

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

WRIT PETITION NO.415 OF 1998

1. Arvind Krushna Navale

2. Mahavir Krushna Navale

3. Ashok Krushna Navale
through legal heirs

a. Sudhir Ashok Navale

b. Sagar Ashok Navale

all residing at,
Walwa, Tal. Walwa,
District Sangli.

... Petitioners

V/s.

1. Bhagwan Bhau Navale
Deceased through legal heir
Balasaheb Bhagwan Navale
residing at,
Walwa, Tal. Walwa,
District Sangli.

2. Chandrakant Nemu Navale
residing at,
Walwa, Tal. Walwa,
District Sangli.

3. Sachidanand Narahar Joshi
Deceased through legal heir
Yojana Sachidanand Joshi,
and Meena Sachidanand Joshi
Through Power of Attorney
Vishnu Narahar Joshi,
residing at, Flat No. 113,
Sudarshan Colony, Thane (W).

... Respondents

Mr. P. R. Arjunwadkar, Advocate for the Petitioners.

*Mr. Umesh Mankapure with Mr. Nilesh Wuble and Mr. Amol Kanaki,
Advocates for the Respondent No.1.*

CORAM : SANDEEP V. MARNE, J.

RESERVED ON : 31st JANUARY 2025

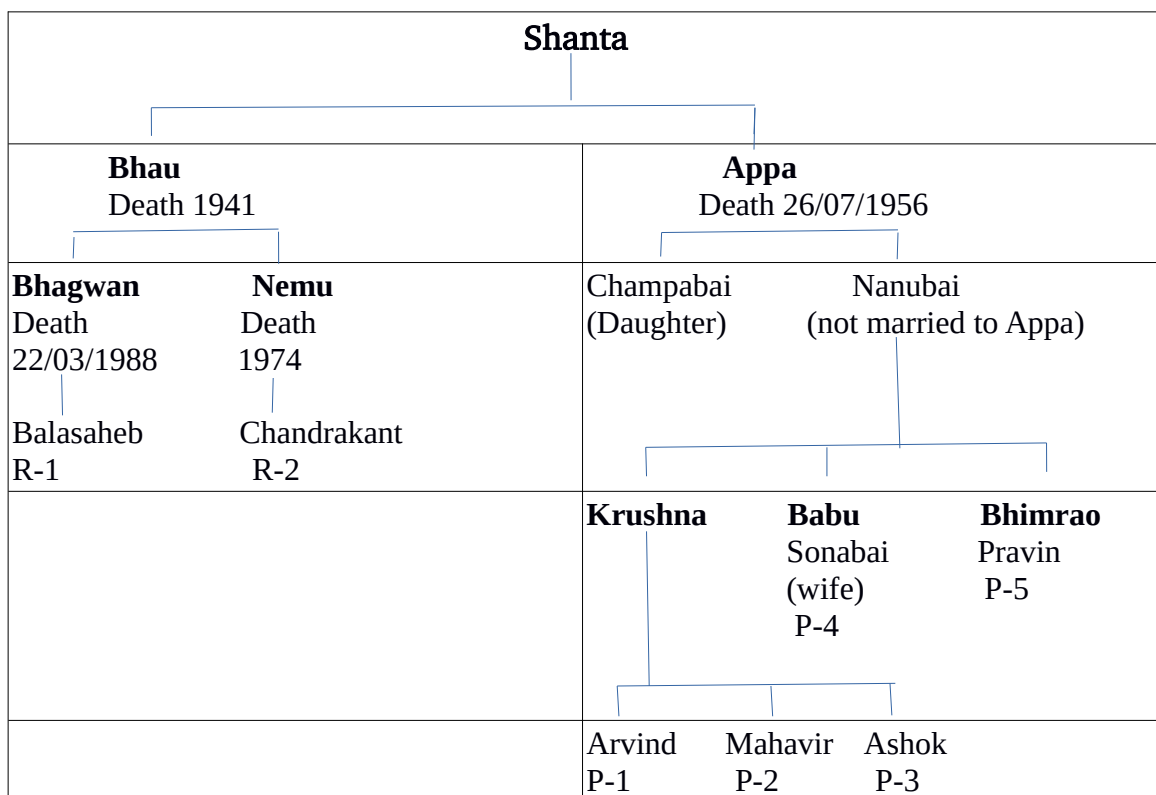
PRONOUNCED ON : 6th FEBRUARY 2025

JUDGMENT :

1. Petitioners have filed the present petition challenging the judgment and order dated 27th October, 1997 passed by Maharashtra Revenue Tribunal Pune, (**MRT**) thereby reversing the judgment and order dated 27th February, 1997 passed by the Sub-Divisional Officer, Walwa (**SDO**) in Tenancy Appeal No.36 of 1996 and confirming the judgment and order dated 7th November, 1996 passed by Agricultural Land Tribunal and Tahasildar, Walwa (**ALT**) in inquiry under provisions of Section 32-G of Maharashtra Tenancy and Agricultural Lands Act, 1948 (**the Act**). The net effect from the order passed by the MRT is that the tenancy claim of Petitioners in respect of the agricultural lands has been rejected and late Bhagwan Bhau Navale is held to be the sole tenant in respect of the said lands.

2. Briefly stated on facts of the case are that the lands bearing Survey Nos. 590/1 and 679/1 at village Walwa, Taluka Walwa, District Sangli (**lands**) are subject matter of tenancy dispute between the rival parties.

Shanta Navale was the original ancestor of Petitioners and Respondents No. 1 and 2. He had two sons namely Bhau and Appa. Bhau had two sons namely Bhagwan and Nemu whereas Appa has only one daughter born of his legal wedding. It is claimed that Krushna, Babu and Bhimrao are illegitimate children of Appa born through Nanubai, with whom apparently Appa had not performed marriage. The contest in the present case is between Bhagwan and the illegitimate children of Appa- Krushna, Babu and Bhimrao. The family tree is as under:-



3. The agricultural lands were owned by Sachidanand Narhar Joshi (original Respondent No. 3), who had executed a lease dated 24th April 1945 in respect of the lands in favour of Appa and his nephew Nemu.

It appears that proceedings were initiated for fixation of purchase price under section 32-G of the Act and it was directed that the tenancy Court shall first inquire the matter about disputes relating to tenancy under provisions of Section 70(b) of the Act and thereafter proceed to fix the purchase price under section 32-G. Accordingly, inquiry was instituted under section 70(b) of the Act before ALT in Tenancy Case No.122 of 1997, in which Bhagwan Bhau Navale was the Applicant, whereas the illegitimate children of Appa (Krushna, Babu and Bhimrao) were the main contesting parties. It appears that Bhagwan's real brother Nemu was also impleaded as opponent through his son Chandrakant Navale. The landlord was also impleaded to proceedings filed under Section 70(b) of the Act.

4. After conduct of inquiry, the ALT passed order dated 7th November 1996 holding that Bhagwan was the tenant in respect of the lands as on 1st April 1957. The order passed by ALT on 7th November 1996 was challenged in appeal by Krushna, Babu and Bhimrao by filing Tenancy Appeal No.36 of 1996 before the SDO under provisions of Section 74 of the Act. The SDO allowed the appeal filed by them by his judgment and order dated 27th February, 1997 and set aside ALT's decision dated 7th November, 1996. SDO held that the contesting Respondents (Krushna, Babu and Bhimrao) are also tenants in respect of the lands as on the tiller's day to the extent of one-half share therein. The heirs of Bhagwan filed revision application before MRT challenging the order passed by SDO. The MRT has allowed the revision vide judgment and order dated 27th October, 1997 and has set aside SDO's decision by confirming the orders passed by ALT. This is how the tenancy claim of the contesting Respondents (Krushna, Babu and Bhimrao and their heirs) in respect of half share of the agricultural lands

has been rejected and Bhagwan and his heirs are held to be the sole tenants in respect of the agricultural lands. Accordingly, the heirs of Krushna, Babu and Bhimrao have filed the present petition challenging the judgment and order dated 27th October 1997 passed by the MRT.

5. The petition came to be admitted by this Court by order dated 19th March 1998 and interim order was granted staying the order passed by the MRT. The Petition is called out for final hearing.

6. Mr. Arjunwadkar, learned counsel appearing for the Petitioners would submit that the Tribunal has erred in reversing the well-considered decision passed of the SDO upholding tenancy rights of the Petitioners in respect of one half portion of the tenanted lands. He would submit that there is no dispute about the fact that Krushna, Babu and Bhimrao are also children of Appa. That though they have been branded as illegitimate children, they would continue to succeed to the estate of Appa. He would submit that the original tenancy agreement was executed in the joint names of Nemu and Appa and that accordingly, both were jointly cultivating the agricultural lands. That Mutation Entry No.11908 was accordingly certified mutating joint names of Appa and Nemu in the revenue records. He would also rely upon the entries in the cultivation column in support of his contention joint tenancy of Appa and Nemu. He would submit that the mutation entry was not challenged at any point of time by Bhagwan. That the competent authority had adjudged Appa and Nemu to be protected tenants under the provisions of Section 4A of the Bombay Tenancy and Agriculture Lands Act, 1948 on 8th April, 1950. He would submit that it is an admitted position the *khand* (rent) in respect of the lands was agreed as Rs.40/- which was being

shared equally by the two sides which is the reason why Bhagwan was in a position to produce rent receipts only of Rs.20/-. That the balance rent of Rs.20/- was always paid by Appa and Krushna. He would rely upon rent receipts issued in the name of Krushna. He would also rely upon the assessment receipts in the name of Krushna of the year 1952.

7. Mr. Arjunwadkar would submit that the ALT and MRT had erroneously relied upon Gift Deed executed by Appa in favour of his three sons in respect of various lands excluding the tenanted lands for the purpose of drawl of inference that Petitioners do not have any tenancy claim therein. He would submit that the gift was executed subsequently in the year 1964 and that therefore the same cannot negate the revenue entries standing in the name of Krushna much before the tiller's day. He would rely upon school leaving certificate of Krushna to demonstrate that he was Appa's son. He would also invite my attention to the Gift Deed in which Appa accepted Krushna, Babu and Bhimrao as children of his keep. He would submit that once the position of Petitioners' branch being illegitimate children of Appa is not disputed, it is inconceivable that the tenancy claim in respect of half portion of land can be rejected. Mr. Arjunwadkar would then take me through the proceedings initiated by the landlord in the year 1964 for disputing tenancy claim in support of his contention that Krushna was also impleaded therein as a party Respondent. The landlord always accepted even Krushna as the tenant. He would also rely upon plaint in Special Civil Suit No.289 of 1999 filed by son of Bhagwan in respect of same properties seeking injunction and for payment of amounts towards sale of sugarcane exclusively to himself. He would submit that if Krushna had absolutely no relationship with the suit lands,

Bhagwan's son would not have impleaded Krushna's children as party Defendants to the suit. He submits that the suit was unconditionally withdrawn on 18th August, 2002 thereby indicating that Bhagwan's son accepted right of Krushna in respect of the lands. Mr. Arjunwadkar would also rely upon specific statement made by Bhagwan before ALT that he was jointly cultivating the tenanted lands with Krushna as a tenant thereon. He would submit that in some of the proceedings, Bhagwan and Krushna had engaged same Advocate in respect of the agricultural lands indicating thereby that Krushna was always recognized as 50% tenant by Bhagwan. Mr. Mankapure would accordingly pray for setting aside the order passed by the Tribunal and to restore the SDO's order.

8. The petition is opposed by Mr. Mankapure, learned counsel appearing for the contesting Respondent No.1A (Bhagwan's son). He would submit that relationship of Krushna, Babu and Bhimrao with Appa is highly doubtful and relies upon entries made in heirship register consequent to death of Appa on 26th July, 1956 showing that he had only one legal heir i.e. daughter Champa Kole. That if Krushna, Babu and Bhimrao were legal heirs of Appa, their names would also have been accepted in the heirship inquiry. He would further rely upon Mutation Entry No.28365 recorded on 22nd September 1986 in support of his contention that the names of children Krushna, Babu and Bhimrao in respect of lands were recorded for the first time on 22nd September, 1986. So far as Mutation Entry No.11908 is concerned, he would submit that ALT has recorded finding of the fact that the same was certified without notice to the concerned parties and that therefore, the same is a mere hollow mutation entry, without any effect.

9. Mr. Mankapure would further submit that what was required to be proved by the Petitioners was that Krushna, Babu and Bhimrao were actually cultivating the lands as tenants on 1st April 1957. That mere capacity of illegitimate children of Appa is not sufficient to succeed to the tenancy claim. That only such party who actually cultivates the land as on 1st April 1957 becomes a deemed purchaser. He would rely upon the statement of the landlord recorded during the inquiry under section 32-G of the Act to the effect that only Bhagwan and Appa were the tenants in respect of the lands. He would submit that in the said statement recorded in the year 1965, the land record did not reflect the name of Krushna showing thereby the tenancy claim of the Petitioners is totally baseless. He would submit that Bhagwan's statement made during the course of proceedings with his brother Nemu cannot be read out of context to mean as if Bhagwan ever admitted the tenancy claim of Krushna. He would submit that in any case, Appa's real daughter Champa was not impleaded in any of the proceedings and Petitioners' claim towards tenancy cannot be adjudicated in absence of Champa. He would submit that no interference is therefore warranted in well-considered decision of MRT. He would accordingly pray for dismissal of the Petition.

10. Rival contentions of the parties now fall for my consideration.

11. This is a contest between two branches stemming out of Shanta's sons Bhau and Appa. Petitioners seek to represent Appa's branch for the purpose of claiming one half share in the tenanted lands, whereas Respondents No.1 and 2 represent Bhau's branch and they deny any share to Appa's branch in the tenanted lands. It appears that earlier there was a

dispute between Bhagwan and his real brother Nemu also, but it appears that Nemu and his heirs are no longer contesting the proceedings to claim any share in the tenanted lands. thus Bahu's branch is now represented solely by Bhagwan.

12. The proceedings before the ALT under Section 70(b) of the Act were initiated by Bhagwan alone to seek a declaration that he alone is a tenant, in respect of the tenanted lands to the exclusion of his real brother Nemu as well as his alleged cousins, Krushna, Babu and Bhimrao. There is no dispute to the position that Krushna, Babu and Bhimrao are not born out of any legal wedlock of Appa. It is alleged that they are born out of relationship between Appa and Nanubai, who was not the legally wedded wife of Appa. Otherwise Appa has only one daughter-Champabai who apparently is not claiming any share in the tenancy rights of the agricultural lands. It is only Krushna, Babu and Bhimrao who claim 50% share in tenancy rights of the lands alongwith Bhagwan, who on the contrary, claims that he alone is the tenant of the lands. He accordingly secured a declaration that he alone was a tenant as on the tiller's day of 1st April, 1957. The SDO reversed the order of ALT holding that even Krushna, Babu and Bhimrao are entitled to one half share in the tenancy rights of the land as they were also cultivating half portion of the land. Since MRT has upset the declaration issued by the SDO, heirs of Krushna, Babu and Bhimrao have filed the present petition in order to seek restoration of the declaration issued by the SDO that they are entitled one half share in the tenancy rights of the lands.

13. Both sides have relied upon voluminous documentary evidence in support of their respective claims. If the revenue entries are perused, Mutation Entry No.11908 was effected in the joint names of Appa Shanta Navale and Nemu Bhau Navale as protected tenants in respect of both the lands. However, this Mutation Entry No.11908 was certified on 8th April 1954. The said Mutation Entry however does not enure to the benefit of the either of the parties because Bhagwan has never really disputed that his uncle Appa was also a tenant in respect of the lands. What Bhagwan contends is that after death of Appa, his alleged illegitimate children are not entitled to claim any tenancy rights in the land as they were not actually cultivating the same. There is no dispute to the position that the *khand* (rent) in respect of the land was Rs.40/- and it is the contention of the Petitioners that half portion of the rent was always paid by Krushna while remaining half portion was paid either by Bhagwan or Nemu. The evidence in this regard is to be found in the form of rent receipt dated 19th December, 1966, in which Krushna had apparently paid rent to the landlord. Mr. Mankapure was seek to discredit the said rent receipts contending the same cannot be a basis for inferring that Krushna was cultivating any portion of the land as on the tiller's day of 1st April, 1957. Similar is the position in respect of the entries in the cultivation column showing name of Krushna for the year 1976-77 onwards alongwith Nemu. However, if Krushna had absolutely no relation with the agricultural lands why his name got added in the cultivation column has not been explained satisfactorily by the Respondent No. 1A. There is no adequate explanation as to why there are rent receipts issued in the name of Krushna even in the year 1966.

14. Mr. Arjunwadkar has relied upon the assessment receipts issued in the joint names of Appa and Krushna in the year 1952, which again makes believable the claim of Krushna cultivating the land jointly. I therefore find some evidence on record to draw an inference that Krushna was also cultivating the land alongwith either Bhawan or Nemu as on the tiller's day.

15. Krushna's cultivation of the land is further buttressed by the conduct of the Respondent No.1A (Bhagwan's son) in instituted Special Civil Suit 289 of 1999 against sons of Nemu and Krushna, Babu and Bhimrao seeking injunction against them from not interfering with the alleged possession of the agricultural lands. If Krushna, Babu and Bhimrao had absolutely no concern with the tenanted lands, why suit was instituted in the year 1999 claiming injunction had not been explained. More curiously, the said suit came to be unconditionally withdrawn on 18th August 2002 by Respondent No.1A.

16. The final nail in the coffin for Bhagwan is in the form of his own statement made before the ALT, in proceedings filed against him by Nemu. In his examination-in-chief recorded before the ALT, Bhagwan expressly admitted that he was jointly cultivating both the lands alongwith Krushna for the last 20 years. The said statement was recorded on 5th November 1965. Thus, there is direct admission of Bhagwan that Krushna was cultivating the land jointly with him as a tenant since 1945.

17. In my view, what has been given by Bhagwan before the ALT on 5th November, 1965 is an admission in collateral quasi-judicial proceedings

relating to not only the same subject matter but also in respect of the same lands. The evidence of Bhagwan is recorded on 5th November, 1965 in proceedings initiated by his brother Nemu claiming tenancy right in respect of same property. Bhagwan apparently denied any share in the tenanted property to his real brother Nemu, but always admitted that Krushna was a joint tenant in respect of the agricultural lands. Bhagwan raised a specific plea in the proceedings initiated by Nemu that Bhagwan and Krushna would each have 50% share in the tenancy rights and that in the 50% land falling in his share, Nemu does not have any right. He stated in his evidence that Nemu was not a tenant in the land. To quell any doubt about right of Krushna to purchase the tenanted lands under Section 32 of the Act, Bhagwan made following statement in his examination-in-chief recorded on 5th November, 1965:-

“हया जमिनीची विक्री कृष्णा आप्पा नवले व माझ्या नावे असें आमच्या दोघांच्या नावे व्हावी.”

18. Thus in proceedings initiated by Nemu possibly for fixing purchase price under section 32-G of the Act, Bhagwan specifically took a plea that, he alongwith Krushna, were entitled to purchase the tenanted lands. So far as payment of rent is concerned, he deposed before the ALT that he was paying only Rs.20/- towards the rent. There is no dispute to the position amongst the parties that the total rent in respect of the entire lands was Rs.40/-. Therefore, payment of rent of only Rs.20/- by Bhagwan would be yet another factor for presuming that the balance rent was always paid by Krushna.

19. In my view, therefore specific admission given by Mr. Bhagwan during the course of deposition recorded before ALT on 5th November 1965 completely demolishes his case that he is the sole tenant in respect of the lands in question. Bhagwan cannot change his stand in different proceedings to suit his convenience. For opposing tenancy rights of his real brother Nemu, he took a plea that he alongwith Krushna were cultivating the lands as tenants and Nemu never cultivated the same. However, when it comes to contest with Appa's illegitimate children (Krushna, Babu and Bhimrao), Bhagwan changes his stand and contends that he alone was cultivating the land as a tenant as on pillar's date. He clearly approbates and reprobates. Such shifting of stand by Bhagwan is clearly not appreciated in any case, admission given by him in collateral proceedings in respect of the same lands and relating to same subject matter of rights, would clearly bind Bhagwan.

20. Instead of appreciating the above position, the MRT has taken the proceedings in an altogether different direction and has erroneously concentrated more on the fact that Krushna, Babu and Bhimrao are illegitimate children of Appa. MRT has recorded perverse finding that "*so in the present case there is no record as to show that the present Opponent Nos.1 to 5 are the legitimate sons of deceased Appa*". The MRT failed to appreciate there was never any dispute of relationship of Krushna, Babu and Bhimrao with Appa and Bhagwan always recognized the position about Appa's illegitimate children. The relationship between Appa and his three illegitimate sons so is also borne out by the covenant of the Gift Deed. Bhagwan also admitted in his evidence before ALT recorded in the present proceedings that:

"सामनेवाले कृष्णा, बाबू व भिमा हे तिघेही आप्पाची **औरस मुले** नाहीत. आप्पा शांता नवले यांनी या **मुलाना** त्यांची वडिलार्जित मालकीची जमीन बक्षीस पत्राने ता. ०८/०४/१९५४ रोजी बक्षीस दिली आहे. त्या बक्षीस पत्रात स्वतः आप्पा शांता नवले यांनी ही सामनेवाले नं: २ ते ४ ही **रखेलीची मुले** आहेत असा उल्लेख केला आहे."

(emphasis added)

21. Thus, Bhagwan himself admitted that Krushna, Babu and Bhimrao are illegitimate children of Appa. Even though Krushna, Babu and Bhimrao are illegitimate children borne out of void marriage, they would be entitled to succeed atleast to the self-acquired property of Appa under provisions of Section 16 of the Hindu Marriage Act. Right to purchase a tenanted property is a personal right. There is nothing on record to indicate that the property was being cultivated by the joint family or that it formed a part of coparcenary property. In fact, Bhagwan's plea of denial of any share in the tenancy rights to his own real brother Nemu leaves no manner of doubt that the agricultural lands are not the joint Hindu family property. Therefore, merely because Krushna, Babu and Bhimrao happen to be illegitimate children of Appa, they would still be entitled to succeed to his estate. This position was well appreciated by the Sub-Divisional Officer. Therefore, the findings recorded by the MRT based on legitimacy of relationship between Appa and his three sons are clearly perverse. In any case, tenancy rights do not devolve by succession. What is relevant is cultivation of the land on the tiller's day and the capacity of such cultivation. The issue of succession would arise only if the lands were cultivated by *karta* of joint Hindu family for benefit of the family. In my view therefore the issue of right to succeed to the estate of Appa is totally

irrelevant. What is relevant is the fact whether Krushna was cultivating the land on the tiller's day.

22. The MRT has also erred in relying on the Gift Deed executed by Appa in favour of his three sons excluding the tenanted lands therefrom. In my view, the SDO had rightly appreciated the position in this regard by holding that what is important is personal cultivation of the land by the tenant. The SDO held that possession and cultivation in the present case was complied with. That it is sufficiently demonstrated by Krushna by relying on 7/12 extract of the year 1957 showing his possession as on tiller's day. I have already discussed various contemporaneous revenue entries showing possession and cultivation of the lands by Krushna jointly with either Bhagwan or Nemu. Once cultivation of land by Krushna as on the tiller's day is established, mere absence of tenanted lands from the purview of Gift Deed executed by Appa in favour of his three sons would not be a reason enough for denying tenancy claim of Krushna, Babu and Bhimrao.

23. Considering the overall conspectus of the case, I am of the view that the SDO had rightly appreciated the evidence on record for upholding tenancy claim of the Petitioners in respect of half portion of the agricultural lands. The MRT has erred in reversing SDO's decision by recording perverse findings. The orders passed by the MRT is thus indefensible and is liable to be set aside.

24. The petition accordingly succeeds, and I proceed to pass the following order:

- (i) Order dated 27th October 1997 passed by Maharashtra Revenue Tribunal, Pune is set aside.
- (ii) Order dated 27th February 1997 passed by SDO, Walwa declaring tenancy rights of Petitioners in half share of the lands is confirmed.

25. Writ Petition is allowed in above terms. Rule is made absolute. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)

After the judgment is pronounced, the learned counsel appearing for the Respondent No.1 would pray for stay of operation of judgment for a period of eight weeks. Considering the facts and circumstances of the case, the operation of the judgment shall remain stayed for a period of eight weeks.

(SANDEEP V. MARNE, J.)