

Commo order Below Ex. 1. i.e. Revision Application
Application dt 22/11/17

① Perused the order under revision.

Perused the Lower Court record. Heard both the Advocates representing parties.

② Admittedly originally disputed land was the tenanted Land in possession of the family. Tenancy disputed arising therefrom reached to finality by issuance of Certificate 4532 M of the Act in the name of one person. Later on dispute between the branches of tenants family started through Civil Suit NO $\frac{196}{73}$ for partition and separate possession of entire joint family properties including the disputed Land. In the said suit the trial Civil Court framed certain issues about the nature original tenancy either joint or exclusive in the name of the persons in whose favour certificate 4532 M has been issued. The order passed by the tribunal below in the said reference proceedings up to BSA of the Act is the subject matter of this revision.

③ Legal position on this aspect is Well Settled in the judgment passed by Our Hon'ble H.C. in the Case of Savitri Shinde v/s ^{Ravi} ~~Ravi~~ Shinde reported in 2006 (2) M.H.J. 243. Our Hon'ble H.C. has ruled that Once tenancy proceedings reached to its finality Nature of joint or exclusive tenancy can be decided only by civil court - and not by the Tribunal under the Act.

④ The learned Advocates representing the parties accepting the said legal settled position moved joint Application dt. 22/11/17 and there by prayed to pass appropriate order in the matter. I have accepted the said application by passing order "Real & Recorded".

On the background of above facts. in view of settled position laid down in the precedent referred supra. I hold that the reference made by the civil court is redundant. Therefore findings recorded if any by the Tribunal below are also unwarranted and does not sustain in Law. But the

कोर्टि च

6/1

the civil court give its finding on
the issues referred independently. With
these observations I proceed to
pass the following order -

ORDER

i) Application moved by the parties
dt. 22/11/17 is hereby allowed.

ii) Issues referred by the civil court
in RCN No 196/73 are hereby reme-
tured for its trial and decision before
civil court only.

iii) Civil Court is hereby requested
to decide the issues referred indepen-
dently without being influenced by the
findings recorded by the tribunal.

iv) Revision application accordingly stands
disposed off by setting aside the
findings recorded by tribunal below
being unwarranted.

v) Copy of order passed by this
tribunal alongwith the copy of orders
passed by the tribunal below be

- Sent to civil Court - before whom the proceedings of suit NO 196/73 is pending as a part of Compliance of 85A(2) of the Act to ~~act~~ act accordingly.

v) Inform the tribunals below and parties concerned. RSP be sent back

VII) : Copy of order be kept with application dated 22/11/

VIII) No order as to costs.