

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
SECOND APPEAL NO.335 OF 2023

Laxman Tatya Ingole & Anr.

...Appellants

*Versus*

Mahadeo Tatoba Ingole & Ors.

...Respondents

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Mr. Ajay A. Joshi, for the Appellants.

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CORAM: MADHAV J. JAMDAR, J.  
DATED: 7<sup>th</sup> JULY 2025

**JUDGMENT:**

**1.** Heard Mr. Ajay Joshi, learned Counsel appearing for the Appellants. He submits that following substantial questions of law are raised in this Appeal.

**A)** Whether the land acquired under the provisions of BT & AL Act of 1947 can be termed as 'Ancestral Property of Joint Hindu Family of Plaintiff and defendants or whether tenancy right can be said to be right in ancestral property?

**B)** Whether the learned Judge of appellate court committed serious error by considering the subsequent development i.e. death of def no1 [Father of plaintiff and defendants] with out giving an opportunity to the appellants by framing issue under Order 22 rule 5 of CPC 1908?

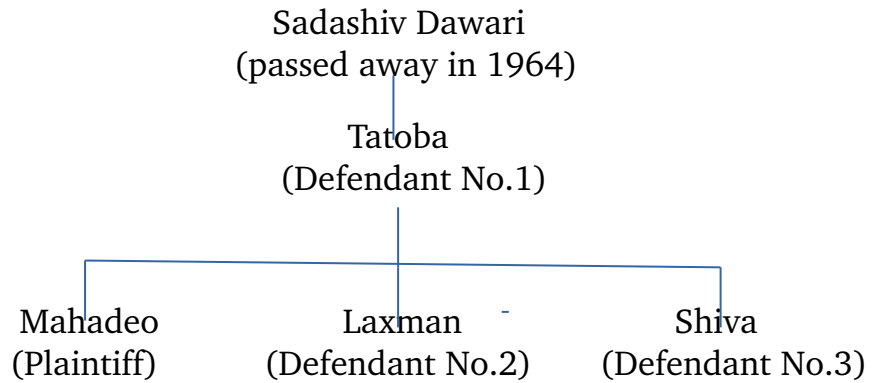
**2.** The present Respondent No.1 - Mahadeo Tatoba Ingole filed

Regular Civil Suit No.124 of 2006 seeking partition and separate possession. It is his contention that, the suit property is an ancestral property.

**3.** The learned Trial Court has held that, the suit property is not the ancestral property of the Plaintiff and Defendants and that Defendant No.1 was the possessor of the suit property and he is the absolute owner of the suit property and therefore, dismissed the suit.

**4.** The Plaintiff - Mahadeo had filed Regular Civil Appeal No.138 of 2011 and the said Appeal was allowed by the impugned Judgment and Decree dated 18<sup>th</sup> June, 2022 passed by the learned Extra Joint Additional District - Judge, Pandharpur. By the said impugned Judgment and Decree passed in Regular Civil Appeal No.138 of 2011, the decree passed by the learned Trial Court of dismissal of the suit has been set aside and suit has been decreed. It has been declared that, the Plaintiff and Defendant Nos.2 to 7 have each 1/7<sup>th</sup> share in the suit property. The learned Appellate Court *inter alia* recorded the finding that the suit property was in possession and cultivation of Sadashiv Laxman Dawari i.e. the father of the Defendant No.1 and the grand father of Plaintiff and Defendant Nos. 2 to 7 as tenant.

**5.** Before considering the substantial questions of law raised by Mr. Ajay Joshi, learned Counsel appearing for the Appellants, it is necessary to set out the genealogy of the family.



**6.** The learned Appellate Court on the basis of the evidence on record held that Sadashiv was in possession and cultivation of the suit property as a tenant. The learned Appellate Court apart from the evidence on record also relied on the admission which has been given by the Defendants in paragraph 6 of the written statement wherein it is admitted that the suit property was in possession and cultivation of Sadashiv Laxman Dawari up to 1964 in his capacity as the tenant. The learned Appellate court has also relied on the fact that revenue record produced by the parties show that Sadashiv Laxman Dawari was declared as protected tenant under Section 3(a) of The Bombay Tenancy and Agricultural Lands Act, 1948 (“**BTAL Act**”) with respect to the suit property. The same is evident from Mutation Entry No.92 dated 29<sup>th</sup> June, 1950 wherein name of Sadashiv Laxman Dawari was entered as protected tenant under the BTAL Act.

**7.** In view of above position, the learned Appellate Court has rightly held that, as per the provisions of Section 32 of the BTAL Act Sadashiv has deemed to have purchased the suit property on the first day of

April, 1957 i.e. the tillers day. Therefore, once Sadashiv becomes the absolute owner of the suit property being the tenant of the suit property, by no stretch of imagination, it can be said that Defendant No.1-Tatoba is the absolute owner of the suit property under the provisions of BTAL Act being the deemed owner as his name has been entered to the revenue record. Thus, there is no substance in the first substantial question of law.

**8.** As far as the second substantial question of law is concerned, the Appellants is trying to submit that deceased Tatoba has executed a will in favour of the present Appellants i.e. Defendant Nos.2 and 3. Perusal of the record shows that, the same was not pointed out to the Appellate Court. In any case, the said document is not even produced before this Court in this Second Appeal. Accordingly, there is no substance in the second substantial question of law raised on behalf of the Appellants.

**9.** Accordingly, the Second Appeal is dismissed, however, with no order as to costs.

**10.** In view of the disposal of the Second Appeal, nothing survives in the Interim Application and the same is also disposed of.

[MADHAV J. JAMDAR, J.]