

Varsha/Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7851 OF 2021

1. Shri Nandkumar Namdev Thorat }
Age: 35, Occu: Agriculture }
2. Shri Vijay Namdev Thorat }
Age: 32, Occu: Agriculture }
3. Shri Kishor Namdev Thorat }
Age: 30, Occu: Agriculture }
- 1 to 3 are R/o, Bahe, Tal. Walwa, }
District-Sangli. }
4. Smt. Kamal Namdev Thorat }
(deceased) }
5. Shri Prakash Dhondiram Thorat }
Age: Adult, Occu: Agriculture }
6. Shri Jaywant Dhodiram Thorat }
Age: Adult, Occu: Agriculture. }
- 7.Smt. Nanda Jaysing Thorat }
Age: Adult, Occu: Housewife }
8. Shri Dipak Jaysing Thorat }
Age: Adult, Occu: Agriculture }
9. Ashwini Jaysing Thorat }
Age___, Occu: Agriculture }
- Minor through her legal guardian }
- Mother i.e. Petitioner No. 7. }
- Petitioner Nos. 2 to 6 are residing at }
- Bahe, Tal. Walwa, District-Sangli. }

.... (Petitioners)

Versus

ARUN
RAMCHANDRA
SANKPAL

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by ARUN
RAMCHANDRA
SANKPAL
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Shri Dhondiram Ananda Patil	}	
(deceased through Legal Heirs)	}	
1a. Shri Vijay Dhondiram Patil	}	
Age : 35, Occu: Agriculture	}	
1b. Shri Vikram Dhondiram Patil	}	
Age : 30, Occu: Agriculture	}	
1c. Smt. Mangal Dhondiram Patil	}	
Age: 55, Occu: Housewife	}	
No. 2a to 2c are residing at Bahe,	}	
Tal. Walwa, Dist: Sangli.	}	
1d. Sou Vidya Pandurang Patil	}	
Age.33, Occu: Housewife,	}	
R/o. Devarde, Tal: Walwa, District-	}	
Sangli.	}	
2. Manager	}	
Krushna Sahakari Bank Limited	}	
Rethare Buduruk, Tal. Karad,	}	
District-Satara	}	 (Respondents)

**WITH
WRIT PETITION NO. 593 OF 2022**

1. Namdev Maruti Thorat	}
(deceased through legal heirs)	}
1a. Nandkumar Namdev Thorat	}
Age: 35, Occu: Agriculture	}
1b. Shri Vijay Namdev Thorat	}
Age: 32, Occu: Agriculture	}
1c. Shri Kishor Namdev Thorat	}
Age: 30, Occu: Agriculture	}
1a to 1c are R/o, Bahe, Tal. Walwa,	}
District-Sangli.	}
1d. Smt. Kamal Namdev Thorat	}
(deceased)	}

2. Shri Prakash Dhondiram Thorat	}	
Age: Adult, Occu: Agriculture	}	
3. Shri Jaywant Dhodiram Thorat	}	
Age: Adult, Occu: Agriculture.	}	
4.Smt. Nanda Jaysing Thorat	}	
Age: Adult, Occu: Housewife	}	
5. Shri Dipak Jaysing Thorat	}	
Age: Adult, Occu: Agriculture	}	
6. Ashwini Jaysing Thorat	}	
Age__, Occu: Agriculture	}	
Minor through her legal guardian	}	
Mother i.e. Petitioner No. 4.	}	
Petitioner Nos. 2 to 6 are residing at	}	
Bahe, Tal. Walwa, District-Sangli.	}	 (Petitioners)

Versus

Shri Dhondiram Ananda Patil	}	
(deceased through Legal Heirs)	}	
1a. Shri Vijay Dhondiram Patil	}	
Age : 35, Occu: Agriculture	}	
1b.Shri Vikram Dhondiram Patil	}	
Age : 30, Occu: Agriculture	}	
1c. Smt. Mangal Dhondiram Patil	}	
Age: 55, Occu: Housewife	}	
No. 2a to 2c are residing at Bahe,	}	
Tal. Walwa, Dist: Sangli.	}	
1d. Sou Vidya Pandurang Patil	}	
Age.33, Occu: Housewife,	}	
R/o. Devarde, Tal: Walwa, District-	}	
Sangli.	}	
2. Manager	}	
Krushna Sahakari Bank Limited	}	
Rethare Buduruk, Tal. Karad,	}	
District-Satara	}	 (Respondents)

Mr. Umesh R Mankapure with Mr. Nilesh Wable, for Petitioner in both Petitions.

Mr. Umesh Pawar, for the Respondent in both Petitions.

CORAM : N.J. JAMADAR, J.

JUDGMENT RESERVED ON : 16TH APRIL 2025.

JUDGMENT PRONOUNCED ON : 9TH JUNE 2025.

JUDGMENT:

1. Rule.
2. Rule made returnable forthwith and, with the consent of the counsel for the parties, heard finally.
3. Since a common question of law arises for consideration in both the petitions, in the backdrop of, by and large, similar facts, these petitions were heard together and are being decided by this common judgment.

WRIT PETITION NO. 7851 OF 2021

4. For the sake of convenience and clarity, the parties are hereinafter referred to in the capacity in which they are arrayed before the trial Court.
5. Dhondiram, the deceased plaintiff, instituted a suit for redemption of mortgaged property and the consequential relief of

execution of the instruments by the defendant nos. 1 to 9. The plaintiff asserted that the plaintiff had mortgaged the suit land bearing Gat No. 196/2 admeasuring 54 R, situated at Mauje-Bahe, Tal-Walwa (1A) and Gat No. 211 admeasuring 10 R situated at Mauje-Bahe, Tal-Walwa (1B) under a registered mortgage dated 29th May 1991 in favour of Namdev Thorat, the predecessor-in-title of the defendant no. 1 to 4 and Dhondiram Thorat, predecessor-in-title of defendant nos. 5 to 9, for the mortgage money of Rs.6,000/-. In accordance with the terms of the mortgage, in the month of March 1985 the plaintiff had repaid the mortgage money of Rs. 6,000/- to the mortgagees in the presence of three witnesses, in cash. The mortgagees had redelivered the possession of the mortgaged properties, and agreed to execute the instruments. The plaintiff had been in continuous and peaceful possession and cultivation of the suit properties.

6. The plaintiff asserted the mortgagees, however, bought time to execute the instruments for cancellation of the mortgage on one on the other pretext. Instead, by taking undue advantage of the mutation of the name of the mortgagees to the record of the rights of the suit land, the mortgagees illegally created security over the suit land (1B) in favour of the defendant no. 3 Bank. A legal notice was

addressed on 31st December 2010 calling upon the defendants to execute the instrument. Namdev Thorat and defendant nos. 5 to 9 gave a reply raising false and frivolous contentions. Hence, the plaintiff was constrained to institute the suit for redemption of mortgage and the consequential reliefs.

7. The defendant No. 3 filed a written statement. Apart from denying the averments in the plaint adverse to the interest of the defendant, it was, inter alia, contended that Maruti Thorat was in possession and cultivation of the suit land bearing old Survey Nos. 76/2b, 92/2 and 74/1, which corresponds to Gat No. 918, as a tenant of predecessor-in-title of the plaintiff, since the year 1937-1938. Since then the predecessor-in-title of the defendants and the defendants have been in possession and cultivation of the suit land. During the course of the consolidation proceedings, there were errors in recording the correct survey numbers and the Gat numbers. In fact, the name of the Maruti Thorat, the predecessor-in-title of defendant nos. 1 to 4, was mutated to the record of rights of the land bearing Survey Nos. 74/1 , Survey No. 77/7 vide Mutation Entry. No. 4942/1954 dated 16th November 1954. However, inadvertently, the name of late Maruti was not mutated to the record of rights of Survey No. 92/2 corresponding

to Gat No. 196/2.

8. The defendants contended on 1st April 1957, the predecessor-in-title of the defendants became the deemed purchasers of the suit lands. The names of the predecessor-in-title of the defendants were mutated to the record of rights of the suit land. However, in the year 1961-1962 the names of the predecessor-in-title of the defendants were removed purportedly pursuant to an order in a proceeding, being ALT 1/60. However, no such order and record are available with the revenue authorities.

9. The defendants further contended, though in the deeds of mortgage by conditional sale it has been mentioned that the possession of the suit properties was delivered to the mortgagees thereunder, yet, the predecessor-in-title of the defendants had been in possession and cultivation of the suit land in the capacity of the tenants thereof. Taking undue advantage of the errors in consolidation proceedings and deletion of the entry of tenancy in the record of rights of the suit land, the plaintiff has instituted the suit for redemption by concocting a story.

10. The trial commenced. The defendants preferred an application (Exhibit-66) to frame additional issue as to whether the

defendants proved that they were tenants in the suit lands. The defendants also prayed for reference of the aforesaid issue to the Agricultural Land Tribunal (ALT) under the provisions of Section 85A of Maharashtra Tenancy and Agricultural Lands Act, 1948 (“the Act of 1948”), as the ALT has exclusive jurisdiction to decide the question as to whether the defendants were the tenants of the suit land (Exhibit-67).

11. By orders dated 4th February 2021, the learned Civil Judge was persuaded to reject the applications observing, inter alia, that the suit was for redemption of mortgage and, thus, it was not necessary for the determination of the suit to frame the issue of tenancy and refer the same to the tribunal.

12. Being aggrieved, the defendants have invoked the writ jurisdiction.

WRIT PETITION NO. 593 OF 2022

13. Dhondiba, the deceased plaintiff, had instituted the suit for redemption of the mortgage with the assertion that the plaintiff had mortgaged the land bearing Gat No. 198, admeasuring 51 R situated at Mauje Kharatwadi, Tal-Sangli (the suit land) under a registered mortgage deed dated 10th May 1979 for the mortgage money of

Rs.3,000/-, in favour of Namdev Thorat, the deceased-defendant no. 1 and his brother Dhondiram, the predecessor-in-title of the defendant nos. 2 to 6. The plaintiff had accepted a further sum of Rs. 2000/- from the deceased-defendant no. 1 and his brother Dhondiram by way of additional mortgage money. Subsequently, the plaintiff called upon the defendants to accept the entire mortgage money, redeem the mortgage and execute the instrument. As the defendants declined and raised false and frivolous contentions, the plaintiff was constrained to institute the suit for redemption of the mortgage and execution of the instrument.

14. In the said Suit as well, the defendants raised the issue of tenancy, apart from contesting the claim for redemption of mortgage. An application to frame an additional issue of tenancy (Exhibit-89) and refer the same to ALT for determination under Section 85A of the Act, 1948, was filed.

15. By an order dated 6th February 2021, the learned Civil Judge was persuaded to reject the application opining, inter alia, that a bald contention about tenancy was raised in the written statement without disclosing material facts regarding the alleged tenancy and sans any material to substantiate the same. Moreover, the application

came to be preferred at a belated stage i.e. at the stage of final arguments in the suit.

16. Being aggrieved, the defendants have preferred these petitions.

17. I have heard Mr. Mankapure, the learned counsel for the petitioners, and Mr. Pawar, the learned counsel for the respondents, in both the petitions. With the assistance of the learned counsel for the parties, I have perused the material on record, including the averments in the complaints, the contentions in the written statements, and the impugned orders.

18. Mr. Mankapure, the learned Counsel for the petitioners submitted that in the Written Statement, the defendants had raised a categorical contention that Maruti Thorat, the predecessor-in-title of the defendants, was a tenant of the suit lands since the year 1937-1938. The suit properties have been under the cultivation of late Maruti Thorat and, after his demise, the defendants, in the capacity of the tenants thereof. The names of the tenants have been surreptitiously deleted from the record of rights in the year 1961-1962. In the face of these pleadings and the mutation entries Nos. 4942 and 4676, recording the names of the predecessor-in-title of the defendants as the

tenants of the suit land and the Record of Rights of the suit land showing the predecessor-in-title of the defendants to be in possession and cultivation of the suit land as a tenant thereof, the trial Court ought to have framed the issue of tenancy and referred the same for determination to the ALT under Section 85A of the Act of 1948.

19. Mr. Mankapure submitted that the mortgage of the suit lands would not extinguish the tenancy rights of the predecessor-in-title of the defendants and the defendants. Moreover, on 1st April 1957, the Tiller's Day, the predecessor-in-title of the defendants became the deemed purchaser of the suit lands. This being the settled position in law, the issue of of tenancy was required to be framed, and determined by the competent authority under the Act of 1948, as the jurisdiction of the Civil Court is expressly barred under Section 85 of the Act of 1948.

20. To buttress this submission, Mr. Mankapure placed a very strong reliance on the judgments of the Supreme Court in the cases of **Gundaji Satwaji Shinde Vs Ramchandra Bhikaji Joshi**¹ and **Papila Bai Vs Chavdas T. Bhortakke (Dead) by LR's and Ors.**²

21. In opposition to this, Mr. Pawar the learned Counsel for the respondents, would submit that the plea of tenancy was as vague as

¹ (1979) 2 SCC 495.

² AIR 2005 SC 662.

possible. First and foremost, according to Mr. Pawar, the suit properties bearing Gat No. 196(2) (1A) of Village Bahe, and Gat No. 211 (1B) of village Kharatwadi, Taluka Walwa, District Sangli, in RCS No. 91 of 2015, were not derived from old Survey No.. 77/7. Attention of the Court was invited to the contentions in the Written Statement that Gat No. 211 was bearing old Survey No. 76/2B. Mr. Pawar laid emphasis on the proceedings in the consolidation scheme which indicate that Survey No. 74/1A/2 was given Gat No. 198 and Survey No. 76/2B was given Gat No. 211. Moreover, the original Plaintiff, Dhondiram Patil was found in possession of the said lands when the consolidation scheme was implemented.

22. Mr Pawar also banked upon the certificate issued under Section 24(1) of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (“the Act of 1947”) to bolster up the case that old Survey No. 74/1/A/2 and 76/2/B were converted into Gat No. 198 and 211 of village Kharatwadi, Taluka Walwa and allotted to Dhondiram Patil, the deceased-plaintiff.

23. Co-relating the aforesaid documents with the entries in the Record of Rights of the suit land which indicate that the name of the predecessor-in-title of the defendants, Maruti Thorat, was deleted as

an ordinary tenant, since he was not the found in possession and cultivation of the suit land in the year 1961-1962, Mr. Pawar would urge that the predecessor-in-title of the defendants and the defendants did not take any action since the year 1961-1962. No proceeding was initiated for declaration of tenancy. In these circumstances, when the Application was filed at the fag end of the trial, the learned Civil Judge was fully justified in rejecting the Application.

24. Mr Pawar laid emphasis on the fact that in the Mortgage Deeds there are clear recitals to the effect that the possession of the mortgaged lands was delivered to the mortgagees under the said Mortgage Deeds. Those Mortgage Deeds nowhere referred to the alleged previous tenancy rights of the mortgagees. In fact, it is the case of the plaintiff that, the in the year 1985, the suit properties in Suit No. 91 of 1995 were delivered back to the plaintiff-mortgagor. Therefore, the plaintiff had not claimed any relief of the delivery of possession of the mortgaged property. This nature of the claim also deserves to be kept in view while determining the issue of tenancy.

25. In order to lend support to the submission that issue of tenancy can be framed and referred to the Tribunal only when the claim is *bona fide* and legally sustainable, Mr. Pawar placed reliance on

a judgment of the learned Single Judge of this Court in the case of **Nausabai Balu Patil Vs Kamal Chaugunda Patil.**³ Reliance was also placed on a Division Bench judgment of this Court in the case of **Pulmati Shyamlal Mishra & Anr Vs Ramkrishna Gangaprasad Bajpai & Ors.**⁴

26. I have carefully considered the material on record and given anxious consideration to the submissions canvassed by the learned Counsel for the parties. Evidently, there is no controversy over the factum of execution of the Mortgage Deed dated 10th May 1979 by the deceased plaintiff in respect of Gat No. 198, Village Bahe, Taluka Walwa, the suit property in RCS No. 118 of 2011 and the Mortgage Deed dated 29th May 1981 in respect of Gat No 196/2, Village Walwa, the suit properties in Suit No. 91 of 2015, in favour of Dondhiram and Maruti Thorat, the predecessor-in-title of the defendants.

27. Incontrovertibly, the Mortgage Deeds recorded that the possession of the mortgaged lands was delivered to the Mortgagees on the date of the execution of the respective Mortgage Deeds. The controversy between the parties revolves around the question as to whether the predecessor-in-title of the defendants and the defendants

³ 2002 (2) Mh.L.J. 440.

⁴ 1980 SCC OnLine Bom 114.

had been in possession of respective suit lands since prior to the execution of the Mortgage Deed and, if so, the character of their possession. Were the predecessor-in-title of the defendants and the defendants in possession of the suit lands, since prior to the execution of the Mortgage Deeds, in the capacity of the tenants thereof, is the moot question raised by the defendants.

28. Whether the aforesaid character of possession of the defendants-mortgagees since prior to the execution of the mortgage, is of any relevance in determining the rights of the parties?

29. Section 2(18) of the Act of 1948, defines a “tenant” as under:

“2(18) “tenant” means a person who holds land on lease and include,—

- (a) a person who is deemed to be a tenant under section 4;
- (b) a person who is protected tenant; and
- (c) a person who is permanent tenant;

and the word “landlord” shall be construed accordingly.”

30. Section 4 of the Act of 1948, declares who are the persons deemed to be tenants as under:

“4. Persons to be deemed tenants

(1) A person lawfully cultivating any land belonging to another persons shall be deemed to be a 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 on wages payable in cash or kind but not in crop share or a hired labourer cultivating the land under the personal supervision of the owner or any member of the owner's family, or
- (c) a mortgagee in possession.”

31. In the case of **Dahya Lal And Ors Vs Rasul Mohammed Abdul Rahim**,⁵ the Constitution Bench of the Supreme Court held that under Section 2(18) of the Act of 1948, the expression “tenant” means a person who holds land on lease and includes a person who is deemed to be a tenant under the provisions of Section 4. Section 2(18) of Act of 1948 has devised a special definition of tenant and included therein persons who are not contractual tenants. The only condition under the Act of 1948 is that the person claiming the status of a deemed tenant must be cultivating land lawfully and it is not a condition that he must cultivate land with the consent of or under authority derived directly from the landlord. In these circumstances, all persons, other than those mentioned in clauses (a), (b) and (c) of Section 4, who lawfully cultivate land belonging to other persons, whether or not their authority is derived directly from the owner of land, must be deemed

⁵ 1964 AIR 1320.

to be tenants of the lands.

32. Under Section 70(b) of the Act 1948, it is the duty of the Mamlatdar to decide whether a person is, or was at any time in the past, a tenant or a protected tenant or a permanent tenant. Section 85 of the Act of 1948 incorporates an express bar to the jurisdiction of the Civil Court by providing that no Civil Court shall have jurisdiction to settle and 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 be have purchased from his landlord, the land held by him which is by or under the said Act required to be settled, decided or dealt with by the Mamlatdar or the Tribunal, a Manager, the Collector or the MRT in appeal or revision or the State Government in exercise of their powers of control.

33. Section 85A provides that if any suit instituted in any civil Court involves any issue which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues under the said Act, the Civil Court shall stay the Suit and refer such suit to such competent authority for determination. Section 85 bars jurisdiction of the Civil Court to decide certain issues. Section 85A provides for reference of issues required to be decided under the

Act to the competent authority set up under the said Act.

34. The import of these provisions came up for consideration before the Supreme Court in the case of **Gundaji Satwaji Shinde (Supra)**, The Supreme Court enunciated that by an express provision contained in Section 85 of the Act of 1948, the jurisdiction of the civil Court to settle, decide or deal with any question which is by or under the Tenancy Act required to be decided, settled and dealt with by competent authority, is ousted. The Court must give effect to the policy underlying the statute set out in express terms in the statute. There is, therefore, no escape from the fact that the legislature has expressly ousted the jurisdiction of the Civil Court to settle, decide or deal with any question which is by or under the Tenancy Act required to be settled, decided or dealt with by any of the authorities therein mentioned.

35. Such being the concept of the tenant envisaged under the Act of 1948, and the statutory regime set up for the determination thereof, the factum of existence of prior tenancy before the character of the tenant changes into a mortgagee cannot be said to be without any significance. A useful reference in this context can be made to a judgment of the Supreme Court in the case of **Parmar Kanaksinh**

Bhagwansinh (Dead) by LRs Vs Makwana Shanabhai Bhikhabhai & Makwana Prabatbhai Bhikhabhai⁶ wherein the following questions (which by and large arise for consideration in these Petitions), were considered and decided by the Supreme Court.

“7. Questions which arise for our consideration and decision in the light of the aforesaid arguments of learned counsel for the contesting parties admit of their formulations thus:

(1) Does the lease-hold of a tenant (lessee) in a property merge in mortgage security if the same property is given by the landlord (lessor) to the tenant (lessee) as a mortgage security under a mortgage by conditional sale, as would debar the tenant from desisting the suit of the landlord-mortgagor for recovery of possession of such property by obtaining a decree for redemption of the mortgage ?

(2) When a plea of tenancy is raised with regard to suit property, an agricultural land, by a defendant who claims to be a tenant of such property under the BT&AL Act and seeks a reference of that issue by the Civil Court to the Mamlatdar under that Act for obtaining a finding thereon, can the Civil Court decide such issue by itself and proceed to decide the suit on the basis of the finding thereon ?”

36. After advertent to the relevant provisions of the Transfer of Property Act 1948 (“the Act of 1948”), the Supreme Court observed as under.

“9. Interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right because of Section 11 1(d) of the T.P. Act. What is

⁶ (1995) 2 SCC 501.

enunciated in Section 11 1(d) of the T.P Act cannot be doubted is the doctrine of merger. Merger takes place when a lesser estate is merged or drowned in a greater estate. Lease- hold held by a tenant or a lessee being a lesser estate and the right of reversion of the landlord (lessor) being a higher estate, the lessee's lease- hold right in respect of the property merges in reversion when that right of reversion, i.e., the landlord's (lessor's) right of reversion comes to the tenant or lessee which happens when the landlord having a right to sell his reversion to the tenant holding the lease- hold sells the whole of it to the tenant (lessee). But, in view of the arguments advanced on behalf of the plaintiff- appellant, what has to be seen is if the landlord of a property, the lease- hold of which is already with the tenant, gives that very property as mortgage security to the tenant (lessee) by executing a mortgage by a conditional sale for the amount borrowed by him from the latter, does merger of lease- hold right in that mortgage security occur. When the landlord mortgages the lease- hold property of the tenant to the tenant himself, he does not part with the right of reversion which he has in respect of that property. If that be so, merger of lease- hold estate in reversion cannot arise, inasmuch as, there cannot be any inconsistency or incompatibility in one person being the tenant and also the mortgagee of the same property, for in that event instead of the tenant paying rent to the landlord he may adjust it against the amount claimable by him as a mortgagee from the landlord. Moreover, if a lessee of a property takes a mortgage of the sum property from the landlord, it would be unreasonable to attribute to a tenant the intention to surrender the tenancy and to invoke the sophisticated doctrine of implied surrender as has been held by the Gujarat High Court in Patel Atmaram Nathudas V Patel Babubhai Kashavlal (AIR 1975 Guj 120)."

10.

11.

Hence, the leasehold of a tenant (lessee) in a property does not merge in mortgage security of that property, even it is given to him by the landlord (lessor) on a mortgage by conditional sale as would debar the tenant from desisting the suit of the landlord mortgagor for recovery of possession of such property by obtaining decree for redemption of the mortgage.

(emphasis supplied)

37. On the aspect of the reference of the plea of tenancy to the ALT, the Supreme Court enunciated the law as under:

“16. Section 70 of the BT&AL Act to which we have adverted already imposes a duty on the Mamlatdar to decide whether a person is an agriculturist or a tenant or a protected tenant or a permanent tenant when such person claims to be so under that Act. Further, Section 85 of the BT&AL Act to which also we have already adverted, in unequivocal terms says that in deciding any issue which is required to be decided by the Mamlatdar under the BT&AL Act no Civil Court has jurisdiction to decide it. Furthermore, section 85A, as it stood prior to its amendment by Gujarat Amendment Act No.5 in the year 1973 and as stands thereafter, requires that if any suit instituted in Civil Court involves the question of tenancy of 'present' or 'past', as the case may be, the same being required to be decided or dealt with by an authority competent under the BT&AL Act, the Civil Court has to stay the suit and refer the issue to such competent authority for determination and after receiving the decision thereon to dispose of the suit in accordance with such decision. Thus, the provisions in the BT&AL Act give no scope or room to think that

the plea of tenancy if raised by the defendants in a suit in a Civil Court, the same could be decided by the Civil Court. Thus we are constrained to answer the question in the negative by agreeing with the view expressed by the single Judge of the High Court in this regard in his Judgment and Order under appeal.”

38. The Supreme Court has in terms held that even if a landlord obtains a decree for redemption of the property, the mortgagee-cum-lessee can claim the right to continue in possession of the property as tenant under the Act of 1948.

39. In **Papila Bai (Supra)**, in a somewhat similar fact-situation, the Supreme Court has held that the Respondent was “lawfully” in possession of the land and “lawfully” cultivating the land and, therefore, was a deemed tenant within the meaning of Section 4 of the Act. Consequently, respondent No.1 continued to have the right as a tenant even after the redemption of mortgage and extinguishment of the interest of the mortgagee in possession. The right of the respondent No.1 which was originally derived from the mortgagee in possession, fructified into a full-fledged statutory right by reason of the provisions of the Act, because of his fulfilling the description of 'deemed tenant' within the meaning of Section 4 of the Act. The Supreme Court after adverting to the judgments in the case of **Dahya Lal (Supra)** and

Prabhu Vs Ramdev & Ors⁷ observed that the judgment of the High Court could hardly be faulted.

40. In the case at hand, the Trial Court has also proceeded on the premise that the issue of tenancy does not arise for determination as the Suit is for redemption of mortgage implying that the issue of tenancy is not the principal or main issue which the Court would be required to be determined in adjudication of the Suit for redemption of mortgage.

41. In the case of **Gundaji Satwaji Shinde (Supra)**, the Supreme Court has expounded that such a view is fallacious. The observations of the Supreme Court in paragraph 10 are material and, hence, extracted below.

“10. The High Court was of the view that the jurisdiction of the Civil Court to settle, decide or deal with any question which arises under the Tenancy Act and which is required to be settled, decided or dealt with by the competent authority under the Tenancy Act would alone be barred under Section 85. Proceeding therefrom, the High Court was of the opinion that if an issue arises in a properly constituted civil suit which the civil Court is competent to entertain, an incidental or subsidiary issue which may arise with reference to provisions of the Tenancy Act, the jurisdiction of the Civil Court to decide the same would not be ousted because the issue is not required to be decided or dealt with under the Tenancy Act. This view overlooks and

⁷ 1966 AIR 1721.

ignores the provision contained in s. 85-A. There can be a civil suit properly constituted which the Civil Court will have jurisdiction to entertain but therein an issue may arise upon a contest when contentions are raised by the party against whom the civil suit is filed. Upon such contest, issues will have to be framed on points on which parties are at variance and which have to be determined to finally dispose of the suit. if any such issue arises which is required to be settled, decide or dealt with by the competent authority under the Tenancy Act, even if it arises In a civil suit, the jurisdiction of the civil Court to settle, decide and deal with the same would be barred by the provision contained in s. 85 and the civil Court will have to take recourse to the provision contained in s. 85A for reference of the issue to the competent authority under the Tenancy Act. Upon a proper construction the expression "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" in s. 85A would only mean that if upon assertion and denial and consequent contest an issue arises in the context of the provisions of the Tenancy Act and which is required to be settled, decided and dealt with by the competent authority under the Tenancy Act, then notwithstanding the fact that such an issue arises in a properly constituted civil suit cognizable by the Civil Court, it would have o be referred to the competent authority under the Tenancy Act. Any other view of the matter would render the scheme of ss. 85 and 85A infructuous and defeat the legislative policy (see Bhimaji Shanker Kulkarni V Dundappa Vithppa Udapudi (AIR 1966 SC 166). The construction suggested by the respondent that the bar would only operate if such an issue arises only in a proceeding under the Tenancy Act, could render s. 85A infructuous or inoperative

or otiose.

If there, is an issue which had to be settled, decided or dealt with by competent authority under the Tenancy Act, the jurisdiction of the civil Court, notwithstanding the fact that it arises in an incidental manner in a civil suit, will be barred and it, will have to be referred to the competent authority under the Tenancy Act. By such camouflage of treating issues arising in a suit as substantial or incidental or principal or subsidiary, civil Court cannot arrogate to itself jurisdiction which is statutorily ousted. This unassailable legal position emerges from the relevant provisions of the Tenancy Act.”

(emphasis supplied)

42. It is true that the issue of tenancy cannot be referred to the ALT as a matter of course, in a mechanical manner and for the mere asking by the party. The civil Court is required to examine whether an issue which is required to be determined by the Tribunal under the provisions of the Act of 1948, arises for adjudication in the Suit.

43. In the case of **Pulmati Shyamlal Mishra & Anr Vs Ramkrishna Gangaprasad Bajpai & Ors**⁸ on which reliance was placed by Mr. Pawar, the Division Bench enunciated that, it is not correct to assume that the Court is under any obligation to frame and remit the issue of tenancy mechanically, merely on the same being raised in the written statement, without judicial satisfaction of its necessity and

⁸ 1980 SCC OnLine 114.

justification. Cases can be conceived, when tenancy plea may appear to be patently frivolous, fraudulent and part of the dilatory strategy, and may not by itself attract sections 85 and 85A of the Tenancy Act. Though Sections provide for remittance of issues only if and when the same are framed on being found to arise on such scrutiny and it is after that stage that the Civil Court ceases to have jurisdiction with regard to the same till the finding is certified by the tenancy authorities.

44. Following the aforesaid pronouncement and the judgment of the Supreme Court in the case of **Thomas Anthony Vs Varkey Varkey**,⁹ in the case of **Nausabai Balu Patil (Supra)**, on which reliance was placed by Mr. Pawar, it was observed that it is abundantly clear that it is only a bona fide and legally sustainable claim of tenancy that can be referred to the Competent Authority in exercise of the provisions of Section 85A of the Bombay Tenancy and Agricultural Lands Act, 1948.

45. On the aforesaid touchstone, reverting to the facts of the case, it has to be examined whether, the defendants had succeeded in raising any such *bona fide* and legally sustainable case. First and foremost, it is imperative to note in the Written Statements, the defendants have raised categorical contentions that Maruti Thorat, the

⁹ (2000) 1 SCC 35.

predecessor-in-title of the defendants, was in possession and cultivation of the suit lands since the year 1937-1938 as a tenant thereof. His name was mutated to the Record of Rights of the suit lands till the year 1961-1962 as a tenant. Mutation Entry Nos.4942 and 4676 were effected. In the year 1961-1962, the name of Maruti Thorat was unlawfully removed from the cultivators column. There is no order and record of the proceedings in ALT No. 1 of 1960 pursuant to which the name of Maruti Thorat was deleted.

46. *Prima facie*, there is satisfactory and adequate pleadings regarding the plea of tenancy. It cannot be said that the plea of tenancy is bald and vague. There is reference to the Mutation Entries, Record of Rights and the circumstances in which the names of the predecessor-in-title of the defendants was deleted from the Record of Rights of the said land.

47. This Court also finds that the Record of Rights of the suit land bearing Survey No. 77/7, records the name of the predecessor-in-title of the defendants to the said land since the year 1937-1938 up to the year 1960-1961. Likewise the Record of Rights of land bearing Survey No. 74/1 records the name of Maruti Thorat as a tenant thereof since the year 1937-1938 up to 1960-1961 with an endorsement that

the name came to be deleted in the year 1961-1962 pursuant to the orders in the proceedings ALT No. 1 of 1960. The Mutation Entry No. 4942 records that the name of Maruti Thorat was recorded as the tenant of the lands bearing Survey No. 74/1 and 77/7, and the said entry was certified on 16th November 1954.

48. The aforesaid documents lend, *prima facie*, credence to the submission on behalf of the petitioners-defendants. Whether there is substance in the contention of the defendants that in the consolidation proceedings the Gat Numbers were incorrectly recorded, whether the deletion of the name of Maruti Thorat as a tenant of the suit lands was unlawful, without there being any order or proceedings in the ALT case No. 1 of 1960, and whether the predecessor-in-title of the defendants ceased to be a tenant since the year 1960-1961 and onwards, are the matters which bear upon the claim of tenancy and fall within the province of the exclusive jurisdiction of the Mamlatdar under Section 70(b) of the Act of 1948. The Court cannot lose sight of the fact that there is overwhelming material to show that Maruti Thorat was the tenant of the suit land for over 25 years, including on the Tiller's Day. In that view of the matter, whether the disruption in the state of affairs, which continued for over 25 years, was in a lawful

manner and in conformity with the provisions of the Act 1948 would be a matter to be examined by the authorities under the Act of 1948.

49. For the forgoing reasons, I am inclined to hold that the issue of tenancy arises for adjudication in the Suits and the said issue is required to be referred to the competent authority under the Act of 1948 for adjudication.

50. The Petitions, therefore, deserve to be allowed. Hence the following order:

: O R D E R :

- (i) Petitions stand allowed.
- (ii) The Trial Court is directed to frame the issue of tenancy in both the Suits.
- (iii) The Trial Court shall pass an appropriate order to refer the issue of tenancy to the competent authority under Section 85A of the Act of 1948.
- (iv) The competent authority shall make an endeavour to decide the issue of tenancy and return a finding to the Trial Court within a period of 6 months from the date of the

receipt of the reference by the Trial Court.

(v) The parties shall appear before the Trial Court on 23rd June 2025.

(vi) In the circumstances, there shall be no order as to costs.

(vii) Rule is made absolute in the aforesaid terms.

(N.J. JAMADAR, J)