

**BEFORE THE DESIGNATED MEMBER, MAHARASHTRA REVENUE TRIBUNAL,
BENCH AT PUNE.**

Presided over by : V.B.Kulkarni, Designated Member

No.NS/II/1/2019 (B-153/19)

Shri Ashok Namdeo Jadhav,
R/o. Pusegaon, Tal.Khatav, Dist.Satara.

.....Applicant

VS.

Shri.Mohan Maruti Jadhav & otrs.,
R/o. Pusegaon, Tal.Khatav, Dist.Satara.

.....Respondents

**Revision Application U/s 76 of
the B.T.& A.L.Act,1948.**

Appearance :- Adv. Shri S.S.Sonwalkar for Revision Applicant
Adv. Shri J.P.Dhaytadak for Respondents

DATED:- 5th SEPTEMBER, 2019

JUDGMENT

Being aggrieved by the judgment & order passed by Ld.appellate tribunal i.e. Sub-Divisional Officer, Man-Khatav Sub Dn., Dahiwadi (hereinafter referred as the "appellate tribunal") in Tenancy Appeal No.74/2018, dt.4/1/2019, the aggrieved party has preferred the present revision application by invoking the provisions of Sec.76 of B.T.& A.L.Act, 1948 (hereinafter referred "the Act"), on the grounds more particularly set out in revision application. Facts either admitted or not seriously disputed or otherwise duly proved on record can be summarized as under.

2. One Shri.Narayan Kulkarni was the original owner of the disputed land. He died on 21/6/1939 living widow Laxmibai and three sons named Govind, Bhaskar & Vasudeo as his LRs. M.E.No.1673 to that effect is on record. In continuation of these facts of title parties are not in dispute as regards the facts that Shri.Maruti Jadhav was the tenant in possession of the disputed lands since prior to the "tillers' day" i.e. 1/4/1957. After the death of original landlord i.e. Narayan, the property came to be mutated in the name of widow. By taking the note of legal status of the landlady, the proceeding u/s 32G of the Act were not started during the lifetime of Laxmibai. The widow landlady reported dead in the year 1988. As a fact on record, parties have not disputed the fact that, though the tenant was and is in possession of the disputed land since prior to "tillers' day", proceedings u/s 32G of the Act were not initiated immediately after the death of landlady or even till in or about 1999 onwards. The proceedings as such came to be initiated for the first time through file No.32F/32G+32H/Pusegaon/339. In the first round of litigation amongst the landlord & tenant interse, the proceedings went upto Hon'ble High Court, through Writ Petition No.7021/2015, which came to be decided by order dt.13/9/2015 and thereby, the order of remand passed by Ld.appellate tribunal came to be confirmed. After the remand order the proceeding was registered before ALT, under new number as Fresh Enquiry/Kavi/819/2017. The said proceedings before ALT came to be decided on merit by order dt.16/3/2018, whereby, the ALT has passed the order u/s 32G of the Act in favour of Maruti Jadhav alone and thereby, rejected the

claim of Ashok Namdeo Jadhav as the LR of the co-tenant. Being aggrieved by the said judgment & order the LR of the co-tenant, Ashok has preferred Tenancy Appeal No.74/2018 and thereby, challenged the findings recorded by ALT to the extent of nature of tenancy and entitlement of title u/s 32G of the Act exclusively in favour of Maruti. The said appeal came to be decided on merit by judgment & order dt.4/1/2019, whereby, the Ld.appellate tribunal dismissed the appeal and thereby, confirmed the findings recorded by ALT. Being aggrieved by the said concurrent findings recorded by tribunals below, the aggrieved LR of the co-tenant has preferred the present revision application by invoking the provisions of Sec.76 of the Act, on the grounds more particularly set out in revision application.

3. After the receipt of record & proceedings from Ld.appellate tribunal when the matter was fixed for hearing, it was brought to the notice of this Tribunal as well as both the parties, that the original proceedings of file from ALT i.e. file No.32F/32G+32H/Pusegaon/339 is not traceable. Not only that, but, the Ld.advocates representing the parties have not disputed the fact that the original proceedings of the said file even not available before the Ld.appellate tribunal while deciding the Tenancy Appeal No.74/2018 on merit. Therefore, by consent of the parties and their Ld.advocates by making available the relevant copies of the original proceedings which is not traceable, matter heard on merit on the basis of available record before the Tribunal.

4. During the course of arguments Ld. Adv. Shri. Sonwalkar for the Revision Petitioner strongly submitted that, though the revision is against the concurrent findings recorded by tribunals below, both the tribunals below have committed error of Law while appreciating the facts and Law involved in the matter. The foremost ground which he has argued is that despite of ample evidence in form of oral evidence and statement of the interested person amounting to admission the tribunals have wrongly drawn certain conclusions against the facts and Law and thereby, committed error of Law while passing the order u/s 32G of the Act only in favour of the LRs of deceased Maruti i.e. Respondent No.1 to 5.

5. As against this Ld. Adv. Shri. J.P. Dhaytadak for the Respondent strongly submitted that the revision is against the concurrent findings recorded by the tribunals below, which is based on sufficient oral as well as documentary evidence on record in favour of the deceased Maruti, who was the exclusive tenant of the disputed land since prior to the "tillers' day" and particularly on the "tillers' day". The branch of Late Namdeo has no concern whatsoever with the disputed land and the interest of the tenancy created therein. He has strongly submitted that the tenancy agreement was ever in between the original landlord and deceased Maruti alone. It was not for and on behalf of the joint family inherited through their common propositors Kundlik. As such tenancy created in respect of the disputed land was the separate property of Maruti and therefore, concurrent findings recorded by tribunals below does not call for interference therein.

6. After perusing the R&P from Ld.appellate tribunal and copies of public documents on record and oral submissions made by respective Ld.advocates representing the parties, following points arise for my determination. I have recorded my findings with reasons thereon as under :-

<u>Points</u>	<u>Findings</u>
1. Whether the Revision Petitioners have proved that the tenancy of disputed land was created in favour of Maruti was for and on behalf of their joint family including Namdeo?	Affirmative
2. Whether the Respondent No.1 to 5 have proved that the tenancy over the disputed land was created in favour of Maruti Jadhav was exclusive in character as his separate property?	Negative
3. Whether the judgment & order passed by tribunal below is proper, correct and legal on the facts proved and Law applicable thereto?	Negative
4. If not, whether the judgment & order passed by the tribunals below, which are concurrent in nature, calls for interference therein within the limited revisional jurisdiction of this Tribunal as per Sec.76 of the Act? If yes, to what extent?	Affirmative. As per final order
5. What order in respect of the costs?	As per final order

Reasons

7. **Point No.1 to 4:** All these four points being linked with each other requires to be answered by common discussion. Therefore, I have proceeded to answer the same at the one and the same time.

8. This is an unique *lis* between the family members of the tenant for the relief declaration u/s 32G of the Act. In the first round of litigation, matter went upto Hon'ble High Court, and ultimately in view of withdrawal of the Writ Petition moved by Maruti, the matter has been decided as fresh before ALT. During the course of trial before ALT, none of the parties have appeared in the witness box. Even the LRs of the deceased landlord have not contested the proceedings throughout either before ALT, Ld.appellate tribunal or even before this Tribunal. As such the proceedings continued ex-parte against the LRs of the deceased landlord i.e. Respondent No.6 to 9. Respondent No.1 to 5 are the LRs of the branch of tenant / Maruti and the Petitioner is representing the branch of Namdeo Jadhav. After perusing the judgment & order passed by tribunals below, which went upto Hon'ble High Court, it has become evident that as the landlord has not taken active participation in the *lis*. Same has been contested amongst the two branches of the tenants and nothing more. While contesting the claim of declaration u/s 32G of the Act, Respondent No.1 to 5 come with a case that the tenancy was created in favour of Maruti as his exclusive property. As against this the branch of Namdeo asserts the nature of tenancy for and on behalf of the joint family represented through its Manager through Maruti was representing the same as the Karta of their family. Under these circumstances, keeping in mind the factual as well as Law points involved in the matter in respect of the scope of tenancy right, I have to scrutinize first the pleadings put forth or oral evidence laid in support of rival contentions which was initially went upto

Hon'ble High Court, in the previous proceedings. By keeping in mind the scope of appreciation of evidence on this line, I will scrutinize the oral as well as documentary evidence as under.

9. The tenancy was created in favour of Maruti since prior to 1950 and particularly after the death of landlord / Narayan. After the death of landlord / Narayan M.E.No.1673 came to be certified in the name of his three sons represented through their natural guardian mother Laxmibai. At the time of certification M.E.No.1673 the age of respective sons of deceased Narayan were shown in M.E.No.1673 as 9 years, 5 years & 1 year respectively. In short, on the "*tillers' day*" all three sons of the deceased landlord were major. Therefore, there was no question which ought to have been considered by the Ld.trial tribunal in a previous litigation on the touchtone of postponement of "*tillers' day*". Without touching to these factual aspects, M.E.No.3390 came to be certified on 5/9/1964 postponing the "*tillers' day*" in the enquiry conducted in the file concerned. In view of above observations I do find that the order referred in M.E.No.3390 is itself against the record and there was no question of postponement of "*tillers' day*" in the eye of Law.

10. By keeping aside the above factual aspect, it is pertinent to note here that the landlord has issued a notice dt.23/11/1956 claiming possession of the disputed land for their personal cultivation. The said proceedings decided on merit through file No.TNC/600/57, which came to be dismissed by order dt.3/2/1959 i.e. after the "*tillers' day*". Even otherwise the proceedings

initiated through file No.508/62 u/s 33B of the Act came to be dismissed by order dt.26/8/1963. All these orders reached to its finality being not ever challenged. In that context, it has become evident on record that the right of tenant as a statutory purchaser was not at all affected on the ground of legal disability with the landlord. In view of the judgment & order passed in file No.TNC/600/57 and file No.508/62, the right of tenant has become absolute. In support of these observations Ld.Adv.Shri.J.P.Dhaytadak for the Respondents rightly called my attention towards the precedent laid down by our Hon'ble High Court in the case of **Nago Mahajan / Yashodabai Mahajan, 1977 BLR-427**, wherein Their Lordships have ruled as under.

"Disabled landlords have a choice to avail all either two provisions of resumption, namely u/s 31(1) or 31(3) whichever depends on circumstances in which age of them finds. However, once the right has been exercised and if it is so negatived the tenant become purchaser on the date of order when it has reached to its finality, refusing the relief of possession in favour of the landlord."

11. In short, in view of the facts narrated supra and Law laid down in the precedent referred supra, no merit remains in favour of the LRs of the deceased landlord to contest the proceedings u/s 32G of the Act and the circumstances call upon the tenants to fight all the *lis* interse on the ground of status of tenancy either exclusive or joint tenancy.
12. On this touchtone also nature of tenancy either individual / exclusive or tenancy for and on behalf of the joint family, at first, it is pertinent to note here that there is ample evidence in form of revenue record wherein, Maruti being the eldest member of the family since from the date of death of his

father, was representing the family as the Manager of joint family. M.E.No.1372 which came to be certified somewhere in 1934 shows that the father of Maruti named Kundalik reported dead on 4/10/1934 and family property left by deceased Kundalik was mutated in the name of Maruti Kundalik Jadhav, minor under guardianship of mother Sardabai Kundalik Jadhav. That entry showing the representation of Maruti as the elder member of the family representing the minor co-parcener represented through his natural guardian speaks volume that, that entry itself sufficient to hold that since prior to the attaining the age of majority, Maruti was representing the family left by his father as its Manager.

13. Secondly, during the course of consolidation scheme of disputed land the name of Maruti Kundalik Jadhav as a *protected tenant* u/s 3a of the Act, recorded in the name of other rights column while preparing the consolidation statement u/r 9(3), 9(4) of the Act. The entry is shown in the name of Maruti as *protected tenant*.

14. Admittedly, Maruti Jadhav reported dead on 13/9/2011 i.e. after initiating the proceedings u/s 32G of the Act in the present case. While the proceeding was conducted before ALT, in the first round of litigation the statement of Maruti came to be recorded. The fact of trial and recording of statement of Maruti at the material time is not at all disputed on any of the ground available to the party concerned. Therefore, evidentially value of statement made in the same proceedings by the party concerned plays vital

importance. Before commenting on its evidentially value I would like to quote the material part of deposition made by deceased Maruti before ALT. The statement was recorded before ALT on 3/2/2000. Certified copy thereof is on record. The relevant portion from the statement made by Maruti in respect of the nature of tenancy runs as under.

"-----सदर जमिनीत मी व माझा पुतण्या श्री.अशोक नामदेव जाधव याची प्रत्येकी ८ आणे हिस्सा कुळवहिवाट आहे. तरी दोघांचे नावे समान हिश्याने किंमत ठरविण्यात यावी. तशी रक्कम भरणेस तयार आहे.

-----आता माझे वय ८५ वर्षाचे आहे. त्यात दोन्ही डोळ्यांनी नीटसे दिसत नाही. त्यामुळे गेली ३ ते ४ वर्षांपासून मी सही न करता आंगठा करीत असतो."

This statement made by Maruti speaks volume as to how the tenancy was created and how it was represented by him as a Manager of family.

15. On this point Ld.advocate for the Revision Petitioner rightly called my attention towards the precedent laid down by our Hon'ble Supreme Court in the case of *Ahmedsaheb / Sayyad Ismail, 2012 (6) MhLJ-503*.

The proposition of law laid down in the above precedent can be summarized as under-

"Admission of a party in the proceedings either in the pleadings or oral binds the party and same does not need any further collaboration."

In addition thereto, I may keep reliance on following two precedents, so as to bring on record the importance of oral admission given by the party in the same proceedings, which was not ever denied by the maker thereof in his lifetime.

(i) *Ningandas Vs. Dalpatram Icchyaram, AIR 1974 SC 471*

(ii) Srinivas / S.Padmavathamma, 2010(5) SCC-274

The proposition of law laid down in these precedents can be summarized as under-

"Judicial admissions given in the pleadings stands on higher footing than evidentially admissions given in form of oral evidence or in any other documents other than pleadings. The evidentially admissions are ever receivable at the trial, but, not a conclusive, they can be shown to be wrong".

16. Herein this case, despite of sufficient chance though available, the maker of the statement has not avail the opportunity to deny or contest the admission given by him before ALT.

Herein this case, fact of recording statement is not denied by the father of the Respondent No.1 to 5, who was alive till 2011. Even otherwise pending the //s the maker of the statement i.e. Maruti has not filed any affidavit, denying the truthfulness of the statement recorded before Tahsildar, wherein, he has made certain admissions against his own interest, and admitted the nature of tenancy as a joint tenancy for and on behalf of the undivided Hindu family represented through him as the Manager thereof.

17. In the given set of facts, while considering the Law points involved in the matter I may state here that well settled principle of Hindu Law is that, there is presumption of jointness of family and not of the property. However, once the existence of joint family is established, then the person who asserts exclusive acquisition has to prove the same, otherwise the presumption attached to the joint family shall be equally applicable to such property as a joint family property. The word "person" and the word "joint family" has been

defined in the Act in Sec.2(11) & 2(7A) of the Act respectively. In addition thereto, I may keep reliance on following two precedents, so as to draw inference about the nature of disputed land as joint family tenancy created in favour of Maruti as a Manager thereof.

(i) Shankarbhai / Dagadubhai, 1991 (2), GLH-487

(ii) Vithu Agaskar / Rama Agaskar, 2018 BCR(4)-711

The proposition of law laid down in these precedents can be summarized as under-

"The word 'person' is defined in Sec.2(11) of the Act, which includes joint family. Section-2(7A) of the Act, defines 'joint family' which means undivided Hindu family. From the inclusion definition of the word 'person' r/w definition 'joint family' it becomes clear that an undivided Hindu family can be a tenant. Certificate issued u/s 32M of the Act, would at the most be conclusive proof of purchase against the owner of the land only. Tenancy rights of the joint tenant cannot be negatived solely on the ground that the certificate issued in favour of Karta or any elderly person of joint family would not cover other members."

18. In the cases referred supra Hon'ble High Court, has ruled that the tenancy on the basis of evidence placed on record, as fact in issue joint family tenancy has been duly proved. Herein this case also after considering the revenue record, role of Maruti played since from the date of attaining the majority till his death, statement made by him before the Competent Authority which has remained unchallenged and revenue record prepared and maintained during his lifetime till his death speaks volume. On this touchtone, I may refer the M.E.No.7003 which came to be certified on 6/8/1985 which is based on application moved by Maruti before revenue authorities, wherein, he has not only admitted the nature of tenancy as joint family tenancy, but, also

admitted his role as the Manager thereof and the right of the LRs of deceased brother i.e. Ashok & Shankar equally thereof his share in the disputed land. The contents from M.E.No.7003 quoted here just for ready reference.

"M.E.No.७००३- तारीख १०/६/८५ अर्जावरून मारुती कुंडलीका जाधव यांनी अर्ज दिला की ते वयोवृद्ध झालेमुळे शेतीचा व्यवहार पहाता येत नाही. म्हणून व त्याचे भावाचे नावावर जमिन दाखल नसलेने व अर्जदार यांचे एकुमें म्हणून नाव दाखल आहे. म्हणून त्यांचे भाऊ नामदेव कुंडलीका जाधव हे मयत वारस मुलगे १) अशोक नामदेव जाधव वय ३०, २)शंकर नामदेव जाधव, वय १९ या दोघांची नावे प्रत्येकी ४ आणे व अर्जदार याचे मुलगे चार १)शिवाजी मारुती जाधव २) विश्वास मारुती जाधव ३) मोहन मारुती जाधव ४) नंदकुमार मारुती जाधव प्रत्येकी २ आणे अशी आनेवारीत नावे दाखल करावीत असा अर्ज आलेवरून नोंद केली. अर्ज फायलीस दाखल."

19. This entry has been certified on 6/8/85 and reached to its finality. Certification of M.E.No.7003 in the lifetime of Maruti supports the statement made by him before ALT, wherein, he has admitted the 8 Ana share of the branch of Namdeo in the disputed land. In the given set of facts, I am of the view that no other additional evidence is required to draw inference in respect of the disputed land as a tenanted land for and on behalf of the joint family represented through Maruti Jadhav. As such after the death of Maruti present Applicant being the LR of Namdeo has got 8 Ana share therein and remaining 8 Ana goes to the branch of Maruti.

20. In view of above observations it has been duly proved that the tenancy which was created through Maruti it was so created by him in the capacity of Manager of undivided Hindu family. Therefore, Applicant being the LR of one of the branch, he has got equal share therein. In that context, the findings recorded by both the tribunals below are against the factual aspects proved and Law established on the point of nature of tenancy. Therefore, having

regard to the scope of powers of revision with this Tribunal, I do find that though the order under challenge is concurrent in nature, does not sustain in eye of Law either on facts or on Law. Therefore, same calls for interference therein at the hands of this Tribunal. In support of above observations I may keep reliance on the following precedents.

(i) *Baldevji Vs. State of Gujarat*, AIR 1979 SC, page-1326

(ii) *Shamrao Vs. Shantabai*, 1995 Vol.I, Mhlj-668

(iii) *Laxman Vs. Vishwanath*, 2007(1) ALL MR-36

The Law laid down in those precedents can be summarized as under :

"The provisions of revision within the limits of Sec.76 of the Act are ever in form of second appeal as contemplated u/s 100 of CPC. Same principle applies for an application for revision before the revenue tribunal. The Tribunal has jurisdiction to examine the finding of fact if same are based on no evidence or are found to be perverse in eye of law. A decision arrived at without deciding the proper issues of fact is an essence of decision contrary to law."

21. By keeping reliance on both the precedents quoted supra, I hold that though the order under revision is against the concurrent findings does not sustain in eye of Law and deserves to be set aside. With these observations, I answer the 'Point No.1 in affirmative, Point No.2 in negative, Point No.3 in negative & Point No.4 in affirmative & as per final order.'

22. **Point No.5:** The facts observed supra speaks volume that the Manager of the family has dragged the other branch in the litigation for years together for the reasons known to them, particularly when burden was on them to prove the nature of property as exclusive in character. Failing in such legal duty unnecessarily burdened the Revision Petitioner for economical as

well as mental harassment. Therefore, same is required to be compensated by invoking the powers u/r 36 made under the Code for awarding the costs in favour of the succeeding party. In the present case if the amount of costs is quantified to the tune of Rs.20,000/- that will meet the ends of justice. With these observations, I answer the 'Point No.5 in affirmative & as per final order' and proceed to pass the following order.

ORDER

The revision application is hereby allowed with costs of Rs.20,000/-.

The judgment & order passed by both the tribunals below are hereby set aside.

Respondent No.1 to 5 are hereby directed to pay the costs of Rs.20,000/- to the Revision Petitioner.

The Branch of Namdeo Jadhav shall be the owner of $\frac{1}{2}$ share of the disputed land and the remaining $\frac{1}{2}$ share to the share of LRs of deceased Maruti.

The amount of price fixed being already deposited, certificate u/s 32M of the Act be issued accordingly. If any amount towards the price fixed as per the declaration made in Para above is still unpaid, be recovered from the respective party as per shares declared as above.

The amount of costs awarded if not paid to the successful petitioner within one month, it shall be recovered as the arrears of land revenue alongwith future interest @ 10% p.a. till its realization.

R&P received from the tribunals below be sent back immediately.

Intimation of this order be sent to both the parties & lower tribunals.