceased through his LRs. Rakhamabai Bhima Rade and anr. V/s. Thakubai Maruti Rade & Ors.***<sup>9</sup>
- (x) ***Ramkuwar w/o. Ramkishan Pallod, deceased through LRs. V/s. Krushnanath Sajan Belhekar and anr.***<sup>10</sup>
- (xi) ***Thimmappa Rai V/s. Ramanna Rai and Ors.***<sup>11</sup>

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<sup>1</sup> (2002) 4 SCC 481

<sup>2</sup> (2000) 2 SCC 417

<sup>3</sup> 2022 SCC OnLine SC 1746

<sup>4</sup> 2019(2) Mh.L.J. 248

<sup>5</sup> 1994 AIR SCW 508

<sup>6</sup> AIR 1978 KAR 136

<sup>7</sup> 1967 Mh.L.J. 522

<sup>8</sup> 1998 (3) Mh.L.J. 542

<sup>9</sup> 2008 (1) Mh. L.J. 192

<sup>10</sup> 2010(6)Mh.L.J. 848

<sup>11</sup> (2007) 14 SCC 63

12. Relying on the above Judgments, Mr. Walawalkar would submit that it is well-settled position in law that issue of correctness of 32M certificate cannot be gone into by the Civil Court nor other family members can claim a share in the property purchased by the purchaser under Section 32M. He would submit that orders passed by the Trial and first Appellate Court deserve to be set aside.

13. *Per-contra*, Mr. Khaladkar, the learned counsel appearing for Respondents in both the Appeals would oppose them and support the order passed by the Trial Court as well as first Appellate Court. He would submit that there are concurrent findings recorded by both the Courts below and therefore this Court would be loathe in interfering in such concurrent findings in Second Appeal. He would submit that the evidence produced before the Trial Court proves that the agricultural lands were cultivated by grandfather Babi Naik and that the same were purchased in the name of Ganesh Babi Naik on behalf of joint family. That, Ganesh Babi Naik was not exclusively cultivating the land as tenant thereof. That, after the death of Babi Naik, the tenanted lands were cultivated jointly by all the family members. That, therefore, mere conduct of proceedings in the name of one of the coparceners under Section 32G of the Tenancy Act and mere issuance of certificate under Section 32G in the name of such coparcener does

not make such purchased land exclusive property of such coparcener under Section 32M. In the present case, purchase of property is for the whole family and not exclusively for Ganesh Babi Naik. That, the Civil Court has jurisdiction to decide the issue as to whether other co-parceners have share in the tenanted property of joint family which is purchased under Section 32G and 32M. He would submit that the issue of entitlement of share cannot be decided under the Tenancy Act and that such dispute can be decided by the Civil Court alone. In support of his contention, Mr. Khaladkar would rely upon the Judgment of this Court in ***Sarjerao Maruti Sathe Vs. Pralhad Laxman Sathe & Ors.***<sup>12</sup>, ***Rajaram Mahadu Dahatonde (D) thr. LRs. V/s. Babu Mahadu Dahatonde & Ors.***<sup>13</sup> and ***Adam Mohmad Darwajkar and Ors. V/s. Appa Daud Darwajkar and Ors.***<sup>14</sup>.

14. Mr. Khaladkar would take me through statements of Ganesh Babi Naik recorded by the Agricultural Lands Tribunal ('ALT') as well as evidence of Shrirang Ramchandra Dhopeswarkar to demonstrate that the agricultural lands were cultivated by the entire family both before and after purchase under Section 32M. That, Ganesh Babi Naik specifically admitted that the properties are of the entire family. That, therefore, the

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<sup>12</sup> 2010(2) ALL MR 544

<sup>13</sup> 2016(2) ALL MR 326

<sup>14</sup> 2007(2) Mh.L.J. 340

Appellant-Ramakant is precluded from raising contentions contrary to the admissions given by his father-Ganesh. He would pray for dismissal of the Appeals.

#### **E. REASONS AND ANALYSIS**

15. The principal issue which arises for consideration in the present Appeals is whether the Civil Court has jurisdiction to decide the entitlement of other family members to a share in properties purchased in the sole name of one family member under the Tenancy Act.

16. In the present case, the documents placed on record would indicate that one Shri. Shrirang Ramchandra Dhopeswarkar was the landlord in respect of the land bearing old Survey No.274, Hissa No.2 and new Survey No.170, Hissa No.2 and Shri Ramchandra Vinayak Dhopeswarkar was landlord in respect of the land bearing Survey No.37 (old No.156), Hissa No.31. It appears that in pursuance of Notice issued under sub-section (1) of Section 32G of Tenancy Act, statement of Ganesh Babi Naik was recorded by the ALT on 31 May 1974. In his statement, Ganesh Babi Naik stated that the land bearing Survey No.274, Hissa No.2 (new Survey No.170, Hissa No.2) was owned by Shrirang

Ramchandra Dhopeswarkar to which his name is mutated as tenant. He further stated that the said land had been in his family from the time of his ancestors. It thus appears that Ganesh Babi Naik alone participated in the proceedings under Section 32G when in fact he had 2 brothers Shankar and Shantaram. It is not known as to whether Shankar was alive as on 31 May 1974 but Shantaram was apparently alive on that day. The statement of Ganesh Babi Naik recorded on 31 May 1974 records that the land bearing Survey No.170, Hissa No.2 was in possession of joint family for several years. Similar is the position in respect of other land bearing Survey No.37, Hissa No.31.

17. Thus, the factual position appears to be that both the agricultural lands were cultivated by grandfather Babi Naik as tenant. However, Ganesh Babi Naik alone participated in the proceedings under Section 32G and got the purchase price fixed in respect of the tenanted land. Consequently, upon deposit of purchase price, 32M certificates have been issued solely in the name of Ganesh Babi Naik on 16 June 1975 and 31 July 1980. The issue that arises is whether such purchase of tenanted lands by Ganesh Babi Naik was for himself or was for the entire family. The next question is whether the Civil Court has jurisdiction to decide this issue.

18. To examine the issues, it would be necessary to discuss

the statutory framework Tenancy Act.

**E.1      STATUTORY FRAMEWORK OF MAHARASHTRA  
TENANCY AND AGRICULTURAL LANDS ACT, 1950  
(‘TENANCY ACT’)**

19.          The statutory framework of the Tenancy Act is such that a tenant can file proceedings under Section 32G of the Tenancy Act for determination of purchase price of the land. A willing tenant can approach the ALT for purchase of tenanted land by paying purchase price to the landlord fixed as per the provisions of Section 32G of the Tenancy Act. Upon payment of such purchase price, the ALT is required to issue certificate of purchase of the tenanted land in the name of the purchaser.

20.          Under Section 32 of the Tenancy Act, on the tillers’ day on first day of April 1957, every tenant is deemed to have purchased the tenanted land from his landlord. Under Section 32G, the Tribunal publishes a public notice in each village calling upon all tenants who deemed to have purchased the land under Section 32, landlords and other persons interested to appear before it. After their appearance, the Tribunal conducts inquiry by recording statement of tenant as to whether he is willing to purchase the land held by him as tenant. In the event of tenant willing to purchase the land, the Tribunal holds an inquiry and determines purchase

price of the land in accordance with the provisions of Section 32H and 63A(3) of the Tenancy Act. On deposit of the purchase price or the last installment of purchase price, the ALT is required to issue a certificate of purchase in prescribed format to the tenant – purchaser. Thus, statutory scheme of Section 32, 32G and 32M of Tenancy Act is such that while there is a deeming fiction of purchase of tenanted land under Section 32, the tenant will have to pay the purchase price for issuance of certificate of purchase under Section 32M. Under Section 32G, the ALT simply issues notices to the persons who it believes are tenants and invites their willingness for purchase of tenanted land. Thus, the ALT does not conduct an inquiry into entitlement of family members to claim shares in respect of the tenanted land. If tenant shows willingness, purchase price is fixed and upon payment of purchase price, certificate of purchase under Section 32M is issued.

21. For better understanding of this statutory framework of the Maharashtra Tenancy Act, it would be apposite to reproduce the provisions of Section 32, 32G and 32M as under :

***32. Tenants deemed to have purchased land on tillers' day.***

*(1) On the first day of April, 1957 (hereinafter referred to as "the tillers" day) every tenant shall, [subject to the other provisions of this section and the provisions of the next succeeding sections, be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon on the said day, the land held by him as tenant, if-*

*(a) such tenant is a permanent tenant thereof and cultivates land personally;*

*(b) such tenant is not a permanent tenant but cultivates the land leased personally; and*

*(i) the landlord has not given notice of termination of his tenancy under section 31; or*

*(ii) notice has been given under section 31, but the landlord has not applied to the Mamlatdar on or before the 31st day of March, 1957 under section 29 for obtaining possession of the land; [or]*

*(iii) the landlord has not terminated his tenancy on any of the grounds specified in section 14, or has so terminated the tenancy but has not applied to the Mamlatdar on or before the 31st day of March, 1957 under section 29 for obtaining possession of the lands:*

*Provided that if an application made by the landlord under section 29 for obtaining possession of the land has been rejected by the Mamlatdar or by the Collector in appeal or in revision by the Maharashtra Revenue Tribunal under the provisions of this Act, the tenant shall be deemed to have purchased the land on the date on which the final order of rejection is passed. The date on which the final order of rejection is passed is hereinafter referred to as "the postponed date".*

*Provided further that the tenant of a landlord who is entitled to the benefit of the proviso to sub-section (3) of section 31 shall be deemed to have purchased the land on the 1st day of April, 1958, if no separation of his share has been effected before the date mentioned in that proviso.*

*(1A) (a) Where a tenant, on account of his eviction from the land by the landlord, before the 1st day of April, 1957, is not in possession of the land on the said date but has made or makes an application for possession of the land under sub-section (1) of section 29 within the period specified in that sub-section, then if the application is allowed by the Mamlatdar, or as the case may be, in appeal by the Collector or in revision by the [Maharashtra Revenue Tribunal], he shall be deemed to have purchased the land on the date on which the final order allowing the application is passed.*

*(b) Where such tenant has not made an application for possession within the period specified in sub-section (1) of section 29 or the application made by him is finally rejected under this Act, and the land is held by any other person as tenant on the expiry of the said period or on the date of the final rejection of the application, such other person shall be deemed to have purchased the land on the date of the expiry of the said period or as the case may be, on the date of the final rejection of the application.]*

*(1B) Where a tenant who was in possession on the appointed day and who on account of his being dispossessed before the 1st day of April, 1957*

*otherwise than in the manner and by an order of the Tahsildar as provided in section 29, is not in possession of the land on the said date and the land is in the possession of the landlord or his successor-in-interest on the 31st day of July, 1969 and the land is not put to a non-agricultural use on or before the last mentioned date, then, the Tahsildar shall, notwithstanding anything contained in the said section 29, either suo motu or on the application of the tenant, hold an inquiry and direct that such land shall be taken from the possession of the landlord or, as the case may be, his successor-in-interest, and shall be restored to the tenant; and thereafter, the provisions of this section and sections 32A to 32R (both inclusive) shall, in so far as they may be applicable, apply thereto, subject to the modification that the tenant shall be deemed to have purchased that land on the date on which the land is restored to him:*

*Provided that, the tenant shall be entitled to restoration of the land under this sub-section only if he undertakes to cultivate the land personally and of so much thereof as together with the other land held by him as owner or tenant shall not exceed the ceiling area.*

*Explanation.- In this sub-section, "successor-in-interest" means a person who acquires the interest by testamentary disposition or devolution on death.]*

*(2) Where by custom, usage or agreement or order of a Court, any warkas land belonging to the landlord is used by the tenant for the purpose of rab manure in connection with rice cultivation in the land held by him as tenant,-*

- (a) the whole of such warkas land, or*
- (b) as the case may be, such part thereof as the Tribunal may determine in cases where such warkas land is jointly used by more persons than one for the purpose of rab manure.*

*shall be included in the land to be deemed to have been purchased by the tenant under sub-section (1):*

*Provided that in cases referred to in clause (b) the Tribunal may determine that such warkas land shall be jointly held by persons entitled to use the same, if in the opinion of the Tribunal, the partition of such warkas land by metes and bounds is neither practicable nor expedient in the interest of such persons.]*

*(3) In respect of the land deemed to have been purchased by a tenant under sub-section (1), -*

- (a) the tenant-purchaser shall be liable to pay to the former landlord compensation for the use and occupation of the land, a sum equal to the rent of such land every year, and*
- (b) the [former landlord] shall continue to be liable to pay to the State Government the dues, if any, referred to in clauses (a), (b), (c) and (d) of sub- section (1) of section 10A, where [the tenant-*

*purchaser] is not liable to pay such dues under sub-section (3) of that section.*

*until the amount of the purchase price payable by [the tenant-purchaser] to the [former landlord] is determined under section 32-H.*

*(4) Where any land held by a tenant is wholly or partially exempt from the payment of land revenue and is deemed to have been purchased by him under sub-section (1) or under section 32-F, section 32-O or section 33-C then, -*

*(a) the tenant-purchaser shall in respect of such land, be liable to pay the full land revenue leviable thereon, and*

*(b) the State Government shall, with effect from the date on which the tenant is deemed to have purchased the land, but so long only as the tenure on which the land was held by the landlord continues and is not abolished, pay annually to the former landlord,*

*(i) where such land is wholly exempt from the payment of land revenue, a cash allowance of an amount equal to the full land revenue leviable on such land; and*

*(ii) in other cases, an amount equal to the difference between the full land revenue leviable on such land and the land revenue payable thereon immediately before the said date.*

### ***32G. Tribunal to issue notices and determine price of land to be paid by tenants***

*(1) As soon as may be after the tillers' day the Tribunal shall publish or cause to be published a public notice in the prescribed form in each its jurisdiction calling upon, -*

*(a) all tenants who under section 32 are deemed to have purchased the lands,*

*(b) all landlords of such lands, and*

*(c) all other persons interested therein,*

*to appear before it on the date specified in the notice. The Tribunal shall issue a notice individually to each such tenant, landlord and also, as far as practicable, other persons calling upon each of them to appear before it on the date specified in the public notice.*

*(2) The Tribunal shall record in the prescribed manner the statement of the tenant whether he is or is not willing to purchase the land held by him as a tenant.*

*(3) Where any tenant fails to appear or makes a statement that he is not willing to purchase the land, the Tribunal shall by an order in writing declare that such tenant is not willing to purchase the land and that the purchase is ineffective:*

*Provided that if such order is passed in default of the appearance of any party, the Tribunal shall communicate such order to the parties and any party on whose default the order was passed may within 60 days from the date on which the order was communicated to him apply for the review of the same.*

*(4) If a tenant is willing to purchase, the Tribunal shall, after giving an opportunity to the tenant and landlord and all other persons interested in such land to be heard and after holding an inquiry, determine the purchase price of such land in accordance with the provisions of section 32-H of sub-section (3) of section 63A :*

*[Provided that where the purchase price in accordance with the provisions of section 32-H is mutually agreed upon by the landlord and the tenant, the Tribunal after satisfying itself in such manner as may be prescribed that the tenant's consent to the agreement is voluntary may make an order determining the purchase price and providing for its payment in accordance with such agreement.*

*(5) In the case of a tenant who is deemed to have purchased the land on the postponed date the Tribunal shall, as soon as may be after such date determine the price of the land.*

*(6) If any land which, by or under the provisions of any of the Land Tenures Abolition Acts referred to in Schedule III to this Act, is regranted to the holder thereof on condition that it was not transferable, such condition shall not be deemed to affect the right of any person holding such land on lease created before the regrant and such person shall as a tenant be deemed to have purchased the land under this section, as if the condition that it was not transferable was not the condition of regrant.*

***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 instalment 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 price 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.*

*[(2) Where the purchase of any land has become ineffective for default of payment in time of the price in lump sum or in instalments, but the tenant-purchaser has nevertheless continued in possession at the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1964, then the purchase of the land shall not be deemed to be ineffective, until the Tribunal fails to recover the amount of the purchase price under sub-section(3) of section 32K.*

22. Under 67 of the Tenancy Act, Agricultural Lands Tribunal (**ALT**) is constituted and Section 68 provides for the duties of the Tribunal. Section 68 provides thus:

**68. Duties of the Tribunal.**

*It shall be the duty of the Tribunal—*

- (a) to determine the value of the site of a dwelling house under section 17;*
- (b) to determine the purchase price of land under section 32G, 63A or 64*
- (c) to decide any dispute under sections 32 to 32R (both inclusive)*
- (d) to dispose of land under section 32P*
- (e) to perform such other functions in carrying out provisions of this Act, as may be prescribed or as may be directed by the 6 [State] Government.*

23. Section 85 of the Tenancy Act provides for bar of jurisdiction of Civil Court to decide any question which can be decided under the Act. 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.*

24. Section 85-A of the Tenancy Act mandates making a reference by the Civil Court of any issue which can be decided under

the Act to the Tenancy Court. Section 85A reads thus:

***85A. Suits involving issues required to be decided under the Act.***

*(1) If any suit instituted in any Civil Court involves any issues which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues under this Act (hereinafter referred to as the “competent authority”), the Civil Court shall stay the suit and refer such issues to such competent authority for determination.*

*(2) On receipt of such reference from the Civil Court, the competent authority shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate its decision to the Civil Court and such court shall thereupon dispose of the suit in accordance with the procedure applicable thereto*

**E.2      POSITION OF RIGHT OF HEIRS TO CLAIM SHARE IN PURCHASED LAND UNDER TENANCY ACT**

25. Appellants’ case of conclusiveness of certificate of purchase under Section 32M and bar of Civil Court’s jurisdiction is premised on an assertion that the ALT can decide all disputes relating to purchase of tenanted land under Section 32G as per Section 67 and that therefore Respondents ought to have agitated the dispute with regard to purchase of suit properties by Appellant-Ramakant in his individual capacity only before ALT. This is how bar of jurisdiction of Civil Court is urged on behalf of Appellant. No doubt, ALT has jurisdiction to decide disputes relating to Section 32 to 32R of the Tenancy Act. The only issue is whether duty imposed upon ALT under Section 68 (c) ‘to decide any dispute under sections 32 to 32R’ would encompass the duty to decide the dispute amongst members of

joint family to succeed to the tenancy right of their father? Under Section 40 of the Tenancy Act, the tenancy continues even after death of the tenant and his legal heirs are entitled to continue the tenancy. Section 40 reads thus:

**40. Continuance of tenancy on death of tenant**

(1) Where a tenant (other than a permanent tenant) dies, the landlord shall be deemed to have continued the tenancy on the same terms and conditions on which such tenant was holding it at the time of his death, to such heir or heirs of the deceased tenant as may be willing to continue the tenancy.

(2) Where the tenancy is inherited by heirs other than the widow of the deceased tenant, such widow shall have a charge for maintenance on the profits of such land.

26. Thus, tenancy right is inheritable and upon death of a tenant, his heir or heirs are entitled to inherit the tenancy rights and can then apply under the provisions of Section 32-G for fixation of purchase price. The right to inherit tenancy is conferred on '*such heir or heirs of the deceased tenant as may be willing to continue the tenancy*'. However, if a dispute arises amongst multiple legal heirs to succeed to the tenancy right of their father, the issue is whether the ALT is clothed with jurisdiction to go the issue of 'succession right' of claimants who claim right to succeed to the tenancy rights of the original tenant. To my mind, upon plain reading of various provisions of the Tenancy Act, such a dispute would be a dispute of civil nature and cannot be exclusively tried by ALT alone. In a given case, all children of a deceased tenant may approach ALT who can fix purchase price and issue purchase certificate in their joint names.

However where only one heir clandestinely obtains purchase certificate on death of original tenant to the exclusion of other heirs, the land so purchased by him, in that sense, becomes the estate of the deceased, which is inherited by that heir. After such purchase, if another heir is to raise claim to have a share in that land, the ALT, in my view, is not expected to hold a trial about right to succeed to the estate of original tenant.

27. Thus a purchase certificate issued under Section 32M, may become conclusive as against the whole world, particularly *qua* the landlord or neighboring land occupiers or against a person claiming adverse title, however the same would not destroy the right of other legal heirs to claim a share in such purchased land. To paraphrase, the act of ‘purchase’ is cemented and cannot be questioned, however, right to claim a share in such purchased land by other heirs continues to survive.

28. To have a clearer picture, it would be necessary to refer to the precedents on the issue.

### **E.3      JUDGMENTS SUGGESTING BAR OF CIVIL COURT’S JURISDICTION IN TENANCY DISPUTES**

29. Mr. Walawalkar has submitted that the ALT alone has jurisdiction to decide any dispute between the family members of a tenant and that jurisdiction of Civil Court is specifically barred under

Section 85 of the Tenancy Act. He has relied upon several judgments in support of his contention about exclusive jurisdiction of ALT to decide *inter-se* dispute between the members of a family to acquire ownership rights in pursuance of the joint family tenancy. While law laid down in all the judgments relied upon by Mr. Walawalkar is discussed in paragraphs to follow, two judgments of the Apex Court in ***Mudakappa*** and ***Saraswatibai Trimbak Gaikwad*** and of Single Judge of this Court in ***Pushpalata Narayan Thorbole*** would need slightly detailed discussion to examine applicability of ratio therein to the issue involved in the present case. I accordingly proceed to examine the various judgments cited by Mr. Walawalkar in support of his contention.

30. In ***Mudakappa V/s. Rudrappa***, the Supreme Court has decided Appeal arising out of judgment of Division Bench of Karnataka High Court (***Mudakappa V/s. Rudrappa AIR 1978 Karnataka 136***). The judgment is based on interpretation of provisions of Karnataka Land Reforms Act, 1962 as amended by Karnataka Act-1 of 1974. In that case, Plaintiff instituted a suit for permanent injunction against the Defendants to restrain them from interfering with his possession of the three suit lands. Mudakappa had four sons Virupaxappa, Rudrappa, Chinnappa and Basappa. Partition took place in the year 1963 amongst four sons in which family properties were divided. The partition did not cover suit lands of which lease was held by Virupaxappa, as a sole lessee. After

Virupaxappa's death, Plaintiff inherited leasehold rights in respect of the suit land and claimed that the other brothers of Virupaxappa did not have any right, title or interest in the suit lands. On the other hand, the Defendants pleaded that the leasehold rights were in respect of joint family property consisting of four sons of Mundakappa and that therefore the suit lands were jointly held by all four brothers as lessees. The suit was dismissed by the Trial Court holding that the Plaintiff was not in exclusive possession of the suit lands. In Appeal, the suit was remanded for fresh trial on account of amendment in Karnataka Land Reforms Act, 1962 by Karnataka Act 1 of 1974. By the amended Act, Section 44 was introduced under which the lands held by tenants vested in the State Government and right was created in favour of the tenants to get registration as occupants under Section 45 of the Act. The scheme of the Amendment Act is being discussed separately. Suffice it to say at this juncture that after coming into force of Karnataka Act 1 of 1974, the Plaintiffs and Defendants made applications before the Tribunal constituted under Section 48A and by Order dated 31 March 1977, four brothers were jointly held to be entitled for leasehold rights and were registered as joint occupants in respect of the suit land. The Order dated 31 March 1977 of the Tribunal was challenged by the Plaintiff in Writ Petition which remained pending. Aggrieved by the order of remand passed by the lower Appellate Court, Plaintiff filed Misc. Second Appeal under Order 43 Rule 1 of the Civil Procedure Code, 1908 before the Single Judge of Karnataka High Court, which came to be referred to

Division Bench. The Division Bench of the Karnataka High Court dismissed the Appeal of the Plaintiff, holding that the lower Appellate Court was right in remanding the suit for being decided in accordance with Section 133 of the Karnataka Land Reforms Act especially in the light of the order passed by the Tribunal holding all four brothers to be joint occupants.

31. Aggrieved by the Judgment of Division Bench of Karnataka High Court, the Plaintiff filed Civil Appeal No.2 of 1979 before the Supreme Court contending that Civil Court has jurisdiction to decide the question of exclusive leasehold rights of the Plaintiff. The Apex Court dismissed Plaintiff's Appeal holding that the Tribunal constituted under Section 48A of the Act has exclusive jurisdiction to decide the *inter-se* disputes between the family members about joint tenancy rights. The Apex Court, in its judgment has reproduced various Sections of the Karnataka Land Reforms Act 1962 as amended by Karnataka Act 1 of 1974 and it would therefore be apposite to reproduce substantial portion of the Judgment with a view to understand the context in which various findings are recorded by the Apex Court. The relevant portion of the judgment reads thus :

***Section 44 of the Act in Chapter III reads thus:-***

***44. "Vesting of land in the State Government-(1) All lands held by or in the possession of tenants (including tenants against whom a decree or order for eviction or a certificate for resumption is made or issued) immediately prior to the date of commencement of the Amendment Act, other than lands held by them under leases permitted under S. 5, shall, with effect on and from the said date, stand transferred to and vest in the State Government,***

*(2) Notwithstanding anything in any decree or order of or certificate issued by any court or authority directing or specifying the lands which may be resumed or in any contract, grant or other instrument or in any other law for the time being in force, with effect on and from the date of vesting and save as otherwise expressly provided in this Act, the following consequences shall ensue, namely-*

*(a) all rights, title and interest vesting in the owners of such lands and other persons interest in such lands shall cease and be vested absolutely in the State Government free from all encumbrances;*

**3.** *Other sub-ss. are not relevant. Hence omitted.*

**4.** *Provided that the State Government shall not dispossess any person of any land in respect of which it considers, after such enquiry as may be prescribed that he is prima facie entitled to be registered as an occupant under this Chapter.*

**5.** *S. 45 reads thus:*

**“Tenants to be registered as occupants of land on certain conditions** - *(1) Subject to the provisions of the succeeding sections of this Chapter, every person who was a permanent tenant, protected tenant or other tenant or where a tenant has lawfully sub-let, such sub-tenant shall with effect on and from the date of vesting be entitled to be registered as an occupant in respect of the lands of which he was a permanent tenant, protected tenant or other tenant or sub-tenant before the date of vesting and which he has been cultivating personally.”*

**6.** *Section 48A creates forum for enquiry which reads thus:*

**48.A. “Enquiry by the Tribunal etc.** *(1) Every person entitled to be registered as an occupant under S. 45 may make an application to the Tribunal in this behalf. Every such application shall, save as provided in this Act, be made (before the expiry of a period of six months from the date of the commencement of S. 1 of the Karnataka Land Reforms (Amendment) Act, 1978).*

*(2) On receipt of the application, the Tribunal shall publish or cause to be published a public notice in the village in which the land is situated calling upon the landlord and all other persons having an interest in the land to appear before it on the date specified in the notice. The tribunal shall also issue individual notices to the persons mentioned in the application and also to such others as may appear to it to be interested in the land.*

*(Emphasis supplied)*

(3) to (4).....

(5) Where an objection is filed disputing the validity of the applicant's claim or setting up a rival claim, the Tribunal shall, after enquiry, determine, by order, the person entitled to be registered as occupant and pass orders accordingly :

### **Section 112(B) Duties of Tribunal**

(a) to make necessary verification or hold an enquiry (including local inspection) and pass orders in cases relating to registration of a tenant as occupant under S. 48A;

(b) to decide whether a person is a tenant or not;

(bb) to decide whether the land in respect of which application u/S 48A is made or in respect of which any question of tenancy is raised or involved, is or is not an agricultural land;

(bbb) to decide questions referred to it under S, 133 (Emphasis supplied)

### **Section 133 Suits, Proceedings etc. involving questions required to be decided by the Tribunal (1) Notwithstanding anything in any law for the time being in force -**

(i) No Civil or Criminal Court or officer or Authority shall, in any suit, case or proceedings concerning a land decide the question whether such land is or is not agricultural land and whether the person claiming to be in possession is or is not a tenant of the said land from prior to 1st March, 1974;

(ii) Such Court or officer or Authority shall stay such suit or proceedings in so far as such question is concerned and refer the same to the Tribunal for decision;

(iii).....

(iv) the Tribunal shall decide the question referred to it under clause (1) and communicate its decision to such Court, Officer or Authority. The decision of the Tribunal shall be final.  
(Emphasis supplied)

(2) Nothing in sub-sec. (1) shall preclude the Civil or Criminal Court or the officer or authority from proceeding with the suit, case or proceedings in respect of any matter other than that referred to in that sub-section.

Section 2(3) "Agriculturist" means a person who cultivate land on one's own account -

.....

**Section 2(11) “to cultivate personally” means to cultivate land on one’s own account:**

- (i) by one’s own labour, or
- (ii) by the labour of any member of one’s family or;
- (iii) by hired labour or by servants on wages payable in cash or kind, but not - in crop share, under the personal supervision of oneself or by member of one’s family;

*Explanation I.*

***Explanation II - In the case of a joint family, the land shall be deemed to - be cultivated personally, if it is cultivated by any member of such family;***

*(Emphasis supplied)*

*Section 2(17) “Joint family” means in the case of persons governed by Hindu Law, an undivided Hindu family, and in the case of other persons, a group or unit the members of which are by custom joint in estate or residence;*

*Section 2(34) “tenant” means an agriculturist who cultivates personally the land he holds on lease from a landlord and includes*

-

- (i) a person who is deemed to be a tenant under S. 4;
- (ii) a person who was protected from eviction from any land by the Karnataka Tenants (Temporary Protection from Eviction) Act, 1961;
- (iia) a person who cultivates personally any land on lease under a lease created contrary to the provisions of S. 5 and before the date of commencement of the Amendment Act;
- (iii) a person who is a permanent tenant; and
- (iv) a person who is a protected tenant.

*Section 4. Persons to be deemed tenants - A person lawfully cultivating any land belonging to another person shall be deemed to be tenant if such land is not cultivated personally by the owner and if such person is not -*

*(a) a member of the owner’s family, or*

*(b) a servant or a hired labourer, on wages payable in cash or kind but not in crop share cultivating the land under the personal supervision of the owner or any member of the owner’s family, or*

*(c) a mortgagee in possession:*

*Provided that if upon an application made by the owner within one year from the appointed day -*

*(i) the Tribunal declares that such person is not a tenant and its decision is not reversed on appeal, or*

*(ii) the Tribunal refuses to make such, declaration but its decision is reversed on appeal.*

*Such person shall not be deemed to be a tenant.”*

*7. In Chapter III heading is conferment of ownership on tenants. A conspectus of the provision establishes the gamut of operation of the Act, namely, conferment of ownership of tenancy rights of the lands vested in the State Govt. The pre-existing right, title and interest of the landlord in relation to the lands in possession of the tenant, even against whom a decree or order for eviction or a certification for assumption was made or issued immediately prior to the date of the commencement of the Amendment Act other than the lands held by them under leases permitted under S. 5, with effect on and from the said date, ie. March 1, 1974 stand transferred to and vested in the State Government. In other words the pre-existing relationship of the tenant with the landlord stood extinguished from the date of vesting in the State Govt. By operation of non obstante clause of sub- s. (2) of S. 44, the lands which were resumed by or in any contract, grant or other instrument or in any other law for the time being in force with effect on and from the date of vesting and save as otherwise expressly provided in the Act shall cease. The consequences enumerated thereunder shall ensue, namely, all rights, title and interest held by the owners of such lands and other persons interested in such lands shall cease and be vested absolutely in the State Govt. free from all encumbrances. Consequently the pre-existing right, title or an interest of the owners of such lands shall cease and be vested absolutely in the State Government free from all encumbrances. Pending finalisation of the registration with the State Govt. of a tenant, his possession of the land is protected and he should not be dispossessed. Section 45 gives right to the tenant to be registered as an occupant of land on specified conditions enumerated in S. 45 and the provisions of the succeeding Chapter. Every tenant who is personally cultivating the land shall, with effect from the date of vesting, be entitled to be registered as an occupant in respect of the lands of which he was a permanent tenant, protected tenant or other tenant or sub-tenant before the date of vesting. The pre-existing tenancy rights with predecessor landlord have been extinguished and new rights have been created by the statute which would be ensued under the Act creating direct tenancy relationship with the State as a tenant. Section 48A constitutes the forum and enjoins it to enquire into the application registered by it. It should direct every person entitled to be registered as an occupant under S. 45 to make an application to the Tribunal in that behalf within the time specified thereunder. On receipt of such application, the Tribunal should publish or cause to be published a public notice in the village in which the land is situated calling upon the landlord and all other persons having an interest in the land to appear before it on the specified date, personal notice shall be served on the persons named in the application or otherwise found to be*

entitled to be heard, By operation of Explanation II to 5, 2011) if the land is being cultivated by or on behalf of the joint family or by any one of the members of the joint Family, it should be deemed that the Joint family is personally cultivating the land. The joint family is, therefore, the tenant and the land is lawfully in occupation of the joint family as a "tenant", Sub-section (5) of S. 48A postulates that when an objection is filed disputing the validity of the applicant's claim or set up a rival claim, the Tribunal shall, after enquiry, determine, by order, the person entitled to be registered as tenant and pass orders accordingly. Therefore, when rival claims were set up for tenancy right and entitlement for registration, it is incumbent upon the Tribunal to enquire into the dispute and to decide the same in the prescribed manner. Thereon an order should accordingly be made by the Tribunal and it would become final. Thereby it is clear that the Act extinguishes the pre-existing right, title and interest of the land owners as well as those who were inducted into possession by the erstwhile land holders. The new rights have been created in the Act itself in favour of the tenants in personal cultivation to claim registration as tenants so as to continue to enjoy the occupancy right as a tenant as enumerated under S. 45. A forum was created and the forum is enjoined to enquire into not only the nature of the land but also the entitlement for registration as a tenant. When inter se rival claims for tenancy rights have been set up, it has been empowered with jurisdiction to decide that question as to who is the tenant in possession of the land prior to the date of vesting and entitled to be registered as a tenant with the State Govt. and its decision shall be final. The Civil Court's jurisdiction under S. 9 of CPC by necessary implication therefore, stood excluded.

8. It is seen that the words 'tenant', 'the Tribunal', and 'the joint family' have been defined under the Act. If one of the members of the family cultivates the land, it is for and on behalf of the joint family. Under these circumstances pending the suit, when the question arose whether the appellant or Joint family is the tenant, that question should be decided by the Tribunal alone under S. 48A read with S. 133 and not by the Civil Court. It is needless to mention that when the Tribunal constituted under the Act has been invested with the power and jurisdiction to determine the rival claims, it should record the evidence and decide the matter so that its correctness could be tested either in an appeal or by judicial review under Article 226 or under Art. 227, as the case may be. But that cannot, by necessary implication, be concluded that when rival claims are made for tenancy rights, the jurisdiction of the Tribunal is ousted or its decision is subject of the decision once over by the Civil Court. It is clear from S. 48A(5) and S. 112B(bbb) read with S. 133, that the decision of the Tribunal is final under S. 133 (iii). The Civil Court has power only to decide other issues. It is, therefore, difficult to accept the contention that the rival claims for tenancy rights or the nature of the tenancy are exclusively left to be dealt with by the Civil Court.

32. To apply the Judgment of the Apex court in

***Mudakappa*** to the present case, it is necessary to understand the statutory framework of the Karnataka Land Reforms Act. Under Section 44 of the Act, all lands held in possession of tenants stand transferred to and vested in the State Government. After such vesting, the tenants are entitled to file application under Section 45 for getting themselves registered as occupants in respect of the land of which they were tenants. Thus, the concept of the Act is such that the tenanted land's ownership vests in the State Government, the land owner loses title of such land and the tenants merely get occupancy rights by seeking registration as occupants under Section 45. Section 48A has created a forum for conducting enquiry to decide the application for registration of a tenant as an occupant, filed under Section 45. Section 48A provides for manner of conduct of enquiry by issuance of public notice and calling upon the landlord and other persons interested in land for hearing. The Tribunal, after such enquiry passes an order in favour of a person entitled to be registered as Occupant. Under Section 133 of the Act, jurisdiction of the Civil Court is barred. Section 133 also provides for stay of suits and for reference of the question whether such land is or is not agricultural land and whether the person claiming to be in possession is or is not a tenant of the said land to the Tribunal. In ***Mudakappa***, after coming into force of the Karnataka Act 1 of 1974, all the four brothers made applications before the Tribunal under Section 48A and sought registration as occupants under Section 45. While the Plaintiff claimed registration in his exclusive name, the other brothers claimed

registration as joint tenants. The Tribunal passed Order dated 31 March 1977 holding that all four brothers were jointly entitled to be registered as Occupants under Section 45. The said order attained finality on account of dismissal of the Writ Petition filed by the Plaintiff.

33. It is in the light of the above statutory framework of Karnataka Land Reforms Act as well as the fact of Tribunal's order declaring four brothers as joint occupants attaining finality that the Apex Court held that jurisdiction of the Civil Court was barred to decide rival claims for tenancy rights. However, when one considers the statutory framework of the Maharashtra Tenancy Act, there is a conceptual difference as compared to the provisions of the Karnataka Land Reforms Act. Under the Maharashtra Tenancy Act, there is a deemed fiction under Section 32, whereunder the tenants are deemed to have purchased the land in their occupation on the Tillers Day of 1 April 1957. There is no concept of vesting of land in the State Government under the Tenancy Act, which is the case under Section 44 of the Karnataka Land Reforms Act. Furthermore, while a tenant becomes a mere occupant and can be registered as an occupant under the provisions of Section 45 of the Karnataka Land Reforms Act, the tenant becomes an owner under the Maharashtra Tenancy Act under Section 32 thereof. As against the concept of conducting enquiry for registration of occupant by the Tribunal under Section 48A of the Karnataka Land Reforms Act, under Section 32G of the Maharashtra

Tenancy Act, the Tribunal is required to publish a public notice calling upon all tenants who under Section 32 are deemed to have purchased the lands on tillers' day and all other persons interested to appear before it. The Tribunal conducts an enquiry by recording statement of the tenants to ascertain whether he is or is not willing to purchase the land held by him as tenant. The Tribunal thereafter proceeds to determine the purchase price in the manner provided under Section 32H or Section 63A(3) of the Maharashtra Tenancy Act. After payment of the purchase price or the last installment thereof, the Tribunal issues Certificate of ownership under the provisions of Section 32M. Thus here is conceptual difference between the statutory framework of the Karnataka Land Reforms Act and the Maharashtra Tenancy Act. Therefore, it is difficult to apply the ratio of ***Mudakappa*** to the facts of the present case which are governed by all together different statute in the form of the Maharashtra Tenancy Act. Also, in ***Mudakappa***, all four brothers had got adjudicated their right of joint tenancy before the Tribunal, which is not the case here. The first Appellate Court has rightly considered this position and has held in para-13 of its judgment in Regular Civil Appeal No. 81 of 2015 that the provisions of the Karnataka Land Reforms Act are not *pari materia* with the provisions of the Maharashtra Tenancy Act. On the contrary, the first Appellate Court has taken into consideration various decisions of this Court interpreting the provisions of the Tenancy Act of which, reference is made in the latter portion of the judgment. I am therefore of the view that based on

Apex Court's judgment in ***Mudakappa*** it cannot be held that Civil Court's jurisdiction is barred in a case where no inquiry is conducted by ALT about issue of individual or joint tenancy.

34. In ***Saraswatibai Trimbak Gaikwad*** (supra), one Narayan Motiwale was the owner of the land and had son named, Dattatraya and daughter named Tarabai. On Narayan's death, his son-Dattatraya became owner of the properties and by Deed of Settlement, he gave certain properties to his sister-Tarabai whose name was entered in the revenue records as Kabjedaar. Dattatraya and Tarabai entered into consent decree before the Appellate Court in which Tarabai agreed not to lease out any piece of land. After Dattatraya's death, Tarabai executed a lease-deed in favour of the Appellants on 6 September 1980 and the Appellant gave a notice under Section 32-O of the Tenancy Act to Tarabai and the Land Tribunal for purchase of the suit land. Respondent Nos.1 and 2 filed suit against Tarabai and the Appellant for a declaration that Tarabai had no authority to lease the suit land and prayed for recovery of possession. After Tarabai's death, the suit proceeded against the Appellant which was decreed holding Appellant to be trespasser. Parallely in the application filed under Section 32-O of the Tenancy Act, which was opposed by the Respondent Nos.1 and 2, the Tribunal fixed the purchase price which was paid by the Appellant and Certificate of Ownership was issued in their favour in the execution proceedings filed by Respondent Nos.1 and 2. To execute decree

passed in their suit, the Appellant raised a defence that he had become the owner of the land in proceedings conducted under Section 32-O and 32-G in his favour. The application was rejected by the Executing Court. The Appellant's Appeal was rejected and this is how the dispute reached the Apex Court. In the light of this factual position, the issue that arose before the Apex Court was whether the Decree passed by the Civil Court can be executed if Certificate of Ownership has been granted under the provisions of the Tenancy Act. The Apex Court held in paras-24 and 25 as under :

*24. Faced with this position Mr Lalit submitted that in this case there was a decree, after contest, between the appellant and Respondents 1 and 2. He submits that that decree is binding on the appellant and can be executed against the appellant. We have read the decrees/orders of the civil court. In passing the decree and holding the appellant to be a trespasser the civil court has not considered the provisions of the said Act. The conclusion that the appellant is a trespasser is de hors the rights of the appellant under the said Act. Mr Lalit submitted that the appellant never claimed before the civil court that she was a deemed tenant. He submitted that the appellant could have contended before the civil court that she was a deemed tenant under the said Act. He submitted that as the appellant has not taken this contention before the civil court she is now debarred from raising a claim under the said Act. We see no substance in this submission. The appellant had already made an application under Section 32-O before the suit was filed by Respondents 1 and 2. Respondents 1 and 2 were also parties to those proceedings and were contesting those proceedings. These are not questions which could be raised before a civil court. Therefore, rightly, neither Respondents 1 and 2 nor the appellant took up this question before the civil court. Even if the question had been raised, the civil court could not have decided it. The civil court would have had to refer the issue to the appropriate authority and then abide by its decision. A decree passed without the consideration of the provisions of the said Act must be subject to orders of the appropriate authority in the proceedings under the said Act.*

*25. Thus so long as the certificate stands the decree cannot be executed against the appellant. It is only if Respondents 1 and 2 succeed in getting the certificate set aside, in their pending revision, that they can execute the decree. It would be open for Respondents 1 and 2 to pursue the revision filed by them against the order dated 23-11-2000. We realise that a revision is on limited grounds. We have noticed that the Appellate Authority dismissed the appeal of Respondents 1 and 2 merely on the ground that this Court had*

*stayed the operation of the decree passed by the civil court. If the revisional authority so desires it may remit the matter back to the Appellate Authority for a decision on merits in accordance with law. We, however, clarify that the decision of the revisional authority or the Appellate Authority must be based only on the provisions of the said Act. Findings given by the civil court de hors the provisions of the said Act, and any observation made by us on that question cannot be taken into consideration in deciding whether the appellant is a deemed tenant.*

35. In my view, the factual situation in ***Saraswati Trimbak Gaikwad*** was entirely different. The issue before the Apex Court was whether the Executing Court can ignore the certificate of ownership issued by the ALT. While answering this issue, the Apex Court held that Civil Court did not have jurisdiction to decide the correctness of the Certificate issued by the ALT. In my view, the judgment in ***Saraswati Trimbak Gaikwad*** (supra) deals with the issue of binding effect of certificate of ownership issued by the ALT *qua* outsiders. It does not deal with the issue of creation of ownership rights individually in favour of one family member or jointly in favour of the entire family. The Judgment therefore does not assist in determination of issue involved in the present case.

36. The next judgment relied upon by Mr. Walawalkar is of Single Judge of this Court (*A.M. Dhavale, J.*) in ***Pushpalata Narayan Thorbole*** (supra). In that case, when reliance was placed on 32M Certificate, the Trial Court framed an issue about legality of the said Certificate and proceeded to hold that Civil Court has supervisory jurisdiction over the statutory authorities to verify

whether proper procedure was followed while issuing the certificate. This Court therefore framed an issue as to whether Civil Court can set aside or refuse to rely upon 32M Certificate. This Court framed substantial question of law in para-10 and answered the same in paras-19 and 20 as under :

10. *The substantial question of law formulated with my finding is as under:*

|                                                                                                                                                                                       |                  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| Whether the Civil Court can set aside or refuse to rely on the certificate issued by the Tenancy Authority under section 32-M of the Bombay Tenancy and Agricultural Lands Act, 1948? | In the negative. |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|

19. In *Bhima vs. Thakubai* (supra) in para 10 it is held that the Civil Court has no jurisdiction to examine the questions which are required to be dealt with and settled under the provisions of the BT and AL Act. There is bar of jurisdiction under provisions of section 85 of the BT and 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.

20. Considering all these rulings, it is crystal clear that the Certificate issued under section 32-M must be accepted as a document of title, so long as it is not set aside by the competent authority. The view expressed in *Laxman Pote vs. Shri. Govindrao Koregaonkar Dharmadaya Sangh Managing Trustee*, 1981 Mh.L.J. 338 = AIR 1981 Bombay 33 is no more good law in the light of Apex Court judgment in *Saraswatibai vs. Damodhar* (supra) followed and as interpreted by this Court in judgments referred above. The Civil Court has no supervisory jurisdiction over the Tribunal under the BTAL Act and if the decision is given without following the procedure of law, prescribed or without giving opportunity of hearing, the same can be challenged before the competent Appellate Authority under the said Act only.

37. The issue in ***Pushpalata Narayan Thorbole*** was entirely different. This Court framed substantial question of law about jurisdiction of the Civil Court to set aside or refuse to rely upon

32M Certificate. The issue was framed and the Trial Court went into the correctness of procedure followed while issuing 32M Certificate and held that the finality of the Certificate does not oust the jurisdiction of the Civil Court. It is in light of the peculiar factual position that this Court held that Civil Court does not have jurisdiction to determine validity of 32M Certificate issued under the Tenancy Act. Though this Court has made some observations in para-19 about entitlement of one family member to purchase the suit land and jurisdiction of the Civil Court to examine the issue of joint tenancy, since the issue before this Court was completely different, the observations made in para-19 of the Judgment cannot be read as if the said observations lay down an absolute proposition of law that in every case once the land is purchased by one of the members of the joint family under Section 32G and 32M of the Tenancy Act, the Civil Court loses its jurisdiction to decide a partition suit *qua* that property by going into the issue whether such purchase was individually for that member or for the entire family. In my view, the ratio laid down by the judgment in ***Pushpalata Narayan Thorbole*** will have to be restricted to lack of jurisdiction of Civil Court to determine validity of Certificate issued under Section 32M of the Tenancy Act. The Judgment will have no relevance to the issue involved in the present Appeal.

38. Mr. Walawalkar has relied upon four more judgments of this Court in ***Rajaram Totaram Patel, Shrikant Gangaram***

***Teli, Bhima Aba Rade and Ramkuwar Ramkishan Pallod*** (supra). However, none of the four judgments have any bearing on the exact issue involved in the present Appeal. In ***Rajaram Totaram Patel***, the issue was about jurisdiction of Mamlatdar to decide whether a party is co-tenant or not. In ***Shrikant Gangaram Teli***, the Single Judge of this Court (*R.M. Lodha, J. as he then was*) held that Certificate issued under Section 32M is conclusive proof of purchase and that its legality can be challenged only in Appeal against the order granting the Certificate. In that case, the Tehsildar had given a declaration that 32M Certificate was a nullity and this is why this Court held that 32M Certificate is a conclusive evidence of purchase and that the same can be set aside only in Appeal and not by the Tehsildar. In ***Bhima Aba Rade*** (supra), the issue was about validity of surrender of tenancy rights and this Court held that Civil Court does not have jurisdiction to decide correctness of the order certifying the surrender of tenancy. In ***Ramkuwar Ramkishan Pallod*** (supra), the petition arose out of challenge to the order of the Maharashtra Revenue Tribunal challenging the declaration of deemed purchase on Tillers day. In the context of that challenge, this Court held that Certificate issued under Section 32M is conclusive against the landlord and once the rights of the tenants are crystallised, the landlord cannot be permitted to adduce additional evidence to prove personal cultivation of the land. Thus none of the four judgments relied upon by Mr. Walawalkar would have any relevance to the issue involved in the present appeals.

39. Mr. Walawalkar has relied upon the judgment of Apex Court in ***Cheeranthoodika Ahmmedkutty*** in support of his contention that the Certificate issued under Section 72K of the Kerala Land Reforms Act, 1963 is a conclusive proof and would forbid other evidence from being adduced for the purpose of contradicting or varying its conclusiveness. The issue before the Apex Court was entirely different. The issue was about delinking of land obtained vide Certificate under Section 72-K and which was gifted to a Masjid for the purpose of computing all holdings under the provisions of the Land Ceiling Act. The judgment therefore will have no application to the issue involved in the present case. In ***A. Samikkutty*** (supra), the Apex Court has dealt with a case where Defendants therein were declared as Tenants of land admeasuring 11.88 Acres of land by the Tenancy Court and the landlord applied for modification of the order on a plea that the Defendants be declared as tenants only in respect of 10 acres of land. Thus, the Plaintiff therein admitted before the Tenancy Court that Defendants were tenants in respect of 10 acres of land. The said prayer of the Plaintiff was rejected and a purchase certificate came to be issued in favour of the Defendant in respect of the land admeasuring 11.88 acres. Subsequently, Plaintiffs filed suit for declaration of purchase certificate as null and void and later the suit was amended by restricting the same for mandatory injunction alone. It is in the light of this fact that the Apex Court held that the Certificate issued by the Tenancy Court is a conclusive proof. The facts and issue before the Apex Court in ***A. Samikkutty*** were thus

completely different and the judgment has no application to the facts of the present case.

**E. 4      JUDGMENTS      UPHOLDING      CIVIL      COURT'S**  
**JURISDICTION IN TENANCY DISPUTES**

40.            Having considered various judgments cited on behalf of Appellants in support of their contentions, it is now time to consider the decisions which takes a view opposite to what is sought to be propounded on their behalf.

41.            ***Thimmappa Rai*** (supra) is the judgment of Apex Court, which would throw light on issues involved in the present Appeals. It must be clarified here that ***Thimmappa Rai*** is relied upon by Mr. Walawalkar to suggest that Civil Court's jurisdiction is ousted. However on careful consideration of facts of the case and the ratio laid down therein, and also slight distinction made by the Apex Court with Judgment in ***Mukadappa***, two important propositions can be traced in the judgment viz. (i) that in case where the Tenancy Tribunal has not determined the issue of joint tenancy by family members, suit for partition would be maintainable and (ii) that the entire joint family, who was cultivating tenanted land jointly, would be entitled to tenancy in respect of that land, notwithstanding issuance of occupancy certificate in the name of only one family member. On issue of maintainability of suit for partition, the Apex

Court held in para-19 as under:

*19. A certificate of registration granted in favour of a tenant as an occupant under Section 55(1) of the Karnataka Land Reforms Act, 1961 and Rule 21 of the Karnataka Land Reform Rules, 1974 as specified in Form 10 also is not of much significance. Submission of Ms. Suri that the civil courts have no jurisdiction in this behalf cannot be accepted. **It may be true that in terms of Section 48-A of the 1961 Act, the Tribunal has jurisdiction to go into all questions of tenancy, grant or refusal of occupancy right and rival claims in respect of their leasehold right, but this would not mean that although there had been no determination as such by the learned Tribunal and the parties proceeded on the basis of admission made by the appellant himself that Schedule B properties were jointly possessed by the parties, a suit for partition would not be maintainable.***

*(emphasis supplied)*

42. Thus, on the issue of maintainability of suit for partition of land in respect of which occupancy certificate is issued, the judgment in ***Thimmappa Rai***, far from assisting the case of the Appellants, actually militates against them. The Apex Court in ***Thimmappa Rai*** has held that even if the Tribunal under the Karnataka Land Reforms Act has jurisdiction to go into the question of tenancy, the same does not mean that a suit for partition would not be maintainable where there was no determination of an issue by the Tribunal of issue of individual or joint possession of tenanted properties by parties. Thus, the judgment in ***Thimmappa Rai*** infact suggests that in the event of non-determination of the issue by the Tribunal under the Karnataka Land Reforms Act, about individual or joint tenancy of property, the suit for partition would still be

maintainable.

43. Going further on the issue of joint tenancy rights of a family, in **Thimmappa Rai** the Apex Court has considered the judgment of Karnataka High Court in **Veerabhadrapam V/s. Veerupaxappa Totappa Bilebal** ILR 1998 Kar 2508 and has held in paras-21 and 22 of its judgment as under:

*21. On the other hand, in Veerabhadrapam vs. Virupaxappa Totappa Bilebal, ILR 1998 Kar 2508, it was categorically held*

*“6. This Court has already taken the view that once the tenancy is granted even to one member of the family, it is for the benefit of the family. In this case, admittedly, it is the joint tenancy. The Tribunal has declared that if it is a joint tenancy or in the eye of the law it is a joint tenancy, even if it is given to one of the members. In my opinion, it is only an acquisition of the property by two members of the joint family, and certainly the civil court has jurisdiction to decide the same is the view expressed by me in Rudrayya v. Basayya, (RSA No.105 of 1994 decided on 10-12-1997).*

*22. We have noticed hereinbefore the definition of a joint family. It is not correct to contend that the courts below wrongly proceed on the basis that the parties are governed by the Mitakshara School of Hindu Law. A joint family, as its definition show, may consist of a group of person, and, thus, they need not be joint tenants. They may be tenants in common but still then if they are in joint possession of a property, the same would vest in all of them, although certificate may be granted in favour of only one.*

Thus in **Thimmappa Rai**, the Apex Court has clearly held that even if the Certificate is granted in the name of one member of joint family, the entire family members, if they are in joint possession of the property, would be entitled to benefit of tenancy of the said property.

44. Mr. Khaladkar has relied upon the judgment of Single

Judge of this Court (*C.L. Pangarkar, J.*) in **Sarjerao Maruti Sathe** (supra) in which this Court has held in paras-16 and 17 of the judgment as under:

*16. Let us look into the purchase of property under Section 32-G of the Bombay Tenancy Act. Tenancy is a right which is heritable. In the context we will have to refer to Section 40 of the Bombay Tenancy and Agricultural Lands Act:*

*"40. Continuance to tenancy on death of tenant.- (1) where a tenant (other than a permanent tenant) dies, the landlord shall be deemed to have continued the tenancy on the same terms and conditions on which such tenant was holding at the time of his death, to such heir or heirs of the deceased tenant as may be willing to continue the tenancy.*

*(2) where the tenancy is inherited by heirs other than the widow of the deceased tenant, such widow shall have a charge for maintenance on the profits of such land."*

*17. The tenancy right devolves upon such of the heir or heirs who are willing to continue the tenancy. It was contended on behalf of the Respondents that the Plaintiff or Laxman could not give any consent when their father died and when the right devolved as they were then minors. The evidence of DW-1 Hansabai-the mother of the Plaintiff and Defendant No.1 goes to show that at the time of death of Maruti, Laxman was 12 months old and the Plaintiff Arjun was 4 to 5 years old, while defendant Sarjerao was 20 years old. Naturally neither Arjun nor Laxman had a capacity to assert their rights or to give their consent. Naturally therefore the name of Defendant No.1 Sarjerao who was then 20 years old and major came to be substituted in place of his father. Maruti died in 1947. If Arjun was 4 to 5 years old in 1945, he could be said to have attained majority in on 1960. Sub-section 4 of Section 32-G contemplates giving of notice to the interested persons and all others. A notice therefore to these two persons i.e. the Plaintiff and Laxman was necessary. It was necessary because the name of Sarjerao was recorded as tenant and in the capacity of manager of joint family. Section 40 merely says that the landlord shall continue the tenancy in favour of those willing. This is, therefore, a question between the landlord and the tenant which can be resolved even by an agreement. In the case at hand, the landlord had no option but to continue the tenancy only in the name of Sarjerao Defendant No.1 as other brothers were minor. To my mind, that did not give right to Sarjerao alone to purchase the property under Section 32-G. The said section says that notice to interested persons is to be given. There is no evidence on record that Laxman and Plaintiff had given any consent nor there is any evidence to show that any notice was given to them when the 32-G proceedings were decided. Thus upon the death of Maruti, the tenancy right devolved upon the Plaintiff, Defendant No.1 and Laxman who were joint with him. Sahebrao his eldest son had already separated from him after taking his share. Sahe-*

*brao's wife and son, therefore cannot have any interest in these two properties. Simply because the certificate is issued in the name of Sarjerao, he had not become exclusive owner. Such purchase by Sarjerao must enure for the benefit of the other sharers of joint family. Although Sarjerao Defendant No.1 may have paid price, that too would not make him the exclusive owner. At the most he may say that if the plaintiff wants to assert his right he should pay price of his share. The Plaintiff, Defendant No. 1 and Defendant Nos.2 & 3 being heirs of Laxman will have a share which come to 1/3rd each in Survey No.47 only. In the circumstances, the question of law are answered accordingly.*

Thus, in ***Sarjerao Maruti Sathe***, this Court has taken a view that tenancy right is heritable under Section 40 of the Tenancy Act and once the consent of other brothers is not obtained for purchase of the tenanted land by another brother in his own name, all brothers are entitled to have share in the land purchased under Section 32G and 32M of the Tenancy Act.

45. In ***Rajaram Mahadu Dahatonde*** (supra), the Single Judge of this Court (*T.V. Nalawade, J.*) has reiterated the ratio that tenancy right under the Tenancy Act is heritable and the question whether the properties covered by 32M Certificate are joint Hindu family properties is a dispute which cannot be dealt with under the Tenancy Act. This Court held in paras-23, 24 and 25 as under :

*23. The aforesaid proposition made by the learned counsel for the appellants is not at all acceptable in this case. Firstly, the bar of jurisdiction under Bombay Tenancy Act is applicable only with regard to the subject matters mentioned in the Bombay Tenancy Act. Secondly, the bar does not mean that for all purposes the jurisdiction of Civil Court is taken away. Under the Bombay Tenancy Act, the tenant's rights are hereditary. Tenancy rights can be acquired by single person or more persons or even by joint Hindu family. The disputes which are between tenant and the landlord are expected to be considered by the tenancy Court. In the present matter, the question is, whether the three properties mentioned in three certificates given under section 32-M of the Bombay Tenancy Act are joint Hindu family properties. Such dispute can be and needs to be decided by Civil Court. This is partition suit and only on the*

*basis of certificate granted under section 32-M of the Bombay Tenancy Act defendant No. I cannot contend that it is his self acquired property. No such inference n al is possible when there are facts and t circumstances of the case like present one. This Court has no hesitation to hold that the of dispute of the present nature cannot be dealt is ne with under the Bombay Tenancy Act. Reliance is placed on the case reported as **2006 (2) Mh.L.J. 243: [2006(1) ALL MR 423] (Savitra Bapa v. Rau Rama)**.*

*24. When it is proved that at the relevant time the parties were members of joint Hindu family and they were having ancestral and joint Hindu family properties, the burden of proof is on the member who as claims that particular property is his self acquired property. This burden is more on as the Karta of joint Hindu family.*

*25. In the written statement, defendant No.1 has not come with specific case of partition. He has only referred to the contents of plaint and has contended that there was severance of status. Partition record is in respect of two properties like Gat Nos. 474 and 498 which had come to the share of Mahadu in partition which had taken place in the year 1937 and so there is no specific case of partition amongst the plaintiff and defendants. Mere severance of status of joint Hindu family cannot change the character of by joint Hindu family property. Thus even if it is are presumed that five sons of Mahadu started living separate as per the case of the plaintiff, in the year 1972 and they were cultivating some portions separately, inference of partition cannot be drawn. There is no specific case of partition of defendant No.1 and this circumstance goes long way against defendant No. 1. There is voluminous record to show that these brothers were jointly cultivating the suit properties and such record is even in respect of the three properties received under the Bombay Tenancy Act. Whether the property was joint Hindu family property or it was self acquired property of defendant No. 1 is a question of fact and the fact finding Court has given finding against the appellants. In second appeal it is not possible to interfere in this finding and it needs to be held all these properties are the joint Hindu family properties.*

46. In **Adam Mohmad Darwajkar** (supra), Single Judge of this Court (*S.R. Sathe, J.*) has held that Civil Court is not bound to refer the dispute of tenancy to ALT once it is satisfied that the Defendants are also co-owners in respect of the tenanted properties. This Court held in para-11 as under :

*11. It was tried to be argued on behalf of the appellant that in this matter the question that arose for consideration was whether Mohammed alone*

*was tenant or whether alongwith Mohammed, Appa and Abdul were also tenants, and as per the provisions of Section 70B and 85A of the BTAL Act when such issue has arisen, it was necessary to refer the said issue to the tenancy court or to the Mamlatdar. But in the instant case no such reference has been made and as such the learned Additional District Judge was not justified in deciding tenancy rights of the parties. It is true that the question whether the person is or was any time in the past a tenant and whether any such tenant is or should be deemed to have purchased the land from the landlord is required to be dealt with by the Mamlatdar and Civil Court has no jurisdiction to decide the said issue and as soon as such issue arises the Civil Court has to refer the said issue to the Mamlatdar. However, that does not mean that in each and every case as soon as one party alleges that he is a tenant and the other party denies the same and contends that first party is not a tenant or that along with him there are other tenants also, then the said issue must be referred to Mamlatdar. Ultimately, Civil Court is not under obligation to frame and remand the issue to tenancy authorities mechanically merely the same being raised in the written statement or in the pleading of the plaint without judicial satisfaction of its necessity and justification. The court has to see whether such issue is involved in the matter or whether the material on record is sufficient to show that particular party or parties are tenants or deemed purchasers. If it is so then there is absolutely no need to refer the matter to tenancy authorities. In the instant case there is ample material on record which clearly indicates that Dawood was the original tenant and by virtue of Section 40 after the death of Dawood his sons became the tenants and accordingly mutation entry was also effected. Not only that, but even according to plaintiff the defendants contention in this behalf has been accepted by the tenancy authorities in other proceedings. When such is the position, the question before the Court was only to find out whether the contention of the defendants that plaintiff's fathers name was entered for and on behalf of the brothers or not and whether they had in fact acquired necessary rights. So, in other words, the issue was whether the suit land belongs to Mohammed and his two brothers jointly as indicated in Mutation Entry No. 632. It is pertinent to note that even in the plaint the plaintiff has stated that even if after evidence it is established that Dawood had taken such land from Kelkar, the original owner of the land, still Dawood expired in 1955 and after his death plaintiffs father Mohammed was cultivating the land as tenant and as such defendants are not having any right, title and interest in the same. This averment in the plaint in a way shows that plaintiff is in fact aware of the real position but he tried to conceal the same and made an attempt to show that the suit land was initially taken by Mohammed. So, under such circumstances the question involved in the suit is whether the defendants are also the co-owners could properly be decided by the Civil Court and reference to tenancy court was unnecessary. So Civil Court was justified in observing that Appa and Abdul had become co-owners of the suit land without referring the matter to the tenancy authorities. In similar circumstances, in a case Babaji Bhagwan Patkar Vs. Govind Bhagwan Patkar, 1972 Mh.L.J. Note 43 when suit for partition and separate possession of property alleged to be joint family the defendants eldest brother was declared to be statutory purchaser under Tenancy Act- defendant denied that the land belonged to joint family and claimed exclusive ownership, it was observed*

*that issue arising on such contention is not required to be referred to tenancy court. Hence, having regard to the peculiar facts and circumstances of this case and the position of law, I think that in the instant case, on the material available the Civil Court was competent to decide the issue involved or in other words the rights of Appa and Abdul. There is absolutely no such issue involved in the matter which could have been referred to and decided only by the Tenancy Court. Hence the order passed by the learned Additional District Judge is legal and correct.*

## **E. 5 ANSWERS TO THE QUESTIONS FORMULATED**

47. After having considered the law expounded by the Apex Court and various High Courts including by this Court on the issue of jurisdiction of the Civil Court to decide whether the property purchased under the Tenancy Act is individual or joint family property, I am of the view that the jurisdiction of the Civil Court is not ousted to decide that issue. This is true especially in a case where the Tenancy Court has not conducted any enquiry or has an occasion to conduct an enquiry to decide contesting claims of various members to succeed to the tenanted property. It is only in cases where various family members of joint family raise their respective claims before the Tenancy Court and there the Tenancy Court conducts an enquiry into such claim and then decides to uphold tenancy rights in respect of only one such family member, the jurisdiction of the Civil Court to redetermine the said issue would be barred. However, in a given case where the land is under cultivation of joint family but one of the family members approaches the Tenancy Court, gets the purchase price fixed, pays the same and procures 32M Certificate, the same cannot and would not mean that the other family members

permanently lose their rights *qua* that property. The Civil Court has jurisdiction to decide whether the property purchased under the Tenancy Act is a self-acquired or joint family property. As observed above, it would depend upon the facts of each case. The key to the problem is whether an enquiry has been conducted into the competing claims of members of joint family or not. If such enquiry is conducted by the Tenancy Court and a finding is recorded that only one member is entitled to purchase the property and that he alone was actually cultivating the land on the Tillers day, in that situation, fresh enquiry cannot be instituted by the Civil Court having the very same jurisdiction. However in a case where the Tribunal did not have any occasion to conduct such enquiry and has issued 32M Certificate merely on an application made by one of the joint family members, the Civil Court would not be precluded from determining whether the tenanted land was in joint cultivation of the entire family and whether after its purchase, would continue to remain joint family property or not.

48. In the present case, there is specific evidence on record in the form of admission of Ganesh Babi Naik himself that the tenanted land was in cultivation of the entire family from the forefathers. Additionally, the landlord-Shrirang Ramchandra Dhopeshwarkar has given evidence before the Trial Court that the suit property was owned by his forefathers and Babi was the protected tenant in respect of the said land. The said witness has further stated that while purchasing the land Ganesh Babi Naik had given specific statement

that the property was a joint family property. Thus, it is conclusively proved before the Trial Court that Ganesh Babi Naik was the original protected tenant. It is further proved that the tenanted land was joint family property and in joint cultivation of all the brothers.

49. As a matter of fact, Explanation -II to the definition of the term “*to cultivate personally*” under the Tenancy Act has a direct bearing on the issue involved in the Appeal relating to entitlement of other family members of joint family to claim rights in respect of tenanted land purchased by one family member under Sections 32G and 32M. The definition of the term “*to cultivate personally*” under Section 2(6) of the Tenancy Act reads thus:

**2. Definitions.**

(6) “*to cultivate personally*” means to cultivate land on one’s own account—

(i) by one’s own labour, or

(ii) by the labour of any member of one’s family, or (

iii) under the personal supervision of oneself or any member of one’s family, by hired labour or by servants on wages payable in cash or kind but not in crop share, being land, the entire area of which—

(a) is situate within the limits of single village, or

(b) is so situated that no piece of land is separated from another by a distance of more than five miles, or

(c) forms one compact block.

Provided that the restrictions contained in clauses (a), (b) and (c) shall not apply to any land,—

(i) which does not exceed twice the ceiling area,

(ii) upto twice the ceiling area, if such land exceeds twice the ceiling area.

**Explanation I.**— A widow or a minor, or a person who is subject to physical or mental disability, or a serving member of the armed forces shall be deemed, to cultivate the land personally if such land is cultivated by servants, or by hired labour, or through tenants.

***Explanation II.— In the case of a joint family, the land shall be deemed to have been cultivated personally if it is cultivated by any member of such family;***

*(emphasis supplied)*

In fact, identical Explanation -II in definition of the term 'to cultivate personally' under Section 2(11) of the Karnataka Land Reforms Act, made all four brothers entitled for joint occupancy registration, which is confirmed by the Apex Court in ***Mudakappa***.

50. Mr. Walawalkar has attempted to draw an inference on the basis of the averments made by the Respondents in their Regular Civil Suit No. 52 of 2003 that Ramakant's name was mutated to the revenue record as tenant of the suit land. I am unable to agree. In para-3 of the plaint, in Regular Civil Suit No. 52 of 2003, Respondents herein pleaded as follows :

3) दावा जमिनीतील 'अ' मिळकत ही मुळची श्रीरंग रामचंद्र धोपेश्वरकर यांच्या कुटुंबाच्या मालकीची होती. व सदर जमीन ही वादी यांचे आजोबा बाबी यांचेकडे संरक्षित कुळपणास चालत होती त्यांचे मृत्यु पश्चात सदर दावा मिळकत 'अ' चा कुळपणा त्यांचे मुलगे गणेश, शंकर, शांताराम यांना प्राप्त झाला. परंतु या तिघांमध्ये ज्येष्ठ गणेश असल्यामुळे सातबारा मध्ये रेकॉर्ड ऑफ राइटला कुळ म्हणून गणेश म्हणजे प्रतिवादी नं. १ याचे -5 - वडील यांचे नावे लागले. व त्यानंतर सदरची जमीन ही कुळकायदा कलम ३२ ग खाली विक्रित झाली. व सुंदर दावा मिळकतीचे वादी व प्रतिवादी हे मालक झालेले आहेत. तसेच बाबी यांचा मुलगा शंकर हा निर्वश मयत झाल्याने त्याचा हिस्सा वादी व प्रतिवादी यांना प्राप्त झालेला आहे. त्यामुळे दावा मिळकत 'अ' मध्ये वादी यांना १/२ हिस्सा प्राप्त झालेला आहे. तसेच प्रतिवादी यांना १/२ हिस्सा प्राप्त झालेला आहे.

Perusal of the above pleadings would show that Babi was the original

tenant after whose death, the rights were inherited by Ganesh, Shankar and Shantaram and that since Ganesh was the eldest brother, he got his name mutated to the record of rights as tenant and that he purchased the land under Section 32G of the Tenancy Act. It is specifically pleaded that all family members became owners of the suit property after such purchase. I am therefore unable to agree that there is an admission on the part of the Respondents that Ganesh was a tenant in individual capacity in respect of the suit lands.

51. After having considered the entire evidence on record, I am of the view that there is no error committed by the Trial Court or the first Appellate Court while delivering the impugned judgments. I accordingly proceed to answer questions of law formulated by this Court as under :

*(i) Mere purchase of suit property by Ganesh Babi Naik in his individual name under the provisions of Section 32G and 32M of the Tenancy Act does not make him an exclusive owner thereof and the same continues to be a joint family property.*

*(ii) Civil Court has jurisdiction to decide entitlement of co-parceners for shares in the tenanted properties purchased by one of the co-parceners under the provisions of Section 32G and 32M of the Tenancy Act in the event of non-conduct of any enquiry into that issue by the ALT.*

**F.            ORDER**

52.            I therefore do not find any merit in both the Appeals filed by the Appellant. Both the Appeals are accordingly **dismissed**. With dismissal of the Appeals, Civil/Interim Applications taken out therein also stand disposed of. There shall be no order as to costs.

**SANDEEP V. MARNE, J.**

53.            After the Judgment is pronounced, the learned counsel appearing for the Appellants would request for continuation of the interim order granted by this Court. The request is opposed by the learned counsel appearing for the Respondent. Considering the fact that interim order is operational for substantial period of time, the same is extended by a period of 8 weeks from today.

**SANDEEP V. MARNE, J.**