

(1976) 09 BOM CK 0018
In the Bombay High Court
Case No : Appeal No. 872 of 1969

Gangadhar Rameshwar Telang

APPELLANT

Vs

Anna Bhima Ghugare

RESPONDENT

Date of Decision : 09-09-1976

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(1), 13, 14, 15
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 2, 31, 31B, 31C
Hindu Succession Act, 1956 — Section 14, 14(2), 30

Citation : (1977) MhLj 347

Hon'ble Judges : N.B. Naik, J

Bench : Single Bench

Advocate : K.J. Abhyankar, for the Appellant; M.D. Gangakhedkar for S.C. Pratap, for the Respondent

Final Decision : Dismissed

Judgement

N.B. Naik, J.—This appeal raises an interesting point of law under the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the "Act"), as to whether a tenant of an agricultural land who could not become a deemed purchaser u/s 32 (1) read with section 34F (i) (b) of the Act by reason of her being a widow, could bequeath her tenancy rights by a will.

2. The facts giving rise to that question are these : Survey No. 24/2A of village Haripur taluka and district Sangli is of the ownership of the plaintiff. One Tarabai Bhimgonda Patil was admittedly a protected tenant of this land. Because she was a widow on the tillers' day, by an order (Ex. 19) dated 15th December 1960, the Mamlatdar passed an order that the tiller's day in respect of that land was postponed u/s 32F (i) (b) of the Act.

3. On 5th February 1963, Tarabai executed two registered documents in favour of the defendant who is her sister's son viz. a gift-deed (Ex. 23) in respect of a house and other properties with which we are not concerned and Ex. 24, a will in

respect of tenancy rights in the suit and another land with which we are not concerned. Tarabai died on 14th March 1963. On 26th July 1965, the plaintiff filed the suit giving rise to this appeal for possession of the suit land together with past mesne profits for two years and future mesne profits and costs from the defendant.

4. The allegations on which the suit was founded are that he did not admit the will, if any, executed by Tarabai in favour of the defendant and that in any event Tarabai had no right to bequeath her tenancy rights by a will. He therefore contended that the defendant was in fact a trespasser.

5. The suit was naturally resisted by the defendant. He contended that Tarabai had executed the will when she was in sound and disposing state of mind and that she had every right to bequeath the tenancy rights by a will.

6. Both the Courts have held that the tenancy rights could be bequeathed by a will. Both the Courts have further held that Tarabai was in a sound and disposing state of mind when she executed the will. While the trial Court held that the execution of the will was not proved, the District Court after a careful consideration of the evidence has held that the execution of the will is proved. While consistently with the findings the trial Court decreed the plaintiff's suit, the District Court allowed the appeal and dismissed the plaintiff's suit.

7. Mr. Abhyankar who has appeared in support of this appeal has assailed the judgments of both the Courts taking the view that tenancy rights could be bequeathed by a will. He submits that Tarabai had no authority to bequeath the tenancy rights as she was a statutory tenant and had only a personal right to remain in possession which comes to an end after her death.

8. Mr. Abhyankar has relied upon the judgment of the Supreme Court in Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others, wherein while dealing with the rights of a tenant under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 the Supreme Court has observed,

A person remaining in occupation of the premises let to him after the determination of or expiry of the period of The tenancy is commonly, though in law not accurately, called a statutory tenant. Such a person is not a tenant at all; he has no estate or interest in the premises occupied by him. He has merely the protection of the statute in that he cannot be turned out so long as he pays the standard rent and permitted increases, if any, and performs the other conditions of the tenancy. His right to remain in possession after the determination of the contractual tenancy is personal; it is not capable of being transferred or assigned, and devolves on his death only in the manner provided by the statute,

9. Mr. Abhyankar therefore argues that the Courts below have ignored this aspect of the legal position. He has also submitted that the District Court was not right in coming to the conclusion that the execution of the will relied upon by the defendant is proved.

10. Mr. Gangakhedkar for the respondent in support of his contention that a tenancy right could be bequeathed by a will, has drawn my attention to two unreported judgments of this Court. The first judgment is of Chandrachud J., as he then was, in Smt. Kakabai alias Anusayabai w/o Maruti Naikwadi v. Mahadu Sakharam Adsul Special Civil Appln. No. 1607 of 1964, decided on 15th December 1965, and the second is of Tulzapurkar J. in Anant Kisan v. Madhukar Sadanand Civil Revn. Appln. No. 142 of 1974 with Appeal from Order No. 98 of 1974, decided on 29th April 1976.

11. Since the question raised has got to be resolved in the light of the relevant provisions of the Act, as it stood in 1963, when Tarabai purported to bequeath her tenancy right by the will Ex. 24 and died, it is necessary to refer to those provisions.

12. Chapter III of the Act deals with Special Rights and Privileges of Tenants and provisions for Distribution of Land for Personal Cultivation. Although section 31 gives a right to the landlord to terminate the tenancy, that right is subject to the provisions of sections 31A to 31D.

13. Section 31-B in so far as it is material provides that in no case a tenancy shall be terminated u/s 31 in such manner as will result in leaving with a tenant, after termination, less than half the area of the land leased to him.

14. Section 31-C provides that the tenancy of any land left with the tenant after the termination of the tenancy u/s 31 shall not at any time afterwards be liable to termination again on the ground that the landlord bona fide requires that land for personal cultivation.

15. Admittedly in the instant case Tarabai who was a protected tenant was the beneficiary of the provisions of section 31B, and therefore the landlord had succeeded in being able to terminate the tenancy only in respect of half of the land in the proceedings for termination of tenancy started by him, and Tarabai was therefore left with the remaining half of the land viz. the suit land. In view of the provisions of section 31C, the landlord had no right to terminate the tenancy of the suit land on the ground of bona fide personal use.

16. Part II of Chapter III deals with purchase of land by tenants. Sections 32 to 33 occur in this Part.

17. Section 32 (i) in so far as it is material for our purpose is to the effect:

32(i). On the first day of April 1957 (hereinafter referred to as "the tiller's day") every tenant shall, subject to the other provisions of this section and the provisions of the next succeeding sections, be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon on the said day, the land held by him as tenant, if-

(a) ...

(b) such tenant is not a permanent tenant but cultivates the land leased

personally.

18. It may be mentioned here that Explanation I to sub-section (6) of section 2, as is only to be expected provides that a widow or a minor, or a person who is subject to physical or mental disability, or a serving member of the armed forces shall be deemed to cultivate the land personally if such land is cultivated by servants or by hired labour, or through tenants.

19. Section 32F (1) (b) (ii) provides-

Notwithstanding anything contained in the preceding sections-

where the tenant is a widow, the right to purchase land u/s 32 may be exercised by the successor-in-title of the widow within one year from the date on which her interest in the land ceases to exist.

(Emphasis supplied).

20. This provision makes it clear that the right to purchase the land may be exercised by the successor-in-title of the widow within one year from the date on which her interest in the land ceases to exist. The expression "successor-in-title", in the context in which it appears, clearly and unambiguously means a person who acquires the interest or title of the widow either by testamentary disposition or devolution on death. It is needless to say that the expression "successor-in-title" simpliciter and without reference to context is wide enough to include and mean a transferee or a legatee or an heir. It is, therefore, clear that a widow could certainly bequeath her tenancy rights by a will, if she could otherwise do so.

21. That leads me to the provisions of the Act about the continuance of tenancy on death of tenant.

22. Section 40 (1) of the Act provides:

Where a tenant other than a permanent tenant dies, the landlord shall be deemed to have continued the tenancy on the same terms and conditions on which such tenant was holding it at the time of his death, to such heir or heirs of the deceased tenant as may be willing to continue the tenancy.

23. Sub-section (2) of section 40 provides that-

Where the tenancy is inherited by heirs other than the widow of the deceased tenant, such widow shall have a charge for maintenance on the profits of such land.

(Emphasis supplied.)

24. This section would show that the right of a tenant is clearly heritable. That is precisely why this Court has held in *Nemchand Chunilal v. Bhimrao Anna* 1968 Mh. L J 739=70Bom. L R 571, that the rights of tenancy possessed by the original tenant who was a statutory tenant are heritable.

25. Section 63 in Chapter V of the Act, dealing with restrictions on transfers of agricultural lands, provides;

63. (1) Save as provided in this Act-

(a) no sale (including sales in execution of a decree of a Civil Court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift exchange or lease of any land or interest therein, or

(b) no mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee, shall be valid in favour of a person who is not an agriculturist or who being an agriculturist will after such sale, gift, exchange, lease or mortgage, hold land exceeding two-thirds of the ceiling area determined under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 or who is not an agricultural labourer.

26. There is a proviso to this section which provides that-

the Collector or an officer authorised by the State Government in this behalf may grant permission for such sale, gift, exchange, lease or mortgage, on such conditions, as may be prescribed.

27. Sub-section (3) of section 63 provides:

"Nothing in this section shall apply or be deemed to have applied to a mortgage of any land or interest therein effected in favour of a co-operative society as security for the loan advanced by such society or any transfer declared to be a mortgage by a Court under u/s 24 of the Bombay Agricultural Debtors' Relief Act, 1947.

28. In other words, it would appear that the restrictions on transfers provided for in section 63 of the Act, are not absolute. It may be noted incidentally that almost identical restrictions have been placed on transfers of land purchased or sold under the Act as appears from section 43 (1) of the Act which provides:

No land purchased by a tenant under sections 32, 32-F, 32-I, 32-O, 33-C, or 43-ID or sold to any person u/s 32-P or 64 shall be transferred by sale, gift, exchange, mortgage, lease or assignment or partitioned without the previous sanction of (ho Collector.

29. The marginal note to this section reads as :

Restrictions on Transfers of land purchased and sold under this Act.

30. It is significant to note that even while taking care to lay down restrictions on "transfers" of agricultural lands both by sections 63 and 43, the fact that the Legislature did not think it necessary or advisable to place restrictions on the "demise of the interest" in the lands or the "demise of the land" by a will would show that it was not the intention of the Legislature to prohibit the demise of the tenancy rights or of the lands by a will. After all the Legislature is not unaware of the fact that property could be disposed of either by an act inter vivos or by a

will. The very fact that even while taking care to place restrictions on transfers, the Legislature omitted to place restrictions on demise by a testamentary disposition will show that the Legislature deliberately and intentionally decided not to place restrictions on testamentary dispositions of interest in tenancy or lands if it could be otherwise disposed of under any other provisions of law.

31. These are the relevant provisions which have to be taken into consideration while considering the question as to whether the tenancy rights of a tenant who was a widow and in whose case the tillers' day was postponed u/s 32, could bequeath her tenancy rights by her will.

32. As I have pointed out initially a protected tenant had acquired the status of irremovability. Thereafter the tenancy rights have been made inheritable by section 40 of the Act. Section 32 and other sections of the Act occurring under the heading "purchase of land by tenants" in Chapter III of the Act, provide for the tenant being deemed purchaser on the tillers' day viz. the first day of April 1957, in the circumstances mentioned in section 32 and that day is postponed in the case of a widow as provided to section 32F (1) (b) (ii) of the Act.

33. Section 32F (1) (b) (ii) clearly provides that the right of purchase u/s 32 can be exercised by the successor-in-title of the widow within one year from the date on which her interest in the land ceases to exist. This is a clear indication that she could very well bequeath her property by a will if she could otherwise do so inasmuch as the expression "successor-in-title" is wide enough to include a legatee. It would further appear that the restrictions on transfers both by tenants and deemed purchasers or purchasers are not absolute. What is more, the Legislature has deliberately and intentionally omitted to place restrictions on demise of tenancy rights and lands by testamentary disposition. In fact as I have pointed out by reference to section 32F (1) (b) (ii), the tenancy rights could be certainly bequeathed by a widow. It could not be urged that even while clothing a widow with the power of testamentary disposition the Legislature could have intended to deny that power to male tenants. While it is easily understandable that due consideration had to be shown to widows, minors and those engaged in armed services for their inability to cultivate personally, there could be no justification for giving a higher right of disposition of property by a will to a widow while denying such power to male tenants, if their personal law otherwise confers such power on them.

34. Since Tarabai is a Hindu widow, it would be useful to refer to the provisions of the Hindu Succession Act, 1956 in this connection. Section 30 of this Act provides:

Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him, in accordance with the provisions of the Indian Succession Act, 1925, or any other law for the time being in force and applicable to Hindus.

35. Now prior to the coming into force of the Hindu Succession Act, neither under

the Mitakshara nor under the Dayabhaga law a widow or other limited female heir could in any case dispose of by will any property inherited by her or any portion thereof, whether the property was moveable or immoveable. The effect of section 14 of the Hindu Succession Act inter alia is to abrogate that traditional limitation. She is now full owner of all property howsoever acquired and held by her and can dispose of it by will. The only qualification to this rule is that she cannot do so where she holds any property as "restricted estate" as visualized u/s 14(2). Evidently sub-section (2) of section 14 of the Hindu Succession Act has no application to the tenancy rights held by Tarabai in this case. There is also no other law for the time being in force applicable to Hindus which would restrict Tarabai's right to dispose of by will, which right is given to her u/s 30 of the Hindu Succession Act. It would therefore appear that having regard to the provisions of the Act, and section 30 of the Hindu Succession Act, Tarabai had every right to bequeath the tenancy rights by a will.

36. I will now turn to the decisions relied upon by Mr. Gangakhedkar. In Smt. Kakabai's case decided by Chandrachud J., on 15th December 1965, the facts were these: - One Bhagirathibai Sadu Korde was in possession of five different lands situated in Wai. She died in May 1958 leaving surviving her four daughters, Kakabai alias Anasuyabai, Sitabai, Saraswatibai and Anasuyabai. Anusuyabai and Sitabai filed a suit against their two sisters for partition and separate possession of their one-half share in the properties left by their mother, Bhagirathibai. Mahadu, respondent No. 1, who is the son of Saraswatibai was impleaded to the suit as he had set up a claim under a will alleged to have been executed by Bhagirathibai. He contended that as the tenancy rights were bequeathed to him by Bhagirathibai under her will, civil Court had no jurisdiction to decide whether the tenancy rights were vested in him. The trial Court held that an issue arose which was within the exclusive jurisdiction of Tenancy Court to decide and it therefore framed appropriate issues concerning the claim set up by respondent No. 1 and referred those issues for the decision of the Tenancy Court.

37. The Tenancy Aval Karkun held that the respondent No. 1 was a tenant in respect of 3/4th portion of the suit lands. On appeal, the Deputy Collector, held that the petitioners and their two sisters had inherited the tenancy rights which were vested in their mother Bhagirathibai. The Revenue Tribunal in revision took the view that the respondent No. 1 is a tenant of 3/4th share in the land at serial No. E and that he was the tenant of lands at serial Nos. B to D. Being aggrieved by that judgment, the petitioners had filed Special Civil Application. After referring to the above facts, leading to the Special Civil Application, Chandrachud J., observed that it was now too late to hold that the reference by the civil Court to the Tenancy authorities u/s 85-A of the Act was itself bad. He further observed that the dispute in that case was not between the landlord on the one hand and the tenant on the other, but the dispute is whether as claimed by respondent, the tenancy rights which were vested in his grand-mother Bhagirathibai have been bequeathed to him under a will executed by her. In other words, the question in the first place would be whether the will executed by Bhagirathibai is valid and

secondly, whether under the will set up by respondent No. 1, the tenancy rights have been bequeathed by Bhagirathibai to him. It was observed that these questions cannot certainly be questions for the tenancy Courts to decide and in fact, the Deputy Collector very rightly took the view that the tenancy rights would devolve on the respective parties in accordance with their law of succession and that it was not for him to proclaim upon the validity of the will. Chandrachud J. further observed that in his opinion, the substance of the dispute shall have to be decided by the civil Court, because it is that Court which shall have to deal with the validity of the will alleged to have been executed by Bhagirathibai.

38. Further on, the learned Judge has observed as under:

As regards lands at serial Nos. B, C and D, the question must, in my opinion, be decided by the civil Court, because the plea set up by respondent No. 1 depends entirely on the proof of the will alleged to have been executed by Bhagirathibai on the 28th of March 1958 and the terms of that will. If the civil Court comes to the conclusion that the will is not proved or is otherwise not valid, respondent No. 1 can possibly get no interest in the lands serial Nos B C and D, because his claim is alleged to arise wholly out of the will. If, however, the civil Court holds that the execution of the will dated the 28th March 1958 is duly proved and the will is valid, it shall have to consider the further question as contended by respondent No. 1, whether the lands at serial Nos. B, C and D have been bequeathed by Bhagirathibai to him. If the will is valid and under the will the lands are bequeathed to respondent No. 1, the tenancy rights in respect of the three lands shall have to be held to vest in respondent No. 1. The civil Court would have jurisdiction to decide this question because, as I have stated earlier, this is not a dispute between a landlord and a tenant, but the dispute is whether under a will executed by a person in whom the tenancy rights were vested, those rights have been bequeathed to the claimant. Section 85 of the Tenancy Act does not bar the decision of such a question by the civil Court and indeed, a question as regards the proof and validity of a will and its construction must be left for decision to the civil Court.

39. With the above observations the decision of the Revenue Tribunal was set aside and the matter was remanded back to the civil Court for decision of the question relating to the properties at serial Nos. B, C and D.

40. Mr. Abhyankar who had appeared for respondent No. 1 in that Special Civil Application submits that this decision is not a decision on the points as to whether a tenant could bequeath the tenancy rights by a will. He submits that this is a decision only on the question as to whether the civil Court or the Courts under the tenancy Act could have jurisdiction to decide the question as to whether the will is valid and if it is valid whether the tenancy rights have been bequeathed by the will.

41. It is no doubt true that when the issues for decision as to whether the will

executed by Bhagirathibai is valid and secondly, under the will set up by respondent No. 1 the tenancy rights have been bequeathed by Bhagirathibai to him, were referred to the authorities under the Tenancy Act u/s 85A of the Act; Chandrachud J. took the view that these issues had to be decided by the civil Court and that the trial Court was not right in referring those issues to the authorities under the Tenancy Act. But then it is significant to note that while deciding the question of jurisdiction to try the said issues, Chandrachud J. has made the pertinent observations in his judgment to the effect that "if the will is valid, and under the will the lands are bequeathed to respondent No. 1, the tenancy rights in respect of the three lands shall have to be held to vest in respondent No. 1 and the civil Court would have jurisdiction to decide this question, because, that was not a dispute between a landlord and a tenant". It would, therefore, appear that the learned Judge has in fact by necessary implication held that the tenancy rights could be bequeathed by a will. Even Mr. Abhyankar could not dispute that the plain reading of the judgment does show that such an assumption was made by the learned Judge. It is true that the question as to whether the tenancy rights could or could not be bequeathed by a will does not seem to have been agitated in that case. Even then when the learned Judge has made that assumption and with respect rightly and no contrary view seems to have been urged to the said assumption, I would be justified in holding that the assumption made by the learned Judge was not at all doubted by the learned advocates appearing in that matter. Therefore though the question had not directly arisen in the manner in which Mr. Abhyankar has posed the same before me, the assumption made by Chandrachud J., in the said judgment, does lend assurance to the view I have taken.

42. In the case of Anant Kisan v. Madhukar Sadanand, by Tulzapurkar J., the facts were these :

43. One Saraswatibai was a tenant of three agricultural lands. The plaintiff purchased the said lands in court sale and had secured symbolical possession of the said lands and filed a suit against Saraswatibai, the tenant, to recover arrears of rent. The arrears of rent consisted of cash as well as in kind of the total value of Rs. 1104. The tenant Saraswatibai resisted the plaintiff's claim contending that though she was bound to pay the rent in cash, she was not liable to give the crop share. The trial Court having decreed the suit in plaintiff's favour by rejecting the contention of Saraswatibai, Saraswatibai preferred an appeal to the District Court. During the pendency of the appeal, Saraswatibai died on 5-2-1973 leaving a will dated 23rd September 1968. Under that will she had bequeathed her property including the tenancy rights in the suit lands to her nephew one Madhukar who was then a minor. An application was made on behalf of minor Madhukar by his natural guardian mother for bringing the minor on record, as the legal representative of the deceased Saraswatibai on the basis of the will of Saraswatibai. That application was resisted by the plaintiff-petitioner. The learned District Judge framed three issues and referred them for determination to the trial Court after taking evidence of the parties. The issues

framed were : Whether defendant Saraswatibai Ganpat Hadkar executed a will dated 23-9-1968 and she had bequeathed her interest in tenancy in favour of Madhukar Sadanand Hadkar, whether minor Madhukar had acquired rights of a tenant and whether he should be brought on record as legal representative of defendant Saraswatibai and lastly whether the tenancy right in respect of the suit property which subsisted in favour of deceased Saraswatibai could be bequeathed or transferred by a will in favour of minor Madhukar. The learned trial Judge after recording evidence certified his findings to the District Court on all the three issues in the affirmative. These findings were confirmed by the learned District Judge on appeal and the decree of the trial Court was confirmed. Even so the plaintiff approached this Court both by revision application as well as preferring an appeal, principally challenging the findings on the three additional issues which were recorded by the trial Court and were confirmed by the District Court.

44. It was contended for the plaintiff-petitioner that the question as to whether minor Madhukar has become a tenant of the suit land and whether the tenancy rights in respect of the suit property could be bequeathed by a will in his favour by Saraswatibai ought to have been referred by the civil Court to the competent authority under the Tenancy Act and, therefore, the findings recorded on these issues both by the trial Court and the District Court should be sent to the competent authority under the Tenancy Act for determination, as those findings were without jurisdiction having regard to the fact that these questions were covered by section 70 of the Tenancy Act. This contention was rejected by Tulzapurkar J. by observing as under:

It is impossible to accept any of these submissions of Mr. Rege. In the first place admittedly the lands in suit are bagayat lands and no provision in the Tenancy Act was brought to my notice which prevents any tenant from making any will or testamentary disposition in respect of his rights therein. It may be that the will propounded by the legatee may be challenged on ground that the same has not been duly executed by the testator or attested by the attesting witness or the testator was not in a sound disposing state of mind. Surely these questions are not required to be decided by a competent authority under the Tenancy Act. These questions unquestionably are required to be decided by a civil Court. What is more, once the due execution and attestation of the will is determined by a civil Court, the right of the legatee to claim tenancy rights under the will automatically follows and it is not as if that any question whether legatee has become a tenant or not is further required to be decided by the competent Court under the Tenancy Act.

45. Mr. Abhyankar however submits that even in this case the question which was involved was about jurisdiction of the civil Court to try the throe issues and all that the learned Judge has held is that those issues could be tried by the civil Court and not by the authorities under the Tenancy Act. Mr. Abhyankar has further submitted that although it is observed by the learned Judge that no

provision in the Tenancy Act was brought to his notice which prevents any tenant from making any will or testamentary disposition in respect of his rights therein, the question does not seem to have been approached in the light of the submissions which he has made before me by relying on the observations made by the Supreme Court in *Anand Niwas v. Anandji*, viz.

That the right of the tenant to remain in possession after the determination of the contractual tenancy is personal; it is not enable of being transferred or assigned, and devolves on his death only in the manner provided by the statute.

46. It is true that a perusal of the judgment would show that the only submission which was made by Mr. Rege before Tulzapurkar J., was that the question as to whether minor Madhukar has become a tenant of the suit land and whether the tenancy rights in respect of the suit property could be bequeathed by a will in his favour by Saraswatibai ought to have been referred by the civil Court to the competent authority under the Tenancy Act and therefore the findings of the Courts below on those issues were without jurisdiction. It is also true that Mr. Rege does not seem to have argued as is being done by Mr. Abhyankar before me that the tenancy rights could not be bequeathed at all by a will. Even then, the learned Judge has observed that there is no provision in the Tenancy Act which prevents any tenant from making any will or testamentary disposition in respect of his rights therein. He has further observed that once the due execution and attestation of the will is determined by a civil Court, the right of the legatee to claim tenancy rights under the will automatically follows and it is not as if that any question whether legatee has become a tenant or not is further required to be decided by the competent Court under the Tenancy Act. Therefore, while deciding the question of jurisdiction of the civil Court to try the issues, the learned Judge has held that there is no provision in the Tenancy Act which prevents any tenant from making any will or testamentary disposition in respect of his rights therein. Though the question was not raised in the manner in which Mr. Abhyankar has raised before me and although there is no discussion in the judgment for coming to the conclusion that the tenancy rights could be bequeathed by a will, the opinion which is expressed therein does support my view that the tenancy rights could be bequeathed by a will.

47. While construing the provisions of the Tenancy Act, as I have endeavoured to show, one has to consider the provisions contained in that very Act. The observations of the Supreme Court in *Anand Nivas v. Anandji* relied upon by Mr. Abhyankar while construing the provisions of sections 12 (1), 13, 14 and 15 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, would have evidently no application to the construction of the provisions of the Act because they are evidently based upon the construction of the provisions of a different Act. The question as to whether tenancy rights could be bequeathed by a testamentary disposition was not required to be considered in that case. In fact that was a case of a sub-lessee from a statutory tenant and the Supreme Court held that he acquires no rights under Rent Act. Having regard therefore to the

provisions of the Bombay Tenancy Act, and the provisions of section 30 of the Hindu Succession Act, I have no manner of doubt that Tarabai had every right to bequeath her tenancy rights in the suit land to the defendant

48. That takes me to the second contention of Mr. Abhyankar that the alleged will has not been proved. There is no force in the submission of Mr. Abhyankar. Ex. 24 is a registered will. On the selfsame date i. e. 5th February 1963, Tarabai executed two registered documents in favour of the defendant viz. will (Ex. 24) in respect of the tenancy rights of the suit and another land and a gift deed (Ex. 23) in respect of her house and other properties. After all the defendant was closely related to Tarabai as he happens to be one of the three sons of Tarabai's sister. The evidence shows that Tarabai had no relative from her husband's side for whom she could have any attachment. Several years back Tarabai had adopted one Janappa but that adopted son having driven her out and a criminal litigation have ensued, she was required to fend for herself and eke out a living by selling milk and taking others lands on lease. That adopted son having died leaving a son there was no love lost between her and that grand-son. She had in fact gifted another house to the defendant in 1940. Sometime since prior to her death she had gone to reside with the defendant who was residing with his brothers and mother who happens to be the sister of Tarabai. For proof of the will, besides examining himself the defendant examined Govind Sakharam and Shankar Tukaram, the attesting witnesses and Dhondopant Kulkarni, the scribe. This Dhondopant has sworn that the gift deed and the will were written by him at the instance of Tarabai. He further stated that they were read over to Tarabai and at the time of writing as well as at the time of reading over the documents the attesting witnesses were present. He further stated that Tarabai affixed her thumb marks on the documents and it was at her instance the attesting witnesses attested the documents. It was thereafter that the sub-Registrar being called the documents were registered and he has made endorsement thereon that they were read over to her and she admitted that the contents were correct. The fact that Tarabai was in a sound and disposing state of mind is a concurrent finding of both the Courts. Since the gift deed is a registered document and the circumstances show that there is nothing suspicious about it, it would appear that the learned District Judge was perfectly justified in coming to the conclusion that the execution of the will is proved. I, therefore, see no reason to interfere with that finding of fact.

49. In the result, the appeal fails and is dismissed with costs.