

(1968) 06 BOM CK 0001

In the Bombay High Court

Case No : Spl. Civil Application No's. 1676, 1977 and 1817 of 1964

Anant Dattatraya Mali and Another

APPELLANT

Vs

Chintaman Govindpatil and Another

RESPONDENT

Date of Decision : 20-06-1968

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 31(3), 32

Citation : AIR 1969 Bom 210 : (1968) 70 BOMLR 689 : (1969) ILR (Bom) 66 : (1969) MhLj 35

Hon'ble Judges : Tarkunde, J;Deshpande, J

Bench : Division Bench

Advocate : P.S. Joshi and V.M. Limaye, for the Appellant; Raghavendra A. Jahagirdar and V.N. Ganpule, for G.S. Gupte, for the Respondent

Judgement

Tarkund,

1. These three petitions under Article 227 of the Constitution raise a common question of law relating to the interpretation of the proviso to clause (a) of sub-section(1) of Section 32-F of the Bombay Tenancy and Agricultural Lands Act, 1948.

2. To appreciate the question involved it would be sufficient to notice the acts in Special Civil Application No. 1676 of 1964. One Dattatraya was the owner of several agricultural lands in a village in the Jalgaon District. It appears that Dattatraya also owned several houses and had a money-lending business. He died in 1962 leaving behind a widow Laxmibai & two sons Anant and Balwant. After the Bombay Tenancy and Agricultural Lands Act, 1948 (hereafter referred to as the Bombay Tenancy Act) was extensively amended by Bombay Act No. 13 of 1956 with effect from 1st August 1956, a partition was effected between the widow Laxmibai and the two sons Anant and Balwant by a registered document dated 20th November 1956. By that partition several agricultural lands, which were in the possession of the 1st respondent as a tenant, were allotted to the share of Laxmibai. On the assumption that the 1st respondent had become the

owner of these lands on the Tiller's Day, a proceeding for the determination of their purchase price of these lands was commenced u/s 32 G of the Bombay Tenancy Act . Notice of this proceeding was given to Anant and not to Laxmibai. Anant appeared before the Agricultural Lands Tribunal and contended that the lands had fallen to the share of Laxmibai in a family partition, that since Laxmibai was a widow and the partition was covered by the proviso to Clause (a) of Section 32F (1) of the Bombay Tenancy Act the 1st respondent had not become the purchaser of the lands and that the proceeding for the determination of the purchase price of the lands u/s 32G was, therefore, incompetent. In reply to these contentions the 1st respondent claimed that the alleged partition between Laxmibai and her sons was bogus and that he had become the purchaser of the lands on the Tiller's Day. After recording evidence on these rival contentions, the Agricultural Lands Tribunal came to the conclusion that the alleged partition was not genuine and directed that the proceeding u/s 32G should continue. The Agricultural Lands Tribunal observed that there was no division of the house property between Laxmibai and her sons and that the ancestral money-lending business had admittedly been kept joint between them

3. In an appeal filed by Anant from this decision the Deputy Collector came to the conclusion that there had been genuine partition between Laxmibai and her sons in respect of agricultural lands, that the lands allotted to the share of Laxmibai were not more than her one third share in the entire joint family property, and that although other properties, such as houses, ornaments and the ancestral money-lending business were not partitioned, the partial partition in respect of agricultural lands was good in law and was protected by the proviso to clause (a) of Section 32F(1) of the Bombay Tenancy Act. On these findings the Deputy Collector allowed the appeal and set aside the order of the Agricultural Lands Tribunal.

4. From the order of Deputy Collector the 1st respondent approached the Maharashtra Revenue Tribunal in revision. This revision application which questions relating to the interpretation of the proviso to clause (a) of S. 32F (1) of the Bombay Tenancy Act were involved, was placed before a Full Bench of three Members of the Revenue Tribunal. The Full bench gave its findings on the question of interpretation of the said proviso which were raised in the course of arguments in all the application. Thereafter a Division Bench of the Revenue Tribunal dealt separately with each of the revision application filed by the 1st respondent the Division bench of the Revenue Tribunal set aside the order of Deputy Collector and restored that of the Agricultural Lands Tribunal on the ground that a partial partition of joint family properties was not recognised by the proviso to clause (a) of Section 32-F (1)

5. The present petition (Special Civil Application No.1676 of 1964) was filed by Anant under Article 227 of the Constitution with a view to challenge the legality of the above decision of the Maharashtra Revenue Tribunal. The petition was subsequently amended to add Laxmibai as the 2nd petitioner.

6. In order to appreciate the arguments addressed before us it is necessary to notice the provisions of clause (a) of Section 32 F(1) "Notwithstanding anything contained in the preceding section, - (a) Where the landlord is a minor, or a widow or a persons subject to any mental or physical disability the tenant shall have the right to purchase such land u/s 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 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 share of such person in the land is 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 the person in the entire joint family property and not in a larger proportion".

7. The proviso quoted above was added to clause (a) of Section 32F (1) by Bombay Act No.38 of 1957 but was given retrospective effect from 1st August 1957, i.e., from 1st August 1957, i.e. from the date on which Sections 32 to 32 R were introduced in the Bombay Tenancy Act. A proviso in the same terms was also introduced by Bombay Act No. 38 of 1957 in sub-section (3) of Section 31 provides that when a landlord requires any leased land for personal cultivation, he shall give to the tenant a notice on or before 31st day of March 1957, Subsection (3) of Section 31 lays down an exception to this rule in cases where the landlord is a minor, a widow or a person subject to mental or physical disability. For the sake of convenience these landlords maybe designated as "disabled persons." Sub-section (3) of Section 31 provides in effect that where such disabled persons are landlords, the notice terminating the tenancy for personal cultivation may be given and an application for possession u/s 29 may be made within one year of the date on which the disability of such landlord comes to an end, Correspondingly, Cl.(a) of Section 32 F (1) lays down that where the landlord belongs to one of the categories of disabled persons, the tenant shall have the right to purchase the leased land u/s 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31. Now, the proviso which was introduced in identical terms in S, 31 and S. 32F (1) (a) was designed to meet cases where such disabled persons were members of a joint family. The proviso says, in the first place that where a disabled person was a member of the joint family the provisions of Section 31(3) and of Section 32 F(1) (a) shall not apply if at least one member of the joint family was outside the categories of disabled persons. The proviso, however, further lays down that the aforesaid provisions (the provisions of Section 31(3) and of Section 32F (1)(a) shall apply to disabled persons who were members of a joint family, if there was a partition in the family before 31st March 1958 and if that partition fulfilled certain requirements. Thus the main effect of the proviso is to postpone the date on which a tenant could become a purchaser of the leased land where the land belonged to a joint family of which disabled

person was a member and in which a partition took place before 31st March 1958 fulfilling certain conditions.

8. As stated above, the Full Bench of the Maharashtra Revenue Tribunal gave findings on several questions which were raised before the Bench in the course of arguments relating to the interpretation of the proviso quoted above. For the purpose of deciding the cases before us we have to consider two questions on which findings were given by the Full Bench. j One of these questions related to the meaning of the expression "such person" which occurs in the proviso. The question was whether the expression "such person" refers to a disabled person or a person who is not disabled person or a person who is not disabled. There was difference in the Members of the Full Bench on the interpretation of this expression. The majority consisting of two Members of the Full Bench held that the expression "such person" refers to a person who is not disabled, whereas the remaining Members came to the conclusion that the expression refers to a disabled person.

9. On this disputed question we are inclined to accept the minority view. Like the main provisions of sub-section (3) of Section 31 and clause (a) of Section 32F(1), the proviso deals with the rights of a landlord who is a disabled person. It is the share of "such person" which is to be separated in a partition on or before 31st March 1958. More over, the proviso lays down that in the partition the share allotted to "such person" in the land must be in the same proportion as his share in the entire joint family and "not in a larger proportion". Obviously, in making this provision the legislature intended to ensure that members of a joint family shall not adversely affect the rights of tenants by allotting agricultural land to a disabled member in excess of his proper share in the entire joint family property. The interests of tenants would not be adversely affected if a member of the family, who was not a disabled person, was given in a family partition a larger proportion of agricultural land than the proportion which represented his share in the entire joint family property. It must follow that the expression "such person" in the proviso denotes a disabled person and not a person who is not disabled.

10. The second question, which was raised before the Full Bench of the Revenue Tribunal and which is relevant to the cases before us, is whether, in order to satisfy the requirements of the proviso, the family partition maybe confined to agricultural lands only or must extend to the entire joint family property. The Full Bench of the Revenue Tribunal dealt with this question in the following passage;

"According to the true notion of an undivided Mitakshara family (which governs the State of Maharashtra) no individual member of that family, whilst it remains undivided, can predicate of the joint property that a particular member has a certain definite share one-third or one-fourth (See Mulla's Hindu Law p 492 Edn. 12). Until, therefore, the entire joint family property is divided or partitioned, it would not be feasible to determine what the value of a share of a particular member be. It is, therefore, clear that for the purpose of the provisos, there

cannot be a valid partition which is partial either in relation to persons or properties. The agricultural lands must be divided by metes and bounds, but the other property need not be physically partitioned. It is sufficient if the interest of the members in the the other property is made legally separated."

Thus , according to the Full Bench of the Revenue Tribunal, the requirements of the proviso are satisfied if, in the partition, the agricultural lands are divided by metes and bounds and the rest of the property is divided only notionally and not physically .

11. If this were the correct interpretation of the proviso, we find it difficult to appreciate why in the present case, the Revenue Tribunal allowed the revision application of the 1st respondent and set aside the decision of the Deputy Collector. The deputy collector had found that , whereas the agricultural lands were divided by the metes and bounds between Laxmibai and her sons Anant and Balwant, the rest of the joint family property remained undivided. There was no finding of the Deputy Collector that even a notional partition had not taken place in the rest of the property and that Laxmibai and her sons continued to be members of a joint Hindu family in regard to that property.

12. We are, however, not in agreement with the view of the Full Bench that the requirements of the proviso are fulfilled if, in a family partition, agricultural lands are divided by metes & bounds & the rest of the property is only notional partitioned. The proviso lays down two requirements of a family partition; (1) that "the share of such person (i.e. the disabled person) in the joint family has been separated by metes and bounds " and (2) that "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". The first of these requirements appears to have escaped the notice of the Revenue Tribunal. That requirement makes it obligatory that the share of the disabled person must be separated by metes and bounds in all the joint family property and unless the agricultural land allotted to him corresponds to his share in the entire property and is not in excess thereof.

13. In the petition under consideration (Special Civil Application No. 1676 of 1964) it has been found by the Agricultural Lands Tribunal as well as by the Deputy Collector that Laxmibai's share in the properties of the joint family other than agricultural land was not separated by metes and bounds in the partition between her and her sons . The partition, therefore, did not satisfy the requirements of the proviso and could not have the effect of postponing the date on which the 1st respondent, who was the tenant of the lands allotted to the share of Laxmibai would be entitled to become the statutory purchaser of those lands. We must accordingly uphold the decision of Maharashtra Revenue Tribunal although on a ground different from the one which appealed to the Revenue Tribunal.

14. Similarly, in each of the other two petitions (Special Civil Applications Nos. 1677 of 1964 and 1817 of 1964), it has been found that the share of the disabled person in joint family properties other than agricultural land was not separated by metes and bounds at the partition on which the petitioners relied. Hence these petitions must also fail.

15. In the result, the petitions are dismissed. There will be no order as to costs in all these petitions.

16. Petitions dismissed.