

**BEFORE THE MEMBER (JUDICIAL), MAHARASHTRA REVENUE TRIBUNAL,  
PUNE BENCH, PUNE**

Presided over by : V.B.Kulkarni, Member (Judicial)

**No.TNC/REV/20/2007/SH**

Sadhu Mahadu Koli,  
D/H---

- 1) Ramchandra Sadhu Koli
- 2) Mohan Sadhu Koli
- 3) Sukhdeo Sadhu Koli
- 4) Subhadrabai Dnyanu Bhalerao
- 5) Vithabai Shankar Parchande

D/H---

- a) Kundlik Shankar Parchande
  - b) Namdeo Shankar Parchande
  - c) Shivaji Shankar Parchande
  - d) Pandurang Shankar Parchande
  - e) Dnyeshwar Shankar Parchande
  - f) Shobha Pandurang Waghmare
- All R/o. Gursale, Po.Venunagar, Tal.Pandharpur, Dist.Solapur

- 6) Ambubai Bhiku Koli

No.1 to 3 & 6 R/o.Kadalas, Tal.Sangola, Dist.Solapur.

.... Applicants

**VS.**

- 1) Siddheshwar Krishnarao Kadam
- 2) Balbhim Krishnarao Kadam

D/H---

- a) Smt.Vijayananda Balbhimrao Kadam
  - b) Sangramsinh Balbhimrao Kadam
- Both R/o.Sarkar Kadam Saheb Ka Wada,  
Mama Ka Bazar Lashkar, Gwalior (Madhya Pradesh)

- 3) Pradhamanrao Krishnarao Kadam

No.1 & 3 through POA—Vilas Balbhim Ligade,  
R/o.Kadalas, Tal.Sangola, Dist.Solapur.

.... Respondents

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

Appearance :- Adv. Shri J.P.Dhaytadak for Revision Applicants.  
Adv. Shri N.P.Patil for Respondents / Landlords  
Adv. Shri N.K.Shinde for Respondent / Purchaser

**DATE:- 7<sup>th</sup> JANUARY, 2017**

**JUDGMENT**

1. Being aggrieved by the judgment & order passed by the Asstt.Collector, Pandharpur (hereinafter referred as the “SDO”) in Tenancy Appeal No.8/2015, dt.28/12/2006, the aggrieved LR of the deceased tenant preferred the present revision application by invoking the provisions of Sec.76 of B.T.& A.L.Act, 1948 (hereinafter referred “the Act”) on the grounds more particularly set out in revision application. For the purpose of brevity and convenience, parties hereinafter referred in the same sequence and chronology in which they were referred before the ALT Sangola, as the applicants or the respondents as the case may be. The facts giving rise to the present revision application can be summarized as under.

## Points

1.	Whether the judgment & order passed in tenancy file No.ALT/SR/9/90 decided on 30/4/91 reached to its finality?	Yes
2.	Whether the judgment & order under revision calls for interference therein through this Tribunal within its limited revisional jurisdiction?	No

4. **Point No.1 & 2-** Parties to the proceedings have not disputed the fact that Shamrao Pandurang Ligade was the original owner of suit land, who died in or about 1932 living behind two daughters as his LR's. After the death of Shamrao succession entry No.1181 has been certified on 14/12/1935 and name of Durgadevi, daughter of Shamrao under Guardianship of Court of Wards, Solapur certified. Thereafter after attaining majority by Durgadevi the reference of Court of Wards has been deleted through M.E.No.2072. Thereafter, on 31/5/1947 by taking note of marriage of Durgadevi, new entry No.2106 certified on 6/6/1947, whereby her name has been corrected as Satwashiladevi w/o Vilasrao Pawar. In continuation thereof, it will not be out of way to state that, fact of tenancy recorded in the name of Sadhu Koli prior to 1/4/1957 is not seriously disputed. However, the fact has become evident by order dt.26/9/1959 passed by the ALT, holding that the landlord being widow the effect of "*Deemed Purchase*" stands postponed till the legal disability attached with the landlady removes. The landlady Durgadevi, who was married prior to 1957 was widow on the date of *Tillers Day*, admitted by the tenant himself, while giving deposition before the Tribunal on 29/8/59, wherein the tenant Sadhu Koli has deposed before the Tribunal as under :

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be reverted back to the family of parental side and as such the sons of the Sister of Durgadevi are the only LR's, who can inherit the property left by Durgadevi, who died intestate and issueless. In support of above observations, the landlord has rightly called my attention towards precedent laid down by our Hon.Supreme Court, in the case of *V.Dandapani Chettiar Vs. Balasubramanian Chettiar*, 2003(4) *Mh.L.J.-1*, wherein Their Lordships have ruled as under :-

*“Where the property was got by a female from her mother's side on her dying intestate without leaving any son or daughter or children or predeceased son or daughter, the property would go to the heirs of the father u/s 15(2) of the Hindu Succession Act.”*

6. Secondly, after perusing the record from ALT office, it becomes crystal clear that the proceedings have been initiated by the Tribunal to take the note of death of landlady, so as to proceed for the enquiry u/s 32F r/w 32G of the Act. Accordingly, proceeding started in the year 1990 itself at the instance of the Tribunal. Accordingly, notices were issued to the tenant in possession and the landlord equally. That proceeding has been continued with effective trial and after following principles of natural justice, the Tribunal come to the conclusion that despite of effective notice for the enquiry as contemplated u/s 32F r/w 32G of the Act, the tenant has not responded, but remained absent and these facts constrained the Tribunal to record the findings to that effect in file No.ALT/SR/9/90, holding that despite of the fact that widow landlady though expired on 9/5/71 the tenant has not exercised his right of option to purchase the land within the period prescribed u/s 32F(1A) of the Act, and thereby, come to the conclusion that the sale in favour of the tenant in possession declared ineffective. That order has been passed in file on 30/4/1991. Admittedly, this order was on record since beginning of the proceedings. New file number allotted to the said proceeding as file No.1/91 and fact of existence and legal effect of the order was within the knowledge of the tenant till the decision passed in file No.1/91, holding that in the light of sale being declared ineffective the landlord is entitle for possession u/s 32P of the Act. Despite of existence and knowledge of the said order passed in file No.9/90 the tenant has not preferred any appeal against such order till 2016 and proceeded with the trial by ignoring the existence of order passed in file No.9/90 which was already reached to its finality for want of exercising of right of appeal / review / revision against the same by the aggrieved person in time.

7. Thirdly, Ld.Adv.Dhaytadak for the Revision Petitioner / tenant, strongly submitted that the present Opponents have not proved their right in valid manner. If otherwise they are the sons of the sister of Durgadevi named Satwashiladevi, why the name of Satwashiladevi was not recorded in revenue record while certifying the M.E.No.1181 remained un-answered. Therefore, if the fact has established, that after the death of Shamrao the property was inherited by two daughters, it was for the Opponents to prove that both the landladies were under legal dis-ability u/s 32F of the Act under the widowship. Absence of name of mother of the present Opponents alongwith Durgadevi creates doubt about the postponement of the *Tillers Day*. If one of co-owner is not having legal disability so as to postpone the *Tillers Day*, the right vested with the tenant cannot be withdrawn by lapse of time or merely because one of the co-owner was under legal disability under widowship. In support of above oral submissions. Ld.Adv.Dhaytadak has called my attention to the proceedings of Uncodified Hindu Law relating to succession of Male and particularly called my attention towards para-170, which relates to the rule of inheritance by Female from Males in the Bombay State, applicable at the material time i.e. in the year 1932. I have gone through the substance of the legal preposition laid down in para-170 quoted by the advocate for the applicant / tenants. However, the rule of succession as regards the daughters through their father has been more specifically explained by our Hon.High Court in the precedent, which has been referred by the advocate for the respondent in *case of Bayava Shiddappa Desai Vs. Parvateva Basavanappa Bellad*, reported in 1933 (35) *BLR-118*. I have gone through the above precedent very carefully. The preposition of law laid down therein on the point of preferential right of the succession amongst the daughters as per “Old Uncodified Hindu Law” settled as under:-

*“When the inheritance opened, unmarried daughter has right of succession against the married daughter. Unmarried daughter is having right of preference is against the married daughter : see Mitakshara ch.II, Sec.2, page 1 to 4, Gharpure's translation, page 246, and Mayakha, ch.IV, Sec.8, page 11 & 12.”*

Wherein our Hon.High Court while considering the principles applicable to Mitaksharas of Hindu Law applicable in the Bombay State, ruled that, unmarried daughter has got preferential right of succession as against the married daughter. Herein this case, mutation entries referred supra, particularly M.E.No.1181 itself established the fact that Durgadevi was minor and Court of Wards, Solapur was appointed to manage the property of minor after the death of owner of the property. That means, on the date when the succession was opened due to the death of Shamrao, Durgadevi being the sole un-married daughter has got right of succession by exclusion of another sister. Therefore, enquiry regarding the scope of legal disability whether



concurrent and supported by earlier judgment rendered in file No.9/90 reached to its finality does not call for interference in the orders passed on the point of restoration of possession of the suit land with the landlord as against the tenant. With these observations, I answer the Point No.1 in affirmative, Point No.2 in negative and proceed to pass the following order.

**ORDER**

The revision application stands dismissed.

The judgment & orders passed by the tribunals below which are concurrent in nature are hereby confirmed.

