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) Shiyaji Shankar Parchande
- d) Pandurang Shankar Parchande
- e) Dnyneshwar 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:- 7th 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 LRs 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.

- The land S.No.47 i.e. Gat No.160 adm. 19.02 H. situated at Village Kadalas, Tal.Sangola owned by the predecessors of the Opponents. The father of the applicants, Sadhu Mahadu Koli was the tenant in possession of the entire suit land since prior to Tillers Day. ALT Sangola conducted the proceeding u/s 32G in respect of the suit land in file No.ALT/SR/9/90 and decided the same by order dt.30/4/1991. For the reasons recorded in the said judgment, ALT has declared the sale of the suit land ineffective as against the tenant in possession. Thereafter proceedings continued with new registration No.1/91 for further proceedings u/s 32P of the Act. The said proceeding decided by the ALT through his judgment & order dt.2/8/2005. For the reasons recorded in the said judgment ALT passed the order in favour of the landlord and as against the tenant in possession so as to handover the possession of the suit land to the landlord for the reasons recorded therein. Being aggrieved by the said judgment & order passed by the ALT the aggrieved LRs of the deceased tenants have presented Tenancy Appeal No.8/05 against the judgment & order u/s 32P of the Act before the Asstt.Collector, Pandharpur. The said appeal No.8/05 came to be decided on merit by judgment & order dt.28/12/2006, whereby the Asstt.Collector dismissed the appeal and thereby, confirmed the order u/s 32P of the Act passed in favour of Opponents / landlords. Being aggrieved by the said judgment & order passed by the SDO the aggrieved tenants have preferred the present revision application on the grounds more particularly set out in revision application.
- 3. Pending the revision R&P from both the tribunals below were called and made available for the perusal of this Tribunal. Heard Ld.Adv.Dhaytadak for the applicants / tenants, Ld.Adv.Patil for the Opponents / landlords & Ld.Adv.Shinde for purchasers. After perusing the R&P from both the tribunals below and submissions made by the respective learned advocates, following points arise for my determination. I have recorded my findings with reasons thereon as under:-

<u>Points</u> <u>Answer</u>

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	No
	through this Tribunal within its limited revisional jurisdiction?	

Reasons

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 LRs. 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, Sadhu Koli wherein the tenant deposed before as under "ÃÖŸ¾Ö׿Ö»ÖÖ¤êü¾Öß 'ÖÓโÖÃÖæôûߟÖ ¸üÖÆüŸÖÖŸÖ. ןÖ" -Ö¾Ö¸üÖ 'ÖµÖŸÖ ÆüÖê¾Öæ-Ö 3-4 ¾ÖÂÖì —ÖÖ»Öß. ןÖ»ÖÖ 'Öæ»Ö -ÖÖÆüß." ןÖ"ÖÖ

The evidentially admission given by the father of the present applicants is not seriously disputed. The order passed by the ALT dt.26/9/59 coupled with the statement of the tenant, makes it crystal clear that the landlady was widow on the date of the *Tillers Day* has been sufficiently established on record. It is not desirable in such old matters to call upon the landlord to specify the date of death of the husband of the landlady, particularly when, fact of widowership is admitted by the tenant himself.

5. The applicant / tenant have not disputed seriously that the Opponents are claiming interest in the disputed property as the sons of Sister of Durgadevi. Admittedly, the suit property owned by Durgadevi from her father's side. Therefore, even prior to Codification of Hindu Law or Codification of Hindu Succession Act, as per Sec.15(2) Proviso attached thereto the property of a family inherited by her, through her parents, shall

be reverted back to the family of parental side and as such the sons of the Sister of Durgadevi are the only LRs, 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."

- Secondly, after perusing the record from ALT office, it becomes crystal clear that the proceedings 6. 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.
- 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 widowership. 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 widowership. 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 Basavaneppa 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

available or not, as against the another daughter of Shamrao is not the matter of enquiry while deciding the matter at hand.

- Fourthly, Ld.Adv.Dhaytadak, for the Petitioner / tenant submitted that, there is no sufficient detail enquiry about the holding of the landlord while passing the order u/s 32P of the Act as against the tenant in possession. In support of his submissions advocate for the tenant placed on record several 7/12 extracts and holding certificates in Form No.8A alongwith the list of documents dt.19/12/2016. The matter is petty old. The Petitioners / tenants have very well took effective part in the proceedings since atleast contesting appeal against the order of the Tribunal u/s 32P of the Act. While contesting this issue the tenants have not filed any specific pleadings on the point of excess of holding of the landlord u/s 32P of the Act. Those documents were not made available before the ALT. The production of such documents at belated stage before the revisional court without justifiable reason does not permit the Tribunal to consider those documents and to come at a different conclusion other than the findings recorded by the trial tribunal on the point of entitlement of order of possession of restoration u/s 32P of the Act in favour of the landlord on the point of ceiling. Provisions of rule made under the Act, guides me to that effect, that production of documents by the party before the revisional court should be considered in an exceptional situation and only if the grounds are made out within the meaning of Order-41 Rule-27 of the Code. Herein this case, neither the pleadings put forth by the tenant before the ALT nor the reasons have been explained, as to why those documents were not produced before the appellate tribunal. Therefore, I am of the view that this issue of holding of landlord on the date of passing of order u/s 32P being raised at belated stage without pleadings does not call for to be considered by the Tribunal for the first time.
- 9. Further point raised by the Ld.Adv.Dhaytadak for the applicant / tenants is that the proceedings u/s 32P through file No.1/91 continued against the deceased tenant without being LRs were substituted in place of the deceased tenant. Therefore, the judgment & order passed by the appellate tribunal is against the dead person, which is nullity. Admittedly, the original tenant Sadhu died on 26/2/94, while file No.1/91 was in process i.e. for the enquiry u/s 32P of the Act. Page-3 from the file of ALT, amply suggest that file No.32-P/1/91 started its enquiry w.e.f.9/1/91 and dates were adjourned successively till 5/3/91. This fact indicates that the proceeding was in continuation during the lifetime of Sadhu Koli. Through the application dt.14/6/2004 moved by the LRs of the tenant for the first time, it has brought on record that their father is dead and his LRs are not yet brought on record by Village Talathi in revenue record and for that purpose time may kindly be granted for bringing LRs on record. The relevant averments from this application at page-133 if quoted will bring the issue at end, which runs as under:-

Page-133 from ALT file:-

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These recitals in this application amply suggest that the applicants have taken the note that they are representing the matter as the applicants and not the Opponents. Law settled is that it is for the party in whose name the lis has been instituted or started, shall bring the LRs on record. Suffice to say that application at page-133 itself sufficient to hold that it was for the applicants to get substituted their names in the proceedings as a party in place of deceased applicant and it was not for the Opponent / landlord to bring their LRs on record. Therefore, anyhow once the applicants have taken active parts in the proceedings by moving the application to that effect, proceeded for the trial, preferred the appeal against the order before the appellate tribunal, absence of their names in place of deceased party is a mere procedural irregularity which does not amount illegality at the face of record. Not only that, but even otherwise, after going through the memo of appeal from Tenancy Appeal No.8/05 which was preferred by the present applicant before the appellate tribunal, amply suggest that ground of abatement was not ever contested or raised as a main issue before the appellate tribunal. This indicates that they have taken active part in the proceedings throughout with knowledge of their status, representing the interest in the property as the LRs of deceased applicant / tenant. Therefore, on this count also objection raised by the applicant about the alleged illegality which is not otherwise illegality, but irregularity does not sustain in eye of law, so as to warrant the interference in the concurrent findings recorded by the tribunal below, particularly in the light of judgment & order passed in file No.9/90 which has been reached to its finality.

10. After all, it is well settled principle of law that the Tribunal under the provisions of Sec.76 of the Act have very limited powers to interfere in the concurrent findings recorded by the tribunals below. Herein this case, inview of the observations made supra, findings recorded by both the tribunals below, which are

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.