
(2023) 01 BOM CK 0001

Bombay High Court

Case No: Writ Petition No. 11140 Of 2015

Bayakka W/O Jakoba
Patil And Anr

APPELLANT

Vs

Ravindra Shamrao
Deshpande And Anr

RESPONDENT

Date of Decision: Jan. 3, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 226, 227
- Hindu Succession Act, 1956 - Section 14(1), 14(2), 31, 32, 32A, 32B, 32C, 32D, 32E, 32F, 32F(1)(a), 32G, 32G(3), 32H, 32I, 32J, 32K, 32L, 32M, 32N, 32O, 32P, 32Q, 32R, 74

Citation: (2023) 01 BOM CK 0001

Hon'ble Judges: M.M.Sathaye, J

Bench: Single Bench

Advocate: Vishwanath Talkute, Pradeep Dalvi

Final Decision: Dismissed

Judgement

M.M.Sathaye, J

1. Rule. Rule is made returnable forthwith. Learned counsel for the Respondents waive service. Heard finally by consent of parties.

2. This petition filed under Articles 226 and 227 of the Constitution of India, seeks to quash and set aside the Judgment and Order dated 30.10.2014

passed by the Member, Maharashtra Revenue Tribunal, Pune (Ã¢â€M.R.T.Ã¢â€, for short) in Tenancy Revision No. TNC/REV/15/B/2000/KP by

which, the Order dated 20.01.2000 passed by the Sub-Divisional Officer, Gadhinglaj Sub-Division, Gadhinglaj in Tenancy Appeal No. 30 of 1996 is

confirmed, by which Judgment and Order dated 30.10.1996 passed Additional Tahsildar and ALT Chandgad in Tenancy Case No. 32G-Dukkarwadi-

188 is confirmed. In short, this petition seeks to challenge concurrent findings.

3. The matter arises out of Bombay Tenancy and Agricultural Land Act, 1948, which is hereinafter referred to as "the said Act", for short. Land

bearing survey No. 134, New Gat No. 587 admeasuring 67.8 Ares of village Dukkarwadi, Taluka Chandgad, District Kolhapur, is the subject matter

property, which is hereinafter referred to as "the said land", for short.

4. In view of arguments, which will be recorded below, I find it compelling to check facts necessary for deciding this petition, which are as below :

(i) The said land was originally owned by one Vitthal Nathu Deshpande who was the husband of Smt. Radhabai w/o Vitthal Deshpande. Said Vitthal

expired on 29.01.1951, leaving behind widow Radhabai and son Shamrao. After the death of Vitthal, name of Shamrao was entered in the Revenue

records vide Mutation Entry No. 1153 dated 15.06.1951. It is not disputed that said Shamrao had executed a registered maintenance deed in favour of

his mother Radhabai on 12.12.1956. Therefore, on tillers day i.e. 01.04.1957, the subject matter land stood in the name of Radhabai alone, who

was widow at the relevant time.

(ii) It appears that the concerned Tahsildar had suo moto started proceedings under Section 32G of the said Act in the year 1960, but as the landlady

Radhabai was a widow at the relevant time, the said proceedings were dropped by order dated 31.10.1960. Thereafter, further inquiry was taken up

by Tahsildar, Chandgad in the year 1974. However, it was revealed that both landlady and original tenant were dead by then and landlady had

executed a Will in favour of her grand children, who are present Respondents. As both, grand children of the Radhabai were minors, the inquiry under

Section 32 was postponed and it appears that the said inquiry was again revived in the year 1987, when the Additional Tahsildar and ALT proceeded

to fix purchase price of suit land in favour of the present Petitioners.

(iii) Feeling aggrieved by the said order, Tenancy Appeal No. 13/1987 was preferred before the S.D.O, Gadhingalaj, who dismissed the same by order

dated 17.04.1989.

(iv) Being aggrieved by this order, a Revision came to be filed by present Respondents in Maharashtra Revenue Tribunal Camp at Kolhapur. It was

Revision Application No. MRT-KP-77/1989, in which, a detailed order dated 15.02.1991 was passed considering all the facts on record, thereby

remanding the matter to Tahsildar Chandgad for holding further inquiry under Section 32F(1)(a) of the said Act.

(v) Pursuant to remand, during inquiry, statements of said Shamrao and power of attorney holder of Petitioners (Ramu Zilu Turkewadkar) were

recorded and by dated 30.10.1996, the Additional Tahsildar and ALT, Chandgad, declared the purchase of suit land as ineffective under Section

32G(3) of the said Act.

(vi) The present Petitioners alongwith one Smt. Rangubai Somana Varpe, (legal heirs of original Tenant), challenged the said order dated 30.10.1996

by filing Tenancy Appeal No. 30 of 1996 before the S.D.O., Gadhinglaj Sub-Division, Gadhinglaj under Section 74 of the said Act. This Appeal was

dismissed by the Judgment and Order dated 20.01.2000.

(vii) It was challenged by Petitioners by filing Revision Application No. TNC/REV/15/B/2000/KP before the Maharashtra Revenue Tribunal and that

is how the present impugned Order came to be passed on 30.10.2014 by Member, M.R.T., Pune. It appears that the said Rangubai Somana Varpe

was deleted during pendency of the Revision application before the MRT.

5. In short, the scope of this petition is necessarily to check whether the Authority below has held proper inquiry as contemplated under Section 32F(1)

(a) of the said Act, post / as per Order dated 15.02.1991 and whether there is any perversity or error apparent on the face of the record or

jurisdictional transgression.

6. Heard both the sides in detail on 09.12.2022. Perused the record.

7. Learned counsel Mr. Talkute for the Petitioners, argued that the Authorities i.e. Tahsildar and ALT, Chandgad have not conducted inquiry as

directed under the order of M.R.T. dated 15.02.1991. It is further argued that in order to give a go-by to the proceedings under the said Act and in

order to save the land from being purchased by the agricultural tenant, Shamrao has executed the document in favour of Radhabai and as such on the

tillers' day, Radhabai alone was not the owner and therefore, the right of tenant to purchase the said land could not have been postponed. It is

further argued that the fact that suit land was subsequently transferred in the name of Radhabai and subsequently in the name of Respondents (who

are her grand children), the real intention is clear, which was to by pass the provision of the said Act. It is also argued that in the statement recorded

during inquiry, Shamrao has admitted that there is no partition deed between him and his mother Radhabai and therefore, it should have been held that

there existed another member in the family as contemplated under Section 32F of the said Act. It is argued that therefore, impugned Orders need

interference.

8. On the other hand, the learned counsel Mr. Dalvi for the Respondents argued that the document executed by Shamrao in favour of his mother

Radhabai is a registered document dated 12.12.1956 which is much prior to the tillers' day and there is nothing concrete as such, to conclude that

the said act of the Shamrao is for by-passing the provisions of the said Act. He further argued that under Section 14(1) of the Hindu Succession Act

1956, a hindu woman holds any property possessed by her whether acquired before and after the commencement of that Act, as full owner and not as

a limited owner. Learned counsel invited my attention to Section 14(1) of the Hindu Succession Act and contended that Radhabai cannot be held as

limited owner in the teeth of provision of Section 14(1) of the Hindu Succession Act. He argued that Shamrao cannot be held to be a member of joint

family outside the category mentioned in sub section 1(a) i.e. widow in present case as contemplated under Section 32F of the said Act. Learned

counsel further invited my attention to full statement recorded by Shamrao and urged that a single line in his statement or solitary portion thereof,

should not be and can not be read out of context, as an admission on behalf of Shamrao about absence of partition or existence of joint family. He

pointed out other portions from Shamrao's statement, where it is stated that after the execution of maintenance deed, Shamrao had no connection

with the said land and the action of Radhabai of executing Will in favour of present Respondents is totally independent event and Shamrao had no

connection thereto. Shamrao has also stated that he and his mother Radhabai was staying together only till execution of maintenance deed. He has

further stated that he individually owned other properties, which are different from the present subject matter land. On these grounds, the learned

counsel for the Respondents, urged that it cannot be said on re-appreciation of evidence that Radhabai was not exclusive owner on tillers' day and

there existed other member of joint family as per Section 32F of the said Act.

9. I have carefully considered the submissions. After examining the record, as narrated above, in exercise of the limited jurisdiction, in my opinion, the

conclusions drawn by the Authorities below are on the basis of material evidence available before it. There is nothing on record to show that Radhabai

received the said land as restricted estate as provided in section 14(2) of the Hindu Succession Act, so as to remove the same from the clutches of

Section 14(1) thereof. In that view of the matter, the authorities below were justified in holding that on 12.12.1956 Radhabai became absolute owner

of the said land and obviously therefore on tillers' day i.e. 01.04.1957 Radhabai, a widow, alone was the owner no other member of joint family

had right therein. Obviously therefore there is no question of there being a partition by metes and bound so far that the said land is concerned.

Therefore, the right of purchase was postponed, rightly so. It is not possible to go into intention of Radhabai while transferring the said land in favour

of her grand children, as it falls within the realm of a disputed question of fact in view of rival claims about it. It will not be out of place to

mention here that Radhabai indeed held the said land as absolute owner, when she dealt with it, as she pleased.

10. The learned counsel for both the parties have invited my attention to Section 32F of the said Act which reads thus:

“32F. Right to tenant to purchase where landlord is minor, etc:

(1) Notwithstanding anything contained in the preceding sections,—

(a) where the landlord is a minor, or a widow, or a person subject to any mental or physical disability, the tenant shall have the right to purchase such

land under section 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under section 31

[and for enabling the tenant to exercise the right of purchase, the landlord shall send an intimation to the tenant of the fact that he has attained

majority, before the expiry of the period during which such landlord is entitled to terminate the tenancy under section 31] :

[Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member

of the joint family is outside the categories mentioned in this sub-section unless before the 31st day of March 1958 the share of such person in the joint

family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having

regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property

and not in a larger proportion].

(b) where the tenant is a minor, or a widow, or a person subject to any mental or physical disability or a serving member of the armed forces, then

subject to the provisions of clause (a), the right to purchase land under section 32 may be exercised—

(i) by the minor within one year from the date on which he attains majority.

(ii) by the successor-in-title of the widow within one year from the date on which her interest in the land ceases to exist;

(iii) within one year from the date on which the mental or physical disability of the tenant ceases to exist;

(iv) within one year from the date on which the tenant ceases to be a serving member of the armed forces:

[Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member

of the joint family is outside the categories mentioned in this sub-section unless before the 31st day of March 1958 the share of such person in the joint

family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having

regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property

and not in a larger proportion].

[(1A) A tenant desirous of exercising the right conferred on him under sub-section (1) shall give an intimation in that behalf to the landlord and the

Tribunal in the prescribed manner within the period specified in that sub-section]:

[Provided that, if a tenant holding land from a landlord (who was a minor and has attained majority before the commencement of the Tenancy and

Agricultural Lands Laws (Amendment) Act, 1969) has not given intimation as required by this sub-section but being in possession of the land on such

commencement is desirous of exercising the right conferred upon him under sub-section (1), he may give such intimation within a period of two years

from the commencement of that Act].

(2) The provisions of section 32 to 32E (both inclusive) and section 32G to 32R (both inclusive) shall, so far as may be applicable, apply to such

purchase.

11. Reading of the aforesaid provision shows, that if on the tillers day, the land stood in the name of person with disability as stated therein

(widow in present case), then the right to purchase was automatically postponed, which is the case in the present matter. So question remains as to

whether there was "other member of the joint family" apart from Radhabai. It is not contended that apart from Shamrao & Radhabai, there was

any other member of joint family. Perusal of statement of Shamrao, during inquiry, clearly shows that after the execution of registered maintenance

deed, he had no connection with the said land, which became Radhabai's absolute property by operation of law, as explained above. Therefore it

can not be subject matter of partition among him and Radhabai. Shamrao has also stated that he and his mother Radhabai was staying together only till

execution of maintenance deed. There is no reason to disbelieve the same.

12. Learned counsel Mr. Talkute, relied upon the following judgments in support of his case.

1) Khandu Daulat Dangade v/s. Jaywantrao Yadavrao Kharade and Ors. 1996(1) Mh.L.J. 712.

2) Laxmi Rai v/s Dayanu Narayah Mohite (dead) through Lrs. (1992) 1 SCC 53.

3) Anant Dattatraya Mali and Ors. v/s. Chintaman Govind Patil and Ors. AIR 1969 Bom 210.

4) Balkrishna Somnath and Ors. v/s. Sadu Devram Koli and Ors. (1977) 2 SCC 15.

13. In the case of Khandu Daulat Dangade's case (supra) partition amongst the family members of landlord including landlady widow Anjanabai

was considered. In the case of Laxmi Rai (supra), again a case of partition amongst the family of the landlady Laxmi and other members was pleaded

and the same was not accepted as genuine by the authorities concerned. In the case of Anant Dattatraya Mali (supra) the facts were such that

widow Laxmibai and two sons Anant and Balwant had executed a registered partition deed and it was checked whether share of the disabled person

is separated by metes and bounds. In the case of Balkrishna Somnath (supra) also, it was the case of landlady widow claiming partition amongst

herself and her sons in which share was allotted to the person claiming disability.

14. The propositions laid down by the Hon'ble Supreme Court in all above cases can not be disputed and I respectfully agree with them, however,

in none of the above cases, landlord/landlady under disability (being widow) had become an absolute owner, by operation of law, before the tillerÃ¢â€s

day as in the present case and therefore, these case laws are not useful to the Petitioners.

15. Three authorities i.e. Tahsildar, Sub-Divisional Officer and M.R.T. have concurrently held in favour of the Respondents, based on inquiry which

was so directed to be held, and which has been done on the material available before them. Therefore, there is no perversity or error apparent on the

face of the record in the orders impugned. There is neither jurisdictional transgression, nor it is argued to be so. Hence, no interference is warranted.

16. Writ Petition is accordingly dismissed. No order as to costs. Rule is discharged.

17. At this stage, the learned counsel for the Petitioners seeks continuation of ad-interim relief in terms of prayer clause (b) which was granted and

continued from time-to-time. The learned counsel for the Respondents opposed the prayer.

18. In order to afford an opportunity to the Petitioners to challenge the order passed today, ad-interim relief is extended by a period of six weeks.