

**(1971) 04 BOM CK 0012**

**In the Bombay High Court**

**Case No :** Special Civil Application No. 1454 of 1967

Parvatibai

APPELLANT

Vs

Sitabai Ganpat Chavan and Another

RESPONDENT

---

**Date of Decision :** 08-04-1971

**Acts Referred:**

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 33

**Citation :** AIR 1972 Bom 381 : (1972) 74 BOMLR 147 : (1972) MhLj 357

**Hon'ble Judges :** Vaidya, J

**Bench :** Single Bench

**Advocate :** H.D. Gole, for the Appellant; V.N. Gadgil, for the Respondent

---

## **Judgement**

1. The subject - matter in dispute in this Special Civil Application under Art. 227 of the Constitution of India, consists of agricultural land S. No. 501/3 situate at Saswad in Poona District. This land and some other lands originally belonged to Ganpat Chavan, the Husband of respondent No. 1. The petitioner was the tenant of he above land. There was another tenant Laxman Jagtap in possession of some other lands of Ganpat. Ganpat applied for a certificate u/s 88 - C of the Bombay Tenancy and Agricultural Lands Act, and obtained it on January 20, 1959, in respect of the aforesaid land and the lands in possession of Jagtap. Unfortunately, Ganpat died thereafter. Respondent No. 1 alone claiming to be the sole heir of Ganpat, terminated the tenancy of the petitioner and of the aforesaid Jagtap u/s 33 - B of the Bombay Tenancy Act and filed an application in the Court of the Tenancy Avl Karkun, Purandhar; for restoration of possession of the aforesaid lands on March 29, 1962.

2. Laxman Jagtap settled so far as he was concerned, the matter with respondent No. 1 by giving possession to her of the lands in his possession. The petitioner resisted the application on several grounds including the ground that respondent No. 1 could not terminate the tenancy relying on the certificate granted to her deceased husband; and further that even if she could do so, she could not file an application without joining her sons and daughters who were

heirs and legal representatives of the deceased Ganpat. It was also contended that the landlady did not bona fide require the lands for personal cultivation. The Tenancy Aval Karkun overruled the contentions raised on behalf of the petitioner and ordered possession to be given to the landlady on September 16, 1964.

3. The petitioner carried an appeal to the Deputy Collector, who reversed the order on the ground that respondent No. 1 could not rely on the certificate granted to her deceased husband. Respondent No. 1 then filed a revision application before the Maharashtra Revenue Tribunal against the decision of the Deputy Collector. The Tribunal by its decision dated March 17, 1967 set aside the order of the Deputy Collector relying on the decision of this Court in Parvatibai Vs. Shankar Mahadu Varkhade and Others, . there Tarkunde and K. K. Desai, JJ. held that the right of a certificated landlord to apply u/s 33 - B of the Bombay Tenancy Act for possession of land from an excluded tenant does not lapse on his death and can be exercised, within the specified time, by his successor in interest. The Tribunal applied the case to the facts of the present case and further held that as respondent No. 1 was the sole legatee of the will, it was not necessary for the sons and daughters to be joined in the application. The Tribunal, therefore, set aside the order of the Deputy Collector and restored the order passed by the Tenancy Aval Karkun.

4. The said decision of the Tribunal is challenged by Mr. Gole for the petitioner on the ground that the Tribunal wrongly applied the decision of this Court in Parvatibai Vs. Shankar Mahadu Varkhade and Others, to the facts and circumstances of the present case. He submitted that in the present case Ganpat Chavan died living behind him his widow, two adult well placed sons and three daughters, as admitted by the widow herself, and that all these were Ganpat's heirs under the Hindu Succession Act. Mr. Gole also contended that although the will was relied on by respondent No. 1, it was not proved or produced in the proceedings, and in the absence of that will, it was wrong on the part of the Tribunal to have proceeded on the footing that respondent No. 1 was the sole legatee under the said will. He argued that even assuming that she was the sole legatee under the will, she could not make an application under S. 33 - B as she derived her titled under the alleged will from her husband, and as such did not fulfill the requirements of Section 33 - B (5) (c) of the Bombay Tenancy Act, 1948. He urged that as she was not the only heir of deceased Ganpat, in the absence of the will, she alone could not terminate the tenancy or make an application without joining the sons and daughters. IN support of his last argument, he relied upon the decision in Jainabai v. Bakaji Bhau (1961) 63 Bom LR 637 where it is held that the word "person" in the expression "leased by any person" in Section 88 - C (1) of the Bombay Tenancy Act, means and includes where the land is owned and let by a number of persons, all these persons and that if they hold the land as tenants - in - common, an application by any one of them for exemption form the applicability of Sections 32 to 32 - R of the Act, must be in respect of the whole land in which he has an undivided share and the income, which will consequently be taken into consideration under S. 88 - C (1)

of the Act, will be the income of all these persons who own or have leased the land jointly. Mr. Gole contended that the same meaning should be given to the word "person" used in the definition of the word "certificated landlord" in Section 33 - A (1) as the said definition is based on the certificate issued u/s 88 - C. As the heirs of Ganpat Chavan succeeded as tenants - in - common u/s 19 (b) of the Hindu Succession Act, 1956, according to Mr. Gole, all of them must join in acting as certificated landlords.

5. In view of these contentions, the first question which arises is as to whether respondent No. 1 could terminate the tenancy of the petitioner and make an application u/s 33 - B as the sole legatee under the will of the deceased Ganpat Chavan. Though there is some discussion of the will by the Tenancy Aval Karkun, no will was produced before him. There was no evidence except the bare statement of respondent No. 1 to show that there was a will. In the absence of production of will, it was wrong on the part of the Tenancy Aval Karkun and the Tribunal to assume that respondent No. 1 was the sole legatee under the will. I would have remitted the case to the trial Court, if it was necessary to decide whether respondent No. 1 was in fact the sole legatee under the will of deceased Ganpat Chavan.

6. I, however, think that it is not necessary to remand the case because, even assuming that respondent No. 1 was the sole legatee under the will she would be disqualified from terminating the tenancy in view of Section 33 - B (5) (c) which reads as follows :-

"33 - B (5) The right of a certificated landlord to terminate a tenancy under this section shall be subject to the following conditions, that is to say :

(a) .....

(b) .....

(c) .....

(c) The land leased stands in the Record of rights (or in any public record or similar revenue record) on the 1st day of January 1962 and thereafter until the commencement date in the name of the landlord himself or of any of his ancestors (but not of any person from whom title is derived by assignment or Court sale or otherwise), or if the landlord is a member of a joint family, in the name of a member of such family".

7. The effect of this clause was considered by this Court in Parvati's case referred to above. It is observed at page 388 :

"It cannot be assumed in the absence of adequate reason that the legislature did not intend to grant to the successor - in - interest the same limited protection which it granted to a small holder with limited income. There are, on the other hand ample provisions in the Act to ensure that the successor in interest of a certificated landlord would not be able to secure the benefit conferred by Section

33 - B, if he is not himself a small holder with limited income. In the first place Clause (c) of sub - section (5) of Section 33 - B provides that such a successor - in - interest would not be able to terminate the tenancy of the excluded tenant if his title is "derived by assignment or Court sale or otherwise". A donee or purchaser from a certificated landlord would be unable to terminate the tenancy of he excluded tenant ....."

In that case this Court dealt with two petitions. In the petition in Spl. C. A. No. 1878/64 it appears that the certificated landlord died leaving behind him as his only heir his widow. She was held to be entitled to make an application u/s 33 - B as the successor - in - interest of her husband, notwithstanding the provisions of Section 33 - B (5) (c). In the other Spl. C. A. No. 1962 of 1964 a certificate u/s 88 - C was obtained by one Vithabai the widow, and on her death in September 1961 her husband's sister Kamlabai claimed to be the legatee under Vithabai's will. It was contended on her behalf that besides being the legatee under the will, she was also the nearest heir of Vithabai and, therefore, the matter was remanded to the Maharashtra Revenue Tribunal keeping open the contention urged on behalf of the tenant that Kamlabai being the legatee under the will executed by the widow Vithabai, did not fulfil the requirement of Section 33 - B (5) (c) and was not entitled to terminate the respondent's tenancy. Mr. Gole, who also appeared in that case, says that at p. 389 of the report of that case clause (b) actually stands for clause (c) of sub - section (5) of Section 33 - B.

8. It is, therefore, clear that in that case this Court held that a person who derived title by assignment, or Court sale or otherwise, through or from the certificated landlord, would not be able to terminate the tenancy of the excluded tenant. It is also clear that the point as to whether a legatee under the will did or did not fulfill the requirements of clause (c) of sub - section (5) of Section 33 - B was not decided. The passage quoted above shows that the successor - in - interest who derives title through or from the certificated landlord by assignment, or Court sale or otherwise was expressly held to be not qualified to apply u/s 33 - B. The word "otherwise" in my judgment is wide enough to include "under a will". This Court has held, as pointed out earlier, that a donee or purchaser from a certificated landlord would be unable to terminate the tenancy of the excluded tenant. I cannot see any reason to distinguish a case of a donee or a purchaser from the case of a legatee under a will. I am, therefore, of the opinion that respondent No. 1 could not terminate the tenancy of the petitioner or make an application u/s 33 - b as the sole legatee under the alleged will of Ganpat Chavan even assuming that such a will was executed, as stated by respondent No. 1.

9. The next question is as to whether she alone could make the application as the heir of her deceased husband under the Hindu Succession Act. Whether the property was self - acquired property of Ganpat or joint family property of Ganpat, under the Hindu Succession Act, she would be entitled to a share therein

along with her sons and daughters. She alone could not make an application u/s 33 - B or terminate the tenancy. She could not be the Manager or Karta when there were adult male (?) sons in the family. (See Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Vs. Seth Govindram Sugar Mills, . u/s 19 (b) of the Hindu Succession Act all the heirs would be succeeding as tenants - in - common. Hence it would be necessary for all of them to terminate the tenancy and apply for possession. It is well stated that if they are holding the property as tenants - in - common, one of them alone cannot terminate the tenancy, and a notice of termination must be given by all or on behalf of all. Further as laid down by this Court in the aforesaid case of (1961) 63 Bom LR 637 the word "person" used in the expression "leased by any person" in Section 88 - C (1) means and includes where the land is owned and let by a number of persons, all these persons. The word cannot have a different meaning in Section 33 - A which defines "certificated landlord" with reference to Section 88 - C certificate. In the present case, it is clear that the sons and daughters of respondent No. 1 did not join respondent No. 1 in either terminating the tenancy of he petitioner or making an application for possession. I am, therefore, of the opinion that the application made by respondent No. 1 alone was not maintainable u/s 33 - B.

10. For these reasons, the decision of the Maharashtra Revenue Tribunal is quashed; the order passed by the District Deputy Collector Baramati Division on March 31, 1966, is restored though for different reasons; and the application made by respondent No. 1 is rejected.

11. Rule absolute. No order as to costs.

12. Rule made absolute.