

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

WRIT PETITION NO. 2395 OF 2024

1. Pramod Tukaram Dhoke
2. Smt. Pratibha Tukaram Dhoke

...Petitioners

V/s.

1. Vishram Vithal Dhoke since deceased through legal heirs Sr. No.2.1 to 5
2. Pradip Vishram Dhoke since deceased through legal heirs
- 2.1 Pratibha Pradeep Dhoke
3. Sanjay Vishram Dhoke
4. Vitthal Vishram Dhoke
5. Uttam Vishram Dhoke
6. Dilip Payaji Padelkar
7. Ganesh Rajaram Wadekar
8. Hemalata Hemant Wadekar
9. Alka Ashok Rane
10. Bhiksen Tukaram Dhoke

...Respondents

**WITH
WRIT PETITION NO.15105 OF 2022**

1. Uttam Vishram Dhoke
2. Pratibha Pradeep Dhoke
3. Sanjay Vishram Dhoke
4. Vitthal Vishram Dhoke

...Petitioners

V/s.

1. Pramod Tukaram Dhoke
2. Smt. Pratibha Tukaram Dhoke
3. Dilip Payaji Padelkar
4. Ganesh Rajaram Wadekar
5. Hemalata Hemant Wadekar
6. Alka Ashok Rane

MEGHA
SHREEDHAR
PARAB

Digitally signed by
MEGHA SHREEDHAR
PARAB
Date: 2025.03.11
19:12:11 +0530

7. Bhiksen Tukaram Dhoke
8. The Maharashtra Revenue Tribunal, Mumbai.
9. Sub-Divisional Officer, Kankavali
10. Ld. Tahsildar, Devgad, District-Sindhudurg.
11. The State of Maharashtra.

...Respondents

Mr. Bhushan Walimbe *with Ms. Shalu D. Jadhav i/b. Ms. Preeti Walimbe for the Petitioners in WP/2395/2024 and for Respondent Nos.1 and 2 in WP/15105/2022.*

Mr. Vinayak R. Kumbhar *for Petitioners in WP/15105/2022 and for Respondents in WP/2395/2022.*

Mr. J.P. Patil, *AGP for Respondent Nos.8 to 11-State in WP/15105/2022.*

CORAM: SANDEEP V. MARNE, J.

Judgment reserved on: 24 February 2025.

Judgment pronounced on: 11 March 2025.

Judgment:

1) These are cross Petitions filed by the affected parties challenging the order dated 20 February 2019 passed by the President, Maharashtra Revenue Tribunal, Mumbai (**MRT**). Writ Petition No.2395 of 2024 is filed by the branch of Tukaram Dhoke to the extent of denial of share in a tenanted lands described at Sr. Nos. (B), (C) and (D) of the Plaint. Writ Petition No.15105 of 2022 is filed by the branch of Vishram Dhoke to the extent of the Maharashtra Revenue Tribunal (**MRT**) upholding

the order of Tehsildar holding that suit properties described at Sr. No. (A) are joint family tenanted properties. Thus, it is the contention of the heirs of Vishram Dhoke that all the suit properties are exclusively owned by Vishram Dhoke and Tukaram Dhoke does not have any share in the same. Whereas the branch-Tukaram Dhoke believes that all the suit properties are joint family properties and that children of Tukaram must get a share therein.

2) Briefly stated, facts of the case are that Vitthal R. Dhoke was the head person of the family, whose wife's name was Girija. Vitthal and Girija had two sons -Tukaram and Vishram and one daughter Smt. Gopika Payaji Padelkar. There are total four properties at Village- Jamsande, Taluka-Deogad, District-Sindhudurg, which are divided into four groups as under:

Property "A"

Sr. No.	New S.No.	Old S.No.	Hissa No.	Area
1	52	444	1	0-08-6
2	57	528	6/2	0-05-3
3	34	388	1/7	0-44-0

Property "B"

Sr. No.	New S.No.	Old S.No.	Hissa No.	Area
1	34	388	2/6B	0-04-5 0-01-0
2	28	400	1/13B	0-01-5 0-00-5

Property “C”

Sr. No.	New S.No.	Old S.No.	Hissa No.	Area
1	35	387	2/1B	0-16-0 0-09-0
2	35	387	3/D	0-24-5

Property “D”

Sr. No.	New S.No.	Old S.No.	Hissa No.	Area
1	27	405	6C	0-00-2 0-00-6
2	28	400	7A	0-52-0 0-08-0
3	28	400	2/8	0-02-0
4	34	388	2/1/2	1-00-0
5	28	405	1/13b	0-01-5 0-00-5

3) Tukaram filed Special Civil Suit No.106 of 1991 seeking partition of all the four properties A, B, C and D as well as for injunction. Vishram V. Dhoke was impleaded as Defendant No.1 and his wife Kaushalyabai Vishram Dhoke was impleaded as Defendant No.2 to the Suit. Sister of Tukaram and Vishram - Smt. Gopika Payaji Padelkar was impleaded as Defendant No.3 to the Suit. In the Suit, Defendant Nos.1 and 2 filed written statement *inter alia* contending that the suit properties are tenanted properties and the suit cannot be decided in absence of declaration of tenancy by the competent court.

4) Accordingly, the Trial Court framed Issue No.3 as to ‘whether the Defendants prove that suit property is an exclusive

tenancy property of Defendants?’ and passed order dated 4 November 1996 referring Issue No.3 to the Tenancy Court under Section 85 of the Bombay Tenancy and Agricultural Lands Act, 1948 (**Tenancy Act**). The reference was registered as Tenancy Case No. 45 of 1997 before Tehsildar and Agricultural Lands Tribunal (**ALT**). The ALT passed order dated 2 June 2012 in the Reference holding that the suit property ‘A’ is joint family tenancy whereas the suit property Nos. ‘B’ and ‘C’ are individual tenanted properties of Vishram Dhoke. The property at Serial No. ‘D-1’ was again held to be joint family tenanted property whereas claim of joint tenancy in respect of property at Sr.Nos. D-2 to D-5 was rejected holding the same to be individual tenanted properties of Vishram.

5) Both Tukaram Dhoke and Vishram Dhoke challenged order dated 2 June 2012 before the Sub-Divisional Officer, Kankavali (**SDO**). Tenancy Appeal No.64 of 2012 filed by Vishram came to be allowed and it was held that suit property No. ‘A’ was individual tenanted property of mother-Girijabai Vitthal Dhoke, who had bequeathed the same to Vishram through her will. Tenancy Appeal No.63 of 2012 filed by Tukaram/his heirs in respect of rejection of joint tenancy claim in respect of suit properties B, C and D was however, rejected.

6) Heirs of Tukaram Dhoke filed Revision Application Nos.85 of 2016 and 86 of 2016 challenging the two orders dated 17 February 2016 passed by the SDO, before MRT. The MRT has

allowed Revision Application No.86 of 2016 setting aside the order of the SDO and confirmed ALT's order dated 2 June 2012 *qua* suit property 'A'. The Revision Application No.85 of 2016 was however, dismissed by confirming the orders passed by the SDO and ALT *qua* suit property Nos. 'B', 'C', and 'D'. Heirs of Tukaram are aggrieved by order dated 20 February 2019 *qua* rejection of their claim of joint tenancy in respect of suit properties 'B', 'C' and 'D' and have accordingly filed Writ Petition No.2395 of 2024. On the other hand, heirs of Vishram Dhoke aggrieved by the very same order of 20 February 2019, to the extent it declares suit property No. 'A' to be joint family property. Both the Petitions are heard and decided together.

7) Mr. Walimbe, the learned counsel appearing for the Petitioners in Writ Petition No.2395 of 2024 and for contesting Respondent Nos.1 and 2 in Writ Petition No.15105 of 2022 (heirs of Tukaram Dhoke) would submit that all the three authorities have erred in holding Vishram to be individual tenant in respect of the suit property Nos. 'B', 'C' and 'D'. He would submit that age of Vishram as on Tiller's day of 1 April 1957 was hardly 15 years and it was inconceivable that he was individually cultivating the tenanted land for himself. That therefore the cultivation ought to have been inferred for the benefit of joint family considering the tender age of Vishram as on the Tiller's day. He would further submit that the MRT has ultimately accepted that the mother was cultivating the suit property No. 'A' for the benefit of the entire joint family and that it is therefore

inconceivable that there can be two different types of cultivation viz., joint family cultivation by mother of suit property 'A' and individual cultivation by Vishram of properties- 'B', 'C' and 'D'. That therefore cultivation of suit properties 'B', 'C' and 'D' ought to have been considered as cultivation for the joint family. He would submit that this is particularly true on account of the age at which Vishram was on the Tiller's day of 1 April 1957.

8) So far as Writ Petition No.15105 of 2022 is concerned, Mr. Walimbe would submit that mother-Girijabai was widow as on the Tiller's day of 1 April 1957 and if her personal cultivation of suit property 'A' was to be claimed, she would not have been in a position to purchase the tenanted land at Sr. No. 'A' on account of her disability under the provisions of Section 32F of the Tenancy Act and that purchase would have happened only after her death, by Tukaram and Vishram jointly. Therefore, Vishram's contention of Girijabai individually cultivating the suit property 'A' and purchasing the same for herself is something which is impermissible under Section 32F of the Tenancy Act. The fact that there was no postponement of right of purchase of suit property 'A' and the fact that purchase took place during lifetime of Girijabai are indicators of fact that there was joint cultivation for family and proviso to Section 32F of the Tenancy Act kicked in. That therefore ALT and MRT have rightly held suit property 'A' to be in joint cultivation of the family. He would accordingly pray for setting aside of order dated 20 February 2019.

9) Mr. Kumbhar, the learned counsel appearing for the Petitioners in Writ Petition No.15105 of 2022 and for Respondent Nos.1, 2 and 5 in Writ Petition No.2395 of 2024 (heirs of Vishram) would submit that none of the suit properties were in the cultivation of joint family. That therefore, the ALT and MRT have grossly erred in holding that suit property No. 'A' is in the joint family tenancy. That mother-Girijabai is found to be personally cultivating the suit property No. 'A' and accordingly personally purchased the same in her own name and later executed Will in favour of Vishram in respect thereof. That therefore Tukaram did not have semblance of right *qua* suit property No. 'A'. That in respect of suit property Nos. 'B', 'C' and 'D', there are concurrent findings recorded by all the three authorities that the same are in individual cultivation and that the concurrent findings do not warrant interference in exercise of jurisdiction under Article 227 of the Constitution of India. He would accordingly pray for setting aside order passed by the MRT in respect of suit property No. 'A' by holding the same to be of mother-Girijabai's individual tenanted property and for dismissal of Writ Petition No.2395 of 2024 by upholding the order passed by MRT *qua* properties at Sr. Nos. 'B', 'C' and 'D'.

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

11) The reference to tenancy court arose due to framing of Issue No.3 by the Court of Civil Judge, Senior Division in Special Civil Suit No.106 of 1991, later renumbered as Regular Civil Suit No.57 of 2000. As observed above, the Suit was originally filed by Tukaram Dhoke claiming $\frac{1}{2}$ share in all the four suit properties 'A', 'B', 'C' and 'D' by impleading his brother -Vishram and Vishram's wife- Kaushalyabai as well as sister-Gopika Payaji Padelkar as Defendants. Defendant Nos. 1 and 2 (Vishram and Kaushalyabai) filed written statement raising claim of tenancy in respect of the suit properties and claimed that all the suit properties were exclusively tenanted properties of Vishram. The Court of Joint Civil Judge, Senior Division, Ratnagiri framed Issue No.3 relating to claim of tenancy and directed reference to the Tenancy Court under Section 85 of the Tenancy Act.

12) ALT accordingly conducted enquiry into the tenancy claims. So far as properties at Serial No. 'A' are concerned, the ALT held that after mother Girijabai's death, names of Vishram, legal heirs of Tukaram and sister-Gopikabai were mutated to revenue records. ALT also observed that this is the major factor for holding that the tenancy of Girijabai could not be individual and the same was for the benefit of the entire family.

13) In my view, Girijabai could not have been held as an individual tenant in respect of suit property 'A' in view of provisions of Section 32F of the Tenancy Act. Under Section 32F, if the tenant is a widow, the right to purchase under Section 32

of the Tenancy Act can be exercised only by successor in title of the widow after her death. In short, widow does not have right to purchase tenanted land under Section 32 of the Tenancy Act and the deeming fiction under Section 32 gets postponed till the disability of the widow ceases to exist and the successor in title of the widow can purchase the land within a period of one year from the date on which widow's interest in the land ceases to exist. Mother-Girijabai was admittedly widow on the Tiller's day of 1 April 1957. She therefore did not have right to purchase the land under the provisions of Section 32F (1)(b) of the Tenancy Act and the deeming fiction of Section 32 would have got postponed during her lifetime. Further under proviso to clause (b) of sub-section (1) of Section 32F of the Tenancy Act, if the widow happens to be a member of joint family, the provisions of Section 32F of the Tenancy Act do not apply if one of the members of the joint family is outside the categories mentioned under Section 32F of the Tenancy Act. Thus, where the land is in cultivation of the joint family, mere presence of widow in the joint family does not postpone purchase of the land under Section 32 and it is lawful for the joint family to purchase the land even during lifetime of the widow. The fact that Girijabai purchased suit property at Serial No. 'A' during her lifetime would necessarily mean that she has purchased the same by taking benefit of proviso to Section 32F (1)(b) of the Tenancy Act. If the claim of Girijabai's personal cultivation is now pressed, the same would render purchase of the land by Girijabai during her lifetime *ab initio void*. If land was indeed purchased by Girijabai

in her personal capacity, the purchase would take place only by Vishram and Tukaram after Girijabai's death. Thus, in either of the contingencies, Girijabai can never become individual purchaser of suit property at Serial No. 'A'. In my view, therefore the findings recorded by the ALT and MRT regarding joint family tenancy in respect of the suit properties at Serial No. 'A' cannot really be found fault with.

14) So far as suit property Nos. 'B', 'C' and 'D' are concerned, there appears to be fundamental error in the understanding of order passed by the ALT by both the parties especially about property at Serial No. 'D'. ALT has dealt with the five properties described under head "D" and has held that property at 'D1' is a joint family tenancy property. The ALT has held that the property at Serial No. D(1), Survey No.27 (old Survey No.405) Hissa No.6C was tenanted property of Vitthal and there is house No.816 located thereat. Therefore, the property at Serial No.D(1) is held to be in joint tenancy of the entire family. The property at Serial No.D(2) is held to be not in the joint family tenancy. Property at Serial No. D(3) is held to be Vishram's individual tenancy property. No specific finding is recorded with regard to property at Serial No.D(4). Property at Serial No. D(5) is held to be individual tenancy property of Vishram.

15) It must be observed that these are concurrent findings recorded by the ALT, SDO and MRT with regard to properties at Serial Nos. 'B', 'C' and 'D'. In exercise of jurisdiction under

Article 227 of the Constitution of India, it would be impermissible for this Court to interfere in the said concurrent findings recorded by the three authorities by re-appreciating the evidence on record. It is not that all suit properties Nos. 'B', 'C' and 'D' are held to be individual tenancies of Vishram. The suit property at Serial No. D(1) is held to be joint family tenancy property. No material is produced on record for this Court to interfere in the concurrent findings recorded by ALT, SDO and MRT.

16) Mr. Walimbe has strenuously contended that the suit properties at Serial Nos. 'B', 'C' and 'D' also ought to have been held to be joint family tenancy properties considering the age of Vishram at the time of Tiller's day of 1 April 1957. He would contend that Vishram was of tender age of 15 years as on 1 April 1957 and it was impossible for him individually and personally to cultivate suit property Nos. 'B', 'C' and 'D' as on 1 April 1957. However, the assertion of Mr. Walimbe that Vishram was 15 years of age as on 1 April 1957 is belied by contents of the Plaint in Special Civil Suit No.106 of 1991. In the Plaint filed in that Suit in the year 1991, age of Vishram is described as 58 years and age of Tukaram is described as 56 years. If Vishram was 58 years old in 1991, he would be at least 24 years old in 1957. Therefore, the whole theory of minority of Vishram now sought to be urged directly before this Court is factually wrong. If age of Vishram was indeed 15 years as on 1 April 1957, he would have been 48/49 years of age in the year 1991. However, Tukaram

himself described age of Vishram in the Suit No.106 of 1991 to be 58 years. The contention of alleged minority of Vishram on the Tiller's day is thus totally baseless and is raised only to be rejected. Even otherwise, the Tenancy Act does recognise tenancy rights of even minor persons and the same merely gets postponed till attaining the age of majority. Merely because tenant is minor as on the Tiller's day of 1 April 1957, the same neither extinguishes tenancy nor raises automatic presumption of joint family cultivation. In any case, it is not necessary to delve deeper into this aspect as the very claim of heirs of Tukaram about minority of Vishram as on Tiller's day of 1 April 1957 is found to be factually incorrect.

17) I therefore do not find any valid reason to interfere in the concurrent findings recorded by the ALT, SDO and MRT *qua* suit property Nos. 'B', 'C' and 'D'. Resultantly, the challenge raised by both the sides to the orders passed by the MRT must fail.

18) Resultantly, Writ Petition Nos.2395 of 2024 and 15105 of 2022 are dismissed without any orders as to costs.

[SANDEEP V. MARNE, J.]