

(1979) 09 BOM CK 0041

**Bombay High Court****Case No:** Writ Petition No's. 923 and 924 of 1979

Balaji Ulhas Agrawal

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

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**Date of Decision:** Sept. 20, 1979**Acts Referred:**

- Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 - Section 3

**Hon'ble Judges:** P.S. Shah, J**Bench:** Single Bench**Advocate:** A.H. Vaishnav, for the Appellant; Addl. Govt. Pleader, for the Respondent

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**Judgement**

P.S. Shah, J.

These two petitions under Article 226 of the Constitution of India arise out of the proceedings under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, as amended by Act II of 1975. The Petition No. 924/79 has been failed by one Chandrabhanlal Jaikishanlal Agrawal who is the father of the petitioner, Balaji Ullas Chandrabhanlal Agarwal, in Writ Petition No. 923/1979. The dispute in this case now lies in a narrow compass and relates only to Survey No. 45/B admeasuring 17 acres and 2 gunthas. By its Order dated December 12, 1978. Surplus Land Determination Tribunal, declared the land holder, Chandrabhanlal, to be a surplus holder of land to the extent of 31 acres and 36 gunthas.

2. Aggrieved by this decision, both the petitioners filed separate appeal before the Maharashtra Revenue Tribunal. The Revenue Tribunal by its common Judgment and Order dated March 15, 1979, dismissed the appeal preferred by Balaji whose contention was that Survey No. 45/B could not be included in the holding of Chandrabhanlal as, according to him, he was the exclusive owner of the land under a Will executed by his grand-mother Vithabai, in his favour. The Revenue Tribunal partly allowed the appeal of Chandrabhanlal on the question of delimitation of the land bearing Survey No 163. The order of delimitation was modified with a direction that surplus land of 31 acres 8 gunthas should be delimited from Survey No. 85 to

the extent of 3 acres 39 gunthas and an area of 27 acres 8 gunthas from Survey No. 163. The Revenue Tribunal, therefore, remanded the matter back to the Surplus Land Determination Tribunal for giving effect to the directions on the question of delimitation of the particular lands in question.

3. Being aggrieved by the aforesaid decision of the Revenue Tribunal theses two petitions have been filed by the petitioners.

4. Mr. Dabir, the learned Counsel appearing for the petitioners, raised only one contention before me. He submitted that the authorities below have erred in including Survey No. 45/B in the holding of petitioner, Chandrabhanlal, although, petitioner, Balaji, was the exclusive owner thereof under the Will executed by his grand-mother, Vithabai.

5. In order to appreciate this contention, it is necessary to state a few material facts.

6. An enquiry into the holding of Chandrabhanlal was held under the Ceiling Act as it stood before the amendment. In view of the contention of Chandrabhanlal that the land was gifted by him to his mother, Vithabai, under a registered gift-deed dated January 16, 1956, this land was excluded from his holding. After the commencement of the amended Ceiling Act, the enquiry into the holding of Chandrabhanlal was again taken up by the Surplus Land Determination Tribunal. It was contended by the petitioners before the Surplus Land Determination Tribunal that the said land was bequeathed to the petitioner, Balaji, by Vithabai under a Will executed by her on October, 27, 1975. Vithabai died on December 6, 1975. If the said Will is proved, the land will go to Balaji on her death and if the Will is not proved, the land will go to her heirs. Having regard to the fact that the contention of the holder that Survey No. 45/B could not be included in his holding was accepted in the earlier enquiry under the Ceiling Act before the amendment, we must proceed on the basis that Vithabai was the owner of the land till her death which took place on December 6, 1975. It is true that the petitioners have not produced the original Will before the Surplus Land Determination Tribunal. However, apart from the oral evidence, they also relied on the mutation entry dated August 16, 1966. If the Surplus Land Determination Tribunal was not satisfied with this evidence, it was necessary for it to call upon the petitioners to produce the original Will and also prove it. In the absence of any such procedure being held, it would not be proper to reject the contention of the petitioners on the question of Will. The Revenue Tribunal has also not applied its mind to the above important aspect of the matter. Therefore, it would be necessary to remand the case back to the Surplus Land Determination Tribunal for giving an opportunity to the petitioners to produce the original Will and also to prove it, in accordance with law. If the will is held to be proved by the Land Tribunal, then the land bearing Survey No. 45/B will have to be excluded from the holding of Chandrabhanlal, because, he would have no interest in that land. If, however, the Will is held not proved, then on the death of Vithabai, the land would devolve on her heirs. The Surplus Land Determination Tribunal will have, therefore, to ascertain as

to who are the heirs of the deceased. Of course, Chandrabhanlal being the son, will be one of the heirs, but it is not known whether apart from Chandrabhanlal, there are any other heirs. If there are more heirs, the share of Chandrabhanlal in the land to be found out and his share in the land only can be included in his holding while determining the surplus land.

6. The Rule is, therefore, made absolute.

7. The impugned order of both the authorities below are set aside. The matter is remanded back to the Surplus Land Determination Tribunal, only, to consider the question relating to Survey No. 45/B. After recording appropriate finding on Survey No. 45/B, the Surplus Land Determination Tribunal shall determine the surplus land and pass an order of delimitation, in accordance with law. It is made clear that the petitioners will not be entitled to raise any question relation to any other land before the Surplus Land Tribunal.

8. Petitioners in both the petitions to pay costs.