BEFORE THE MEMBER (JUDICIAL), MAHARASHTRA REVENUE TRIBUNAL, BENCH AT PUNE.

Presided over by : V.B.Kulkarni, Member (Judicial)

No.CLNG/Appeal/1/1985

Satyabhamabai Dattatraya Paricharak,
D/H—
Shriram Prakash Paricharak,
R/o.2683, Umade Galli, Pandharpur. .....Appellant

VS.

The State of Maharashtra,
Through—
The Collector, Solapur. .....Respondent

Ceiling Appeal U/s 33 of Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961

Appearance :- Adv. Shri P.D.Kulkarni for Appellant
Shri S.V.Wangikar, AGP Pandharpur for Respondent

DATE:- 3rd MARCH, 2018

JUDGMENT

Being aggrieved by the judgment & order passed by the Asstt.Collector / Surplus Lands Determination Tribunal, Pandharpur (hereinafter referred as the "SLDT Pandharpur") in Ceiling Case No.1/71, dt.18/4/1981 and the order passed in Review Application No.25/81, dt.25/9/1984, the aggrieved appellant has preferred the present appeal by invoking the provisions of Sec.33 of

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter referred "the Act"), on the grounds more particularly set out in memo of appeal. Facts giving rise to the present appeal can be summarized as under.

2. One Balkrishna Paricharak was the common propositor of the family, in which the dispute regarding surplus lands under the Act and action u/s 13 of the Act, has been initiated by the tribunal below. Late Balkrishna had three sons, Dattatraya, Govind & Ramchandra. Elder son Dattatraya died in 1920 issueless living behind widow Satyabhamabai Paricharak as the only heir. Younger brother Govind died on 9/5/1966 living behind widow Rukminibai, son Narayan & daughter Vijaya as his LRs. The Act came into force w.e.f. 25/1/1962, which shall be the appointed date for the application of the Act. After the death of Balkrishna, co-parceners Govind & Ramchandra Paricharak continued the joint family and represented the entire agricultural land, which was standing in the name of joint family. Neither the appellant nor the State have disputed the fact, that the total holding of Govind Paricharak, as on the appointed date was 324 Acre 20 Gunthas. Despite of holding in the name of Govind Paricharak either in person or as the family unit, he died without furnishing Return under the Act. Therefore, the SLDT Pandharpur, initiated the proceedings u/s 13 of the Act, and thereby, forfeited the holding of Govind Paricharak, which was found in excess of ceiling limit. The aggrieved party taken the matter before the appellate authority. After having successive orders of remand at first by order dt.14/8/1979 passed by the MRT, matter was remanded with direction to call upon all interested persons to submit their separate Returns and then to examine the limit of ceiling. Thereafter, SLDT

Pandharpur, re-examined the separate Returns filed by the interested persons and come to the conclusion that the holding of the branch headed by Satyabhamabai Paricharak was 162 Acre 10 Gunthas, and the holding of the branch headed by Govind Paricharak, represented through Rukminibai, Narayan & Vijaya was 162 Acre 10 Gunthas. After considering the ceiling limit for the "person", the SLDT Pandharpur, found that the holding of the branch of Govind was within limit. However, the holding of Satyabhamabai was excess in 54 Acre 33 Gunthas. Ultimately that orders also taken upto Hon'ble High Court, by the branch of Govind as well as Satyabhamabai in their respective capacity. Two separate Writ Petitions No.1422/87 & 1423/87 came to be filed against the order dt.6/12/2000 passed by MRT. Both the Writ Petitions came to be decided by common order passed by Hon'ble High Court on 2/9/2002. While disposing both the Writ Petitions by common order, the Hon'ble High Court has confirmed the order of MRT to the extent of the holding of the branch of Govind and thereby, confirmed the order of the proceedings stands dropped to the extent of share of the branch of Govind. At the same time Hon'ble High Court has found, that the tribunal has failed to determine the surplus land holding of Satyabhamabai properly and correctly. The exclusion of certain lands on specified grounds was not properly calculated. Therefore, same has been set aside and the proceedings of Appeal No.1/85 which was filed by Satyabhamabai, came to be restored to its original stage with MRT Pune, with direction to re-examine the question of calculation relating to the surplus holding of Satyabhamabai and that too after considering the lands liable for exemptions for the total holding of the person. Pending the appeal original

landlady Satyabhamabai Paricharak reported dead. The present appellant Shriram Paricharak joined as the LR of the deceased Satyabhamabai to represent her estate, on the basis of Will.

3. After perusing the available record and proceedings received through the tribunal below, I have heard Ld.Adv.Shri.P.D.Kulkarni for the appellant and AGP Pandharpur Shri.Wangikar for the State. Both the Ld.advocates have submitted their written notes in support of their rival contentions.

4. While challenging the judgment & order passed by the tribunal below on the issue of legality, Ld.advocate for the appellant Shri.P.D.Kulkarni strongly submitted that the husband of Satyabhamabai Late Dattatraya died in 1920. Satyabhamabai as the only heir, her rights as the widow of deceased, has to be recognized as per the Customary Law, which was applicable in respect of the right of inheritant are prior to Women's' Right to Property Act, 1937. By keeping reliance on the document styled as Partition-Deed dt.25/11/1960, he has submitted that, subsequent events took place after the death of Govind, name of Satyabhamabai being the widow of Dattatraya in the year 1975 without any title, possession with the lands. Soon after the death of Dattatraya, the entire share of Dattatraya which was there vest with the Govind & Ramchandra only. The provisions of Womens' Right to Property Act, or even Hindu Succession Act, 1956, do not confer any right in favour of the widow Satyabhamabai, as her status comes within the ambit of widow prior to 1937. Therefore, neither she has acquired, hold or possessed any part of the suit land, nor she is liable to furnish the Return as no holding stands in her

name for a separate consideration for framing the separate unit therefor. Whatever holding was standing in the name of Govind has to be equally distributed amongst his three heirs after deducting the total area of exclusion. Therefore, after considering the correct assessment of land available for exclusion and deduction thereto from the total holding even the holding of the branch of Govind does not exceed limit of 108 Acre each. Therefore, the proceedings against Satyabhamabai deserves to be dropped. In support of above submissions Ld.Adv.P.D.Kulkarni, produced certified copy of registered Partition-Deed dt.25/11/1960. He has also seriously challenged the legality of M.E.No.403, whereby the name of Satyabhamabai has been entered in revenue record for the first time in the year 1975.

5. As against this the Ld.AGP by keeping reliance on the verdict recorded in successive proceedings arisen out of the present *lis*, which gone upto Hon'ble High Court, and submitted that the findings recorded by the Ld.trial tribunal in respect of holding of Satyabhamabai in independent capacity and observations of surplus holding recorded, do not call for interference therein. Therefore, appeal being devoid with merits deserves to be dismissed.

6. After considering the record & proceedings made available for the perusal, oral submissions made by respective Ld.advocates, written notes of arguments placed on record, and precedents relied in support of their rival contentions before this Tribunal, following points arise for my determination. I have recorded my findings with reasons thereon as under :-

Points		Findings
1.	What was the holding of each member in the family on appointed date i.e. 26/1/1962?	306A. 07G.
2.	Whether the appellant / widow Satyabhamabai had acquired, hold or possessed any land on such appointed date, so as to fill up Returns u/s 12 of the Act?	Negative
3.	If not, in such circumstances whether the holding of the branch of Govind exceeds the limit of ceiling?	Negative
4	Whether the judgment & order under appeal calls for interference therein and if yes, up to what extent?	Yes, As per final order

Reasons

7. Point No.1: After perusing the entire record available and the successive orders passed by this Tribunal or even common order passed by Hon'ble High Court in Writ Petitions, following facts has become evident, which are either admitted, proved or otherwise not seriously disputed.

The appointed date for deciding the issue of ceiling limit regarding disputed land is 26/1/1962. On that date the lands were standing in the name of Late Govind Paricharak. Total holding which was standing in his name was 387 A. 3G. After considering the exemption permissible under different heads, the holding of 62 A 23 G was deducted therefrom and holding of 324 A 20 G was held available for the determination of ceiling limit for the persons who claims interest in the property within the meaning of the Act. In addition thereto, facts are evident that as the occupant in whose name the property was standing on the appointed date failed to furnish Return within time prescribed. Therefore, proceeding u/s 13 against him was initially started. After the orders passed in the proceedings u/s 13 of the Act, all interested persons

were called upon to furnish the Returns and wherein the Returns were either called for or furnished by (i) Satyabhamabai Paricharak (ii) Narayan Paricharak (iii) Rukminibai Paricharak & (iv) Vijaya (daughter of Govind). While deciding the issue of holding available for a calculation, the Ld.trial tribunal has calculated the holding to the extent 324 A 20 G. While arguing the matter before this Tribunal on behalf of the present appellant, Ld.Adv.Kulkarni urged several points on the issue of excluded holding such as dry land, lands affected by acquisition etc., However, I do not find any mis-calculation made by the tribunal below, while determining exempted land from the total holding. However, Ld.advocate for the appellant has rightly called my attention towards the transfer effected by Late Govind in respect of land Gat No.102 in the name of Dharma, dt.9/1/1962. The land under transfer under the disputed sale-deed was 18A 13G. The effect of the said sale-deed given in revenue record through M.E.No.3275, which came to be taken down in the record on 31/3/1962.

8. At this juncture, it has become crystal clear, that the disputed transfer of 18A 13G was already effected prior to the appointed date and i.e. on 9/1/1962. Certification of entry thereupon is the matter of procedure, which will not postpone the transfer of title and delivery of possession. It is well settled principle of law, that the transfer of immovable property by registered Deed shall take effect from the date of registration and passing of title thereunder will not be postponed on any future date. In the given case, once the execution of Transfer-Deed dt.9/1/1962 is established, same being prior to appointed date, neither the title nor the possession remains with transferor family, who was liable for furnishing the Return. Therefore, that area ought to have been

excluded from the available lands for the calculation of ceiling limit. Therefore, to that extent the order passed by SLDT Pandharpur requires to be modified and the actual holding available for calculation after deducting that much portion from the total holding the land which was available for the calculation comes upto 306A 07G. With these observations, I hold that while determining calculation of ceiling limit for the persons u/s 12 of the Act, area of 306A 07G has to be considered while fixing the limit of ceiling and answer 'Point No.1 accordingly'.

9. Point No.2: In consonance with the observations made supra, while considering the liability of the present appellant to furnish Return u/s 12 of the Act, at first I may state here that, after perusing the judgment & order dt.14/8/1979, whereby, four appeals including A/9/79 wherein Satyabhamabai was the appellant came to be decided. It is pertinent to note here that, even while deciding the said matters by common judgment, this Tribunal has not decided the material issues involved in the matter finally, but, the order of remand was made. Now, while considering the directions given by our Hon'ble High Court in Writ Petitions, it is pertinent to note here that, this appeal has been restored to the stage of appeal before this Tribunal, so as to re-consider the ceiling limit of the appellant and that too by considering the holding available for exemption under the different Heads. While doing so, it is pertinent to note here that, pending the appeal, for the first time Ld.advocate for the appellant has produced certified copy of registered Partition-Deed dt.25/11/1960. While producing the said document, advocate has moved application accompanied with affidavit dt.9/11/2016, seeking permission to

produce the document before the Ld.appellate tribunal and allowing her to lead secondary evidence. After considering the submissions made from both the sides, both the applications came to be allowed as the document was material and important to decide not only the holding, but, also the status of the present appellant for furnishing the Return under the Act.

10. In consonance of above observations, at first I may state here that the Partition-Deed dt.25/11/1960 is in between two brothers interse i.e. Ramchandra & Govind Paricharak. As the Tribunal has allowed production of document and to refer the certified copy thereof at the appellate stage, I do find that, I have to consider the evidentially value of this document keeping in mind the date of execution of the document and its reference in evidence before the Tribunal. The registered Partition-Deed executed on 25/11/1960, referred in the evidence for the first time before this Tribunal in the year 2018 i.e. 57 years after the execution of registered document. The document is of far reaching importance against which the comments will be passed lateron, but, it is being a certified copy of registered Partition-Deed, of which existence and execution is not disputed by the State, though the say was called. I am of the view, that for the reference of recitals therefrom same presumed to be proved. In support of above observations, I may keep reliance on the precedent laid down by our Hon'ble High Court, in the case of ***Gulamuddin Vs. Mohamad Bashiruddin, 2004 ALL MR(1)-340.***

11. The observations made by His Lordship regarding the permissibility of recitals from the copy of document, which is more than 30 years old u/s 90 of Indian Evidence Act, can be summarized as under:-

> *The Presumption applies to the document proved to be 30 years old or more and the document must come from proper custody. Whether the document is suspicious on the face of it or mutilated, the Court may refuse to draw presumption under this section. If the contents have not specifically denied by adversary, then such document perfectly admissible in evidence".*

12. Herein this case, as observed supra, statutory period of 30 years is duly satisfied and there is no specific denial put forth by the State in respect of truthfulness of contents of the document appearing in the document. Therefore, I hold that this Partition-Deed should be read in evidence for the purpose of deciding the appeal.

13. Now, while appreciating the evidentially value of this Partition-Deed, Para-10 therefrom is of vital importance. The material recitals therefrom quoted here just for reference, which runs as under:-

Para-10 of Partition-Deed:

आपण उभयतांचे सख्खे वडीलबंधू कै.दत्तात्रय बाळकृष्ण परिचारक या नांवाचे होते. ते सन 1920 साली एकत्रात असताना मयत झाले आहेत. मरणापूर्वी म्हणजे 25/7/1920 रोजी त्यांनी व्यवस्थापत्र करुन ठेवले आहे.----------

सत्यभामाबाईस दरमहा रु.10/- प्रमाणे पोटगी आपण उभयता बंधूंनी दयावी व त्यांनी दत्तक घेवू नये असा सदर व्यवस्थापत्रास स्पष्ट उल्लेख केलेला आहे.----------सदर व्यवस्थापत्राप्रमाणे आपल्या एकत्र कुटुंबाच्या मिळकतीत कै. दत्तात्रय बाळकृष्ण परिचारक यांचे विधवांचा कोणत्याही प्रकारचा हक्कसंबंध नाही. सदर व्यवस्थापत्राप्रमाणे सत्यभामाबाईस हल्लीचे महागाईचा विचार करुन आपण उभयता दरमहा रु.30/- पोटगी देत आहोत".

These recitals are sufficient to observe following points:

(i) Dattatraya died issueless in the year 1920 living behind widow Satyabhamabai as the LR.

(ii) No right was vested in the property, but, maintenance @ Rs.10/- p.m. initially was agreed for her with restrictions against her not to adopt any child for the line of succession.

14. By keeping in mind the above facts on record, it has become evident that, Satyabhamabai though alive as on the appointed date, she was the widow prior to 1937 when Womens' Right to Property Act, came into force. It is pertinent to note here that, at first the husband of the widow has already taken away her right of inheritance in the property. Secondly, as per the provisions of Sec.4 of Womens' Right to Property Act, the said Act has no retrospective effect to create any interest in favour of the widow, whose husband died prior to the implementation of the Act of 1937. Therefore, the legal effect of such circumstance has to be followed and i.e. once vested cannot be digested. In short, after the death of Dattatraya, though he has left his widow as a successor, the entire interest in the joint family was vested with Govind and Ramchandra, who was also the another brother of Govind and no else body has got interest therein. Ld.advocate for the appellant on this issue rightly called my attention towards the precedent laid down by Hon.Karnataka High Court in the case of ***Krishtappa Vs. Ananta, AIR 2001 Karnataka-322.*** In addition thereto, I may take help of the precedent laid down by Hon.Orrisa High Court in the case of ***Nanda Naik Vs. Sukti Dibya / Manu/OR/0063/53.*** The law laid down in both the precedents can be summarized as under:

> ***Section-4:*** *Nothing in this Act, shall apply to the property of any Hindu dying intestate before the commencement of the Act.*
>
> *"It is prima-facie prospective and its proper construction and operation must be determined with reference to conditions and contingencies likely to arise after its commencement. Because these alone could presumably have been within its contemplation. The property vested in*

a co-parcener before the commencement of the Act, 1937 cannot be taken away by this Act".

15. I have gone through the above precedents very carefully. After considering the submissions made by the Ld.advocate for the appellant, supported by precedent quoted supra and the recitals of the document, which came to be executed long before the appointed date of the Act, there is no reason to dis-believe the recitals from the said Partition-Deed.

16. Though the production of said Partition-Deed is at late stage, the recitals therefrom are against the interest of Satyabhamabai in the disputed property. On this ground also the truthfulness of the contents of Partition-Deed cannot be doubted. Therefore, after considering over all circumstances and facts proved, I come to the conclusion that as the appellant-widow was the widow prior to 1937 without creating interest in the immovable property towards her any previous pre-existing right therein, for eg. Maintenance etc., there is no reason to divest interest created in favour of Govind after the death of Dattatraya.

17. In consonance thereto, now I have to consider the effect of M.E.No.403, which is on record. As per the said entry Govind died on 2/5/1966 i.e. after the appointed date and while certifying the said entry on 2/10/1975 the name of present appellant has recorded in the column of occupancy as the LR of pre-deceased brother. In my humble opinion in continuation of above observations, said M.E.No.403 will not confer any title, interest or legal possession whatsoever there may be in favour of the appellant to bring her within the ambit of Sec.12, so as to separate her share in the property as the heir of

Dattatraya and to call upon her to furnish the Returns u/s 12, as she had not acquired, held or possess any portion from the disputed land in the eye of Law on the appointed date i.e. 26/1/1962. It is well settled principle of law, that mutation entry if effected in revenue record without source of title that will remain fiscal, which has got limited purpose thereto in connection of revenue collection and nothing more. Ld.advocate for the appellant Shri.Kulkarni rightly called my attention towards following two precedents on this point.

(i) *Sankalchan Patel Vs. Vitthalbhai Patel, (1996)6-SCC-436*
(ii) *Gurunath Pawaskar Vs. Nagesh Gund, (2007)13, SCC-565*

The Law laid down in these two precedents about the scope and limitations of mutation entry can be summarized as under:

> *"Mutation entries do not create any title to the property. Same are enabling the State to collect revenue from the persons in possession and enjoyment of the property. Revenue record is not a document of title".*

18. I have gone through the above precedents very carefully and hold that, even though Satyabhamabai had furnished Return after the directions of this Tribunal as a person interested therein as she had not acquire, hold or possessed any part from the disputed land, neither ½ share for the branch of Dattatraya can be represented through her nor the holding of the branch of Govind can be decreased by giving such effect. In short, the proceedings u/s 13 of the Act, is against the present appellant by showing allocation of notional ½ share does not survive in eye of Law and deserves to be set aside. With these observations, I answer the 'Point No.2 in negative".

19. **Point No.3:** In view of negative finding of 'Point No.2", I should have to take a note, that in view of the judgment & order passed by our Hon'ble High

Court by common judgment in Writ Petition No.1422/87 alongwith 1423/87, the Return submitted by the branch of Govind has reached to its finality. However, in the light of negative finding of Point No.2 supra, it has been incumbent to consider the holding of the said branch by keeping in mind the ambit of Sec.5 of the Act. While doing so, the holding of the said branch can be calculated as under:

Acre-Gunthas

(i)	Total holding in the name of Balkrishna on the appointed date.	387-03
(ii)	Total holding excluded for the computation of ceiling limit in order under appeal	(-) 62-23
	transferred	=324-20
(iii)	The holding prior to appointed date by Govind, which is also required to be excluded	(-) 18-23
		=306-07

20. Even otherwise after holding the unit of Govind available for the computation of ceiling limit, it has to be divided by three equally, which comes up to 102A 02G each. That means within the limit of permissible holding as per Sec.5 of the Act, which fixed the limit of ceiling up to 108A each.

21. With these observations, and by following the correct method of calculation, I hold that even after the negative finding of Point No.2, the holding of the branch represented through Balkrishna, does not call for its re-opening and accordingly answer the 'Point No.3 in negative'.

22. **Point No.4:** In view of the negative finding of 'Point No.2&3' as discussed supra, I do find that the declaration of surplus land in the name of Satyabhamabai as a person liable to furnish the Return does not sustain in eye

of Law. Therefore, the judgment & order passed by SLDT Pandharpur, deserves to be set aside by invoking the limits of appellate tribunal to interfere therein. With these observations, I answer the 'Point No.4' accordingly and proceed to pass the following order.

ORDER

Appeal is hereby allowed.

The judgment & order passed by SLDT Pandharpur, in Ceiling Case No.1/71 and order passed in Review Petition No.25/81, dt.25/9/84 as against the appellant, are hereby set aside.

The proceedings u/s 13 against Satyabhamabai Paricharak is hereby dropped.