
(1969) 10 BOM CK 0022

In the Bombay High Court

Case No : Special Civil Application No"s. 155 and 156 of 1968

Shrikant Vasantrao Deshpande

APPELLANT

Vs

Ahmadkhan Mandarkhan

RESPONDENT

Date of Decision : 17-10-1969

Acts Referred:

Penal Code, 1860 (IPC) — Section 277

Citation : (1971) 73 BOMLR 170 : (1970) MhLj 485

Hon'ble Judges : Chandurkar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Chandurkar, J.—Both these petitions are filed against a common order passed by the Maharashtra Revenue Tribunal rejecting two revision applications filed by the petitioners. Fields survey number 2, area 12 acres, "22 gunthas of Dattapur, survey number 129, area 5 acres, 12 gunthas, survey number 130, area 9 acres 18 gunthas, and field survey number 130/1, area 3 acres, of Kolwad, taluq Chikhali, originally belonged to one Devidas. Devidas died sometime in 1959 leaving behind him his son Dattatraya, members of his family and the members of the family of his another son Vasant, who had pre-deceased him. Petitioner No. 1 is the grandson of Devidas and petitioner No. 2 is the mother of petitioner No. 1 and respondent No. 2 Dattatraya is the uncle of petitioner No. 1. After the death of Devidas, these fields came to be recorded in the names of the petitioners and respondent No. 2 and the Record-of-Rights showed that Dattatraya was the manager of the joint family left behind by Devidas. Dattatraya, Shrikant and Shalinibai, who will hereafter be referred to as the landholders, started proceedings for possession of these fields u/s 38 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, hereafter referred to as the Tenancy Act, on the ground that they bona fide required these fields for their personal cultivation. Field survey number 2 of Dattapur was being cultivated by Ahmadkhan son of Mandarkhan, respondent No. 1 in Special Civil

Application No. 155 of 1968. Fields survey numbers 129 and 180 of Kolwad were being cultivated by Pandurang Ganpat, respondent No. 1 in Special Civil Application No. 156 of 1968. Field Survey number 130/1 of Kolwad was cultivated by one Mehtabkhan. The proceeding u/s 88 of the Tenancy Act against Ahmadkhan was registered as Revenue Case No. 87/59 (8) of 1960-61, proceeding against Pandurang was registered as Revenue Case No. 90/59(8) of 1960-61 and the proceeding against Mehtabkhan was registered as Revenue Case No. 93/59 (8) of 1960-61. All these cases were disposed of by a common order passed by the Tenancy Naib-Tahsildar, Chikhali. The main evidence which was given on behalf of the landholders was that of one Waman Jankirao, who held a power of attorney from Shalinibai, who was also the guardian of minor landholder Shrikant. Waman was a close relative of landholders and resided in a nearby village. He had deposed that Dattatraya Devidas does not do any work and had no occupation. They were all joint and that there were 10 members in the family of Shalinibai. On evidence it was found that Shalinibai was serving as a teacher who earned Rs. 110 per month as salary, inclusive of dearness allowance. It was also found that Dattatraya's wife was also serving as a Gram-Sewika and was earning Rs. 90 per month. Waman had deposed to the principal income from the fields in possession of the tenants at Rs. 2,000 to Rs. 3,000. This figure was not accepted by the tenants Ahmadkhan and Pandurang. According to them, the total income of the fields in their possession was about Rs. 700. It appears that after the evidence on behalf of the parties was recorded, a crop-statement was filed on behalf of tenant Pandurang in respect of one other survey number 216 having an area of 10 acres, 10 gunthas of Deulghat. This crop-statement showed that one Bapu Dewaji was cultivating this field in the year 1960-61 on Batai. The purpose of filing this crop-statement was to show that the landholders own another field which was leased out to tenant Bapu Dewaji and that as the contesting tenants, Ahmad-khan and Pandurang, were tenants much earlier in point of time the claim against them should be rejected because the landholders had failed to terminate the tenancy of the tenant of the shortest duration.

2. The Naib-Tahsildar who disposed of all the three cases found that no order for possession could be made in respect of field in possession of Mehtabkhan, because a division of that field would result in contravention of the law relating to fragmentation and consolidation of holding. On merits so far as the contesting respondents in the present petitions are concerned, the Naib-Tahsildar found that the principal source of maintenance of the joint Hindu family, who owned these fields, was agriculture and that the income of the wife of Dattatraya could not, be taken into consideration. It appears, before the Naib-Tahsildar the fact of service of notice u/s 38 of the Tenancy Act was challenged. The Naib-Tahsildar found that the notices were refused by the tenants, that the application was maintainable and that the landholders were entitled to resume half the land from the possession of the two contesting tenants, Ahmadkhan and Pandurang. He negatived the contention of the tenants that Bapu Dewaji being a tenant of

shorter duration his lease should have been terminated and the Naib-Tahsildar held that Bapu could be a partner in cultivation, and therefore, could not be said to be a tenant of the shortest duration. The result of the order of the Naib-Tahsildar was that in respect of each of the three fields Nos. 2, 129 and 130 the landholders were held entitled to half the area. Thus out of field survey number 2, the landholders were entitled to 6 acres, 11 gunthas, out of survey number 129 they were entitled to 2 acres, 26 gunthas and out of survey number 130 the landholders were held entitled to 4 acres, 26 gunthas of land.

3. Against this order both the tenants and the landholders filed appeals. These appeals were also decided by a common order of the Special Deputy Collector. The Special Deputy Collector took the view that Bapu Dewaji was a tenant of] 960-61 and his tenancy was of the shortest duration and since the landholders had failed to terminate that tenancy the claim of the landholders was liable to be rejected. Even on the question whether the landholders satisfied the requirements u/s 88(3)(c) of the Tenancy Act the Deputy Collector held against the landholders. He found that the income of Shalinibai and wife of Dattatraya came to Rs. 200 per month, and therefore, the income of the landholders from non-agricultural source would be Rs. 2,400 per annum. Even assuming, according to the Deputy Collector, that the income of the entire fields in the possession of the two contesting tenants was Rs. 2,000 to Rs. 8,000 per year, half of the income of these fields would be much less than the amount of Rs. 2,400, which was the income of the landholders from non-agricultural source. The Deputy Collector also found that the tenants being in actual possession and cultivation of the fields in dispute their estimate that the two fields together would yield about Rs. 550 had, to be accepted. Having thus taken the view that the landholders had failed to satisfy the test u/s 38(3)(c), that one of the landholders-probably the reference was to Dattatraya's wife-was in Government service and that the landholders did not earn their livelihood principally by agriculture or agricultural labour the tenants' appeals were allowed and the landholders' appeals were dismissed.

4. The landholders then filed four revision applications against the orders passed by the Deputy Collector before the Maharashtra Revenue Tribunal. Four revision applications probably were filed because there were four appeals, which were disposed of by the Special Deputy Collector. The Tribunal found that the view taken by the appellate authority that the condition in Section 38(3)(c) was not satisfied was correct. The Tribunal further found that in view of the fact that the income of the family from non-agricultural sources was Rs. 2,400 per year and the total holding of the landholder exceeded one family holding, they did not satisfy the requirements of Section 38(3)(c), because the income from the non-agricultural sources would be more than half of the income, which, according to the landholders, would be about Rs. 1,500. The revision applications were, therefore, rejected. The petitioners have now filed these petitions challenging the orders of the Maharashtra Revenue Tribunal and the Special Deputy Collector.

5. Only two questions are involved in these petitions. The first question is whether the Revenue authorities were justified in rejecting the claim made by the landholders merely on the ground that the tenancy of a tenant for the year 1960-61 was not terminated. The second question is whether the Revenue authorities had correctly applied the law when they took into consideration the income of Shalinibai and the wife of Dattatraya for the purpose of finding out whether the joint family had satisfied the conditions in Section 38(3)(c) of the Act. Taking the question regarding applicability of Section 88(3)(e) first, learned counsel appearing on behalf of the petitioners contended that in a case where the tenants, whose tenancies are sought to be terminated, are found to be holding land for a longer period of time and it is also found that the landholders had not terminated the tenancy of a shorter duration of another tenant, the claim cannot be summarily rejected on the ground of non-compliance with the provisions of Section 38(3)(e) of the Tenancy Act. According to the learned counsel, the provision in Section 38(3)(e) is for the benefit of the tenants and unless the tenant was able to show that there could be no occasion for the termination of his tenancy, if the tenancy of a tenant of shorter duration was terminated, the claim of the landholders could not be rejected merely on the ground that there was another tenant of a shorter duration. On the other hand, Shri Jaiswal, the learned counsel for the tenants, contends that the termination of the tenancy of shortest duration is a condition which must be satisfied in every case irrespective of the fact that even though the tenancy of the shortest duration was terminated, the total land which the landholders can resume does not exceed the maximum limit of three family holdings, which is specified in Section 88(3)(a) and (b) of the Tenancy Act.

6. It is now well settled that the right of a landholder u/s 38 to terminate the tenancy of a tenant is subject to the conditions prescribed by Sub-section (3) of Section 88. Clauses (a) and (b) of sub - Section (3) of Section 38 of the Tenancy Act set the maximum limit with regard to the area which the landholder is entitled to resume for the purpose of personal cultivation. Under Clause (a) if the landholder has no other land of his own or has not been cultivating personally any other land, he is entitled to resume land to the extent of three family holdings. Under Clause (b) if the landholder is cultivating some other land he is entitled to resume only so much area as will make up the total area in his possession equal to three family holdings. Then comes condition under Clause (c) which requires that in the case of the landholder whose total holding is more than one family holding he has to show that the land which he proposes to resume will be his principal source of maintenance. Clause (d) is another condition which is to be satisfied by the landholder and that condition is that the land leased stands in the Record-of-Rights or in any public record or similar revenue record in the name of the landholder on August 1, 1957 and thereafter during the period between the said date and the commencement of the Tenancy Act, that is December 30, 1958. In a given case where the landholder is a member of a joint family even if the field is recorded in the name of the member

of the joint family, the requirement of Clause (d) is said to be satisfied. It is then that Clause (e) appears. This Clause (e) is in the following words :

88. (3) -

(e) If more tenancies than one are held under the same landlord, then the landlord shall be competent to terminate only the tenancy or tenancies which are the shortest in point of duration.

Now though it is obvious that the conditions which are laid down in Sub-section (3) of Section 88 are mutually exclusive of each other, it is apparent that before the claim of a landlord is rejected on the ground that he has failed to comply with the condition in Clause (e) it must be shown that if he had satisfied the condition in Clause (e), the tenant, who is disputing the right of the landholder to terminate the tenancy on the ground that Clause (e) is not complied with, the tenancy would not have been terminated. The object of Clause (e) is to lay down the order in which the tenancies are to be terminated in a case where the landholders own more than three family holdings of land and then they have to make a choice as to whose tenancy must be terminated. Where the landholder does not own land in excess of three family holdings he has a right to terminate the tenancy of every tenant. Unless it is shown that the landholder can secure for his personal cultivation land upto the limit of three family holdings set in Clauses (a) and (b) by terminating the tenancy of some other tenant whose duration of tenancy is shorter, a contention by a tenant that his tenancy cannot be terminated because tenancy of a shorter duration is not terminated cannot be accepted. Obviously the provision in Clause (e), which has to be read along with Clauses (a) and (b), is intended for the benefit of tenants of a longer duration and can be availed of by them only if the maximum limit of land to be resumed for the the purpose of personal cultivation can be reached by the landholder by terminating the tenancies of the shortest duration. Thus in my view, unless it is shown that by a failure to terminate the tenancy of shorter duration a tenant whose tenancy is being terminated has been adversely affected the tenant cannot raise a defence under Clause 38(3)(e) of the Tenancy Act for defeating the right of the landholder which he is seeking to exercise against the tenant.

7. Clause (e) of Sub-section (2) of Section 38 of the Tenancy Act is analogous to Clause (e) of Section 81A of the Bombay Tenancy and Agricultural Lands Act, 1948, Section 31A of 1948 Act contained two (a) and (b) which are an Clause analogous to Clauses (a) and (b) of Section 88(3) of the Tenancy Act. Section 31 A of 1948 Act is as follows :

31 A. The right of a landlord to terminate a tenancy for cultivating the land personally u/s 31 shall be subject to the following conditions:-

(a) If the landlord at the date on which the notice is given and on the date on which it expires has no other land of his own or has not been cultivating personally any other land, he shall be entitled to take possession of the land leased to the extent of a ceiling area.

(b) If the land cultivated by him personally is less than a ceiling area, the landlord shall be entitled to take possession of so much area of the land leased as will be sufficient to make up the area in his possession to the extent of a ceiling area.

(c) The income by the cultivation of the land of which he is entitled to take possession is the principal source of income for his maintenance.

(d) The land leased stands in the record of rights or in any public record or similar revenue record on the 1st day of January 1925 and thereafter during the period between the said date and the appointed day in the name of the landlord himself, or of any of his ancestors but not of any person from whom title is derived, whether 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.

(e) If more tenancies than one are held under the same landlord, then the landlord shall be competent to terminate only the tenancy or tenancies -which are the shortest in point of duration.

The maximum limit of three family holdings which is stated in Clauses (a) and (6) of Section 88(3) of the Tenancy Act 1958, is analogous to the concept of ceiling area which is to be found in Clause 81A, of 1948 Act. Ceiling area is defined in Clause (2D) of 1948 Act as follows :

(2D) "ceiling area" means in relation to land held by a person, whether as an owner or tenant or partly as owner and partly as tenant, the area of land fixed as ceiling area u/s 5 or 7;

Section 5 gives the ceiling area as (a) 48 acres of Jirayat land, or (b) 24 acres of of seasonally irrigated land or paddy or rice land, or (c) 12 acres of perennially irrigated land. The provisions of Clause (e) in Section 31A and the object for which that provision was enacted fell for consideration before a Division Bench of this Court in Rama Shivaraya v. Mukteshwar (1902) Special Civil Application No. 1051 of 1061, decided by Tambe and Kantawala JJ., on March 1, 1962 (Unrep.). I have before me the text of the full judgment & that case and the fact?- in that case were that the landlord owned about 170 acres of land at different places and all these lands were leased out by him to his tenants except a small piece of land admeasuring about 2 acres. The landlord terminated the tenancies of all the tenants and instituted proceedings against all his tenants prior to March 31, 1957, but thereafter he withdrew his cases against certain tenants and proceeded only against some tenants, including the petitioners, who had filed a petition in the High Court, The contention of the tenants in that case was that the lease in their favour was of a prior date and that it was not open to the landlord not to terminate the tenancies of the tenants of shorter duration and to terminate their tenancies. The Mamlatdar and the Deputy Collector rejected this contention. The Tribunal in revision application filed by the tenants had observed referring to that contention as follows :

Now in these cases, the landlord has terminated the tenancies of all the tenants by giving notices and by making applications. Therefore, he has fully complied with the provisions of sections 31 and 31A. Whether to pursue the matter in respect of certain tenants, further or not to pursue them is entirely a question for the landlord. All that has got to be seen is whether he has terminated the tenancies of the shortest duration by giving notices and by making applications. As we have stated above, he has terminated the tenancies of all the tenants, the question of terminating the tenancies of shortest duration does not arise. We, therefore, think that the landlord has complied with this provision also.

Thus the revision application of the tenants having been rejected the tenants approached the High Court under Article 227 of the Constitution.

8. When the matter came to the High Court, the Division Bench referred to the scheme of Section 31A of the 1948 Act, as already stated, and the Division Bench while referring to Clause (e) observed :

Now, when the landlord owns not more than the ceiling area, no difficulty would arise or arises. But, in case of landlords, where the land owned by them exceeds the ceiling area, and they have leased out these lands, it is obvious that it would not be competent for the landlord to terminate the tenancy and obtain possession of the land from all the tenants, because, in that event, there would be contravention of Clause (a) of Section 31A. The legislature, therefore, has enacted Clause (e) to provide for such a contingency, and it provides that in such a case, the landlord can terminate only the tenancy or tenancies which are shortest in point of duration.

(Italics are mine)

These observations of the Division Bench, which were made while construing an analogous provision, clearly indicate that the provision of Clause (e) really comes into operation where the landlord owns more than the ceiling area which so far as the 1958 Tenancy Act is concerned would be more than the area of three family holdings. If Clause (e) operates only in such a case, the claim of the landlords cannot be rejected summarily on the short ground that there was a tenant of shorter duration, whose tenancy has not been terminated.

9. It appears that a similar view has been taken by Justice Abhyankar in *Laxminarayan v. Maharashtra Revenue Tribunal* (1966) Special Civil Application No. 908 of 1965, decided by Abhyankar J., on August 16/17 1960 (Unrep.). In that case the landholder was the tenure-holder of 94 acres, 29 gunthas of land and had in his personal cultivation 27 acres, 9 gunthas of land. Making allowance for some land, which was fallow, about 56 acres, 18 1/2 gunthas was in occupation of the tenants and in respect of these tenants proceedings u/s 38 of the Tenancy Act were commenced. It appears that in addition to four tenants against whom proceedings were taken, there were three other tenants. One of the tenants against whom proceedings were taken was the tenant since 1987 and other three tenants were on land since 1940 and it was held by the Revenue

authorities that unless it was shown since when the remaining 3 tenants were cultivating the lands the landlord's claim would be affected by Clause 38(3)(e) of the Tenancy Act. While discussing the merits of the orders of the Revenue authorities rejecting the claim for resumption because of the provisions of Section 38(3)(e), Abhyankar J. observed ;

Yet another ground on which the petitioner seems to have been unsuccessful is the failure of the petitioner to comply with the provisions of Section 88(3)(e). There seems to be misapprehension about the requirements of the section and when it is to be called in aid. Under Sub-clauses (a) and (b) of Sub-section (3) of Section 88 of the new Tenancy Act, a landlord is entitled to claim land up to three family holdings. In the instant case, the land in personal cultivation of the landlord being 27 acres, 9 gunthas, the maximum land of which he can claim possession will be not more than 48 acres. Total land in possession of the tenants being only 52 acres, 24 gunthas, the maximum land which the petitioner can get from the tenants will not be more than 26 acres, 12 gunthas. It cannot be disputed that the petitioner will be entitled to 26 acres, 12 gunthas of land from his tenants and yet this much land added to the land in personal cultivation properly calculated will not even make up three family holdings. That being the position, it is difficult to see how the the question in Section 88(3)(e) is at all germane. Every one of the tenants will have to part with half land in his possession whatever be the point of time when he has been introduced on the land. It is only when there is competition as to which of the tenants could be deprived of land that any question of priority and duration on the tenancy becomes apposite and relevant for determination. If such question does not arise, as in this case it does not, it is difficult to see how the petitioner's case could be thrown out on the alleged failure to comply with the provisions of Section 38(3)(e) of the new Act.

(Italics are mine).

I respectfully agree with these observations. It is, therefore, clear that unless a question of competition arises between the tenants in the matter of termination of tenancies, the claim of the landlord cannot be rejected under Clause 38(3)(e) of the Tenancy Act and a question of competition can only arise, as observed by the Division Bench in Rama's case, when the landholder owns land in excess of the limit of three family holdings.

10. The facts of the instant case will show that total holding of the landholders was 40 acres, 17 gunthas. Since this exceeds one family holding, u/s 88(4) of the Tenancy Act the landholders will be entitled to only 20 acres, and 8 1/2 gunthas. This is very much short of the maximum limit in Clause (b) of Section 88(3). Even if notice of termination was given to Bapu on the assumption that he was a tenant, as now found by both the Revenue authorities, the land which would be resumed could by no means exceed the limit of three family holdings, and therefore, the tenancy of each one of the tenants of the joint family was liable to be terminated. Failure to terminate Bapu's tenancy, even on the

assumption that he was a tenant, therefore did not in any way adversely affect the present tenants. The application against them, therefore, could not be rejected on the ground that there was non-compliance of Section 38(3)(e) of the Tenancy Act. The view taken by the Tribunal and the Deputy Collector was, therefore, not justified.

11. Coming to the second question regarding satisfaction of condition u/s 38(3) (c) of the Tenancy Act, both the Revenue authorities have taken into consideration the individual income of Shalinibai and wife of Dattatraya and have, therefore, found that the income from non-agricultural sources was Rs. 2,400, which would in any case be more than Rs. 1,500, which would be, even on the evidence given on behalf of the landholders, half of the estimated income from the fields in dispute. The learned counsel for the petitioners contends that the income of the two ladies could not be taken into consideration, because the landholder in the instant case was a joint family and the income of these two ladies could not be said to be the income of the joint family. According to him, the male members of the joint family were non-earning members, because there was evidence that Dattatraya had no job and Shrikant was minor and really speaking, according to him, the joint family had no other source of income as such. On the other hand, it is contended by the learned counsel for the tenants that the Revenue authorities were justified in taking the income of the joint family at Rs. 2,400 per year. In my judgment, both the Revenue authorities have fallen in an error in taking into account the income of Shalinibai and Dattatraya's wife for the purpose of finding out the income of the joint family. I have already stated that the fields are recorded in the name of Dattatraya, Shrikant and Shalinibai, and Dattatraya is shown to be the manager of this joint family. No doubt Shalinibai and Dattatraya's wife are serving but it was not obligatory on these ladies to utilise their income for maintaining the members of the joint family. Neither Dattatraya nor Shrikant, nor any other member of the joint family, could be said to have any right to be maintained out of the income of these female members. They were free to use their income in any way they liked. If the joint family is the landholder, and the two male members of the joint family are without any income, in my view, it would be erroneous to take into account the income of these female members for the purposes of determining the income of the joint family. It is the consistent view of this Court that individual income of the members of the joint family cannot be treated as income of the joint family, unless the income is thrown into the property of the joint family. A reference may usefully be made to a decision of the Division Bench of this Court in *Murlidhar v. Nageshwar* [1961] N. L. J. 325 : 68 Bom. L. R. 417. That was a case u/s 88C (1) of the 1948 Tenancy Act and the question was whether the income of a member of the joint family from his service would be an income of the joint family for the purposes of Section 88C (1) of the Act. The Division Bench in that case held that if the lease was on behalf of the joint family, then the income of the joint family should be taken into consideration. The Division Bench further observed :

The income which is to be taken into consideration for Section 88C (1) is the income of the person who had leased the land. If the land belongs to him alone, then only his income is material and he can be granted a certificate in case his individual income does not exceed Rs. 1,500. If on the other hand the land belonged to the joint family then the income of the joint family must be taken into consideration. Income realised by a member of the joint family from his service would not ordinarily be the income of the joint family, unless it is thrown in the common stock or is blended with other property of the joint family.

In the instant case there is no evidence that the income of these two female members was being blended with the income of the joint family. Similar view is also taken in another decision of this Court in Nilkanth v. Ramchandra (1968) Special Civil Application No. 985 of 1960, decided by Padhye J., on April 15, 1968 (Unrep.). That was a case in which the landholder earned income from salaries, but there was no evidence that that income was thrown into the common stock of the family and the question was whether this individual income could be taken into consideration for the purposes of Section 38(3)(c) of the Tenancy Act. The learned Judge in that decision observed:

Since it is not shown that the income of the petitioners Nos. 1 to 4 from the salaries is thrown in the common stock or is blended with the other property of the joint Hindu family, the incomes of the petitioners Nos. 1 to 4 from the salaries cannot be taken into consideration for finding out the income of the joint Hindu family of which the petitioner No. 5 is also a member. If the incomes from the salaries are excluded then the only income of the joint family would be the income from this field in the shape of lease-money while in the occupation of the tenants and the profits and the produce of the field if it is cultivated by the owner himself.

Similar view was also taken in Pratapsingh v. Maharashtra Revenue Tribunal (1965) Special Civil Application No. 552 of 1968, decided by Abhyankar J., on February 24, 1965 (Unrep.). In that case one of the members of the joint family was earning about Rs. 150 per month because he was in service at Bhilai, while the joint family was in Murtizapur taluq, and the question was whether that income could be taken into consideration and the learned Judge held that his income could not be taken into consideration. Thus in my view, if the fields were the joint family property and the landlord was the joint family, who had succeeded the deceased Devidas, and the male members of the joint family had no source of income and there was no evidence to show that the income of the family members was thrown into the common stock, it must be held that the only source of income of the joint family was agriculture and the income would be in the form of lease-money when the fields were in the possession of the tenants.

12. Though there is evidence on record that a house at Daulghat was let out at B.s.7 per month that would hardly affect the question of principal source of maintenance, because even then the rent which the joint family would receive

annually would come to Rs. 84. The principal source of livelihood of the joint family would still remain to be agriculture.

13. The learned counsel appearing on behalf of the tenants has relied on a decision in *Hiralal v. The Maharashtra Revenue Tribunal* (1964) Special Civil Application No. 537 of 1963, decided by Abhyankar J., on December 9, 1964 (Unrep.) for the proposition that the income of the female members of the joint family should be treated as joint family income. The facts of that case will, however, show that the landholders in that case, who were brothers, were carrying on a Kirana business and the contention was that the income of the individual members of the family obtained by running the Kirana shop was not the income of the family. Answering this contention, the learned Judge held:

There will be some substance in this contention provided evidence was led to show that the income from these sources is not put in the family fund or that it is treated as separate and individual income of these persons. When it is admitted that all the brothers who have a total membership of 20 persons in the family live together and in the absence of any evidence that independent earnings are separately held and spent, the Naib-Tahsildar and the Tribunal could not be said to have acted with any error in treating the income from all the sources as the income of the family from which the family would be maintaining itself. It is difficult to believe that a family of 20 members in a town like Akola WPS maintaining itself from the income of Rs. 000 which the petitioners received from home cultivation without aid from other sources.

The learned Judge there seems to have held on facts that the individual income from Kirana shop which was run by all the brothers was utilised for the maintenance of the family. That decision really does not assist the respondents.

14. The Revenue Tribunal and the Deputy Collector must, therefore, be held to have misapprehended the provisions of Section 38(3)(c) of the Tenancy Act and have erroneously taken into account the income of the two female members of the family for the purpose of deciding whether the joint family satisfied the requirements of Clause (c) of Section 38(3) of the Tenancy Act. That finding also is, therefore, liable to be set aside. If the income of these two female members is then ignored, there is no evidence that the joint family had any other income except Rs. 84 per year from house rent. The agriculture being their main source of livelihood, if they were entitled to half the land from possession of each of the tenants, the income from this land which would be more than 18 acres is bound to be more than the income from other sources, which is the income from the house and lease-money from Bapu, because the Revenue Tribunal and the Deputy Collector have found Bapu to be a lessee. The finding, therefore, that the petitioners had failed to satisfy the requirement of Section 38(3)(c) of the Tenancy Act is liable to be quashed.

15. Having regard to the view which I have taken on the two questions which arose in this case, the orders passed by the Deputy Collector and the

Maharashtra Revenue Tribunal will have, therefore, to be quashed. They are, therefore, quashed and it is held that the Tahsildar was justified in holding that the petitioners were entitled to 6 acres, 11 gunthas out of survey number 2, 2 acres, 26 gunthas out of survey number 129 and 4 acres, 26 gunthas out of survey number 130. The petition is thus allowed with costs on respondent No. 1. Counsel's fee in one set.