

Krishnabai Anaji Ghule And Others vs Nivrutti Ramchandra Raykar And Another on 5 September, 1983

Equivalent citations: 1983 AIR 1213, 1983 SCR (3) 822, AIR 1983 SUPREME COURT 1213, 1984 (1) SCC 179 1983 UJ(SC) 913, 1983 UJ(SC) 913, 1983 UJ(SC) 913 1984 (1) SCC 179, 1984 (1) SCC 179

Author: D.A. Desai

Bench: D.A. Desai, R.B. Misra

PETITIONER:

KRISHNABAI ANAJI GHULE AND OTHERS.

Vs.

RESPONDENT:

NIVRUTTI RAMCHANDRA RAYKAR AND ANOTHER

DATE OF JUDGMENT 05/09/1983

BENCH:

DESAI, D.A.

BENCH:

DESAI, D.A.

MISRA, R.B. (J)

CITATION:

1983 AIR 1213

1983 SCR (3) 822

1984 SCC (1) 179

1983 SCALE (2) 258

ACT:

Bombay Tenancy and Agricultural Lands Act, 1948-S. 33-B
- Certificated landlord's right to obtain possession of
exempted land from excluded tenant- Requirements to be
satisfied by landlord-Scope of proceedings under s. 33-B.

HEADNOTE:

Section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948 provides that every tenant of agricultural land shall be deemed to have purchased from his landlord as on April 1, 1957 (Tiller's Day) the land held by him as tenant free from all encumbrances. However to protect petty or small landlords against statutory compulsory purchase, provision was made in Part II-A of Chapter III read with s. 88-C of the Act enabling them to obtain exemption

certificate under s. 88-C. While s. 33-A designates such petty land lords as 'certificated landlords' and the tenants of such exempted lands as 'excluded tenants', s. 33-B confers a special right on a certificated landlord to terminate the tenancy of the excluded tenant in respect of the exempted land and obtain possession of such land if he bona fide requires the same for cultivating it personally.

The land in question in this appeal had fallen to the share of the respondent in a family partition. The bona fides of the partition was the main issue in the proceedings held under s. 88-C for grant of an exemption certificate in favour of the respondent. However, the order granting the certificate withstood all challenge from the tenants and became final. In the subsequent proceedings instituted by the respondent under S. 33-B for possession of the land the Tehsildar arrived at the finding that the respondent required the land bonafide for his personal cultivation and this finding was confirmed by the Sub-Divisional officer in appeal and the tenants were directed to hand over possession of the land to the respondent. The tenants filed revision applications before the Revenue Tribunal which allowed them on the ground that the Sub-Divisional officer had wrongly declined to admit an important piece of evidence having a direct bearing on the question of bona fides of the partition. The respondent moved the High Court under Art. 227 and the High Court set aside the Tribunal's judgment holding that the bona fides of the partition which had already been agitated inter partes in proceedings under s. 88-C could not be reconsidered in a subsequent proceedings under s. 33-B and directed the Tribunal to decide the revision in accordance with law. The Tribunal, taking note of the fact that the respondent had sold a piece of land 112 years before filing the present application for possession and also that he owned house property in Poona City, came to the conclusion that the respondent did not bona fide require the land in question for personal cultivation and

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dismissed the application for possession of land. The respondent once again moved the High Court under Art. 227. The High Court restored the decision of the Sub-Divisional officer, holding that the Tribunal was in error in holding that in order to obtain possession of land from an excluded tenant under s. 33-B, it was obligatory upon a certificated landlord to prove the compelling necessity to cultivate the land, and that the sale of land by the respondent prior to the commencement of the present proceedings which was for a small price did not have an adverse impact on his bona fides.

Counsel for appellant-tenants submitted that even assuming that the High Court was right in holding that the bona fides of the partition could not be the subject matter of a collateral attack in the present proceedings as the

same had been considered and decided in proceedings held under s. 88-C, still the question could be gone into to ascertain the bona fides of the landlord when he moved an application under s. 33-B seeking eviction for personal cultivation.

Dismissing the appeal,

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HELD: It is true that a certificated landlord is not entitled to recover possession from the excluded tenant merely for asking. He can only obtain the direction for possession if he bona fide requires the exempted land for cultivating it personally. When it is said that the landlord bonafide requires possession of the land, it would be necessary for him to prove that he is acting honestly and that the application for possession is not a device to dispossess the tenant and that he requires, in the sense needs possession of, the land for personal cultivation. In other words, personal cultivation is necessary to obtain the yield of the land for himself. Some element of requirement could inhere the requirement for maintenance by undertaking the avocation of personal cultivation. It is not that the landlord even if he has sufficient source of maintenance, can seek possession merely because he wants to pursue the avocation of cultivating the land personally but this aspect hardly ever arises in an application under s. 33-B because such an application can only be made by a certificated landlord and none else and the certificated landlord is one whose holding does not exceed an economic holding. As long as the certificate of exemption under s. 88-C subsists, two inferences flow therefrom: that the landlord is a petty or small land holder and that his annual income from all sources including rent of land does not exceed Rs. 1,500. It is the bonafide requirement of such a small and petty landlord for personal cultivation that has to be examined under s. 33-B. It may be that while examining the bona fides of the requirement of the certificated landlord, the court may take into account how the landlord became the owner of the land and, if it is by partition, the bona fides of the partition may be examined. [830 G-H; 831 A-D]

Arvind Lal Bhukanda v. Khandu, 63 B.L.R. 929 approved and distinguished.

In the instant case, the appellant-tenants contested the proceedings initiated by the landlord for certificate of exemption under s. 88-C at all levels and on all available contentions, the principal one being the nature and

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character of the partition. That contention having been concurrently negatived cannot be re-opened. The Tehsildar arrived at the finding that the respondent required the land bonafide for his personal cultivation and it was confirmed by the first appellate court which was the last fact-finding court. The Tribunal interfered with this finding on the ground that some important piece of evidence had been over-

looked. The finding cannot be reopened this state on the short submission that the Court declined to examine the genuineness or validity or bona fides of the partition particularly when this very question was considered in an earlier round of proceedings and decided in favour of the landlord. [832 E-F; 833 E-H]

JUDGMENT :

C[VIL APPELLATE JURISDICTION: Civil Appeal No. 2896 of 1977.

Appeal by Special leave from the Judgment and order dated the 4th November, 1977 of the Bombay High Court in Special Civil Appln. No. 107 of 1977.

Y. M. Tarkunde, P. N. Parekh and Mrs. Manik Karanajuwala for the Appellants.

U. R. Lalit, V. N. Ganpule, Mrs. V. D. Khanna and Altaf Ahmad for the Respondents. ;

The Judgment of the Court was delivered by DESAI, J. Two decades have elapsed since the commencement of the proceedings involving a simple issue whether the first respondent designated as certificated landlord is entitled to recover possession of land bearing Survey No. 14/A/2 admeasuring. 7 acres and 13 gunthas situated at Village Manjari Badruk Taluka Haveli Distt. Poona in Maharashtra State from the appellants 1 to 3 who are heirs of excluded tenant Shri Ghule and appellant No. 4 who is also an excluded tenant.

A brief resume of the various proceedings leading to the present appeal may shed some light on a simple issue involved in this appeal.

One Ramchandra Gopal Raykar, father of the first respondent landlord leased land included in Survey No. 14/A/2 to two different persons. Land admeasuring 4 acres out of total area of 7 acres and 13 gunthas; was leased to Shri Anaji Maruti Ghule. Appellants No. 1 to 3 are the heirs and legal representatives of Sh. Ghule. The remaining 3 acres and 13 gunthas of land was leased to Vishnu Maruti Tilekar Appellant No. 4 in this appeal.

After a partition in the family of the landlord, the Land involved in this appeal fell to the share of the first respondent landlord. He moved an application under sec. 88-C of the Bombay Tenancy and Agricultural Lands Act, 1948 ("Tenancy Act, for short) praying for a certificate therein envisaged on the allegation that his holding does not exceed the economic holding and total annual income of the landlord including the rent of such land does not exceed Rs. 1,500. After an enquiry made by the Mamlatdar as contemplated by sec. 88-C (iii) and (iv) an exemption certificate was granted to the landlord. The order of the Mamlatdar was challenged by the tenants upto the High Court of Judicature at Bombay, but the order of the Mamlatdar granting exemption certificate withstood the challenge. And that order has become final. The effect of the granting of an exemption certificate is that, amongst others, provisions contained in secs. 32 to 32R shall not apply to the land leased by

such certificated landlord. In other words, the excluded tenants of such certificated landlord shall not become the owners of the land on the Tillers' day i.e. 1st April, 1957.

Sec. 33-B confers a right on the certificated landlord to terminate the tenancy of the land in respect of which exemption certificate is granted, and to make an application to the Mamlatdar for obtaining possession if such certificated landlord bonafide requires such Land for cultivating it personally. Accordingly the respondent landlord made an application on March 29, 1962 to the Mamlatdar having jurisdiction in the area praying for an order for possession of the land in respect of which certificate was granted. This application was resisted by both the tenants raising various contentions, one such worth noticing being that appellants No. 1 to 3 were not served with the statutory notice as required by Sec. 33-B. In the meantime it, appears that the land bearing Survey No. 14/A/2 was put to auction to recover arrears of irrigation dues and the same was purchased for a consideration of Re. 1 by the Government. Taking note of this fact, the Mamlatdar rejected the application of the landlord observing that he had no title to the land. In an appeal by the landlord, the order of the Mamlatdar was set aside and the matter was remanded to the Mamlatdar for disposal according to law. A revision petition by the appellants was dismissed by the Maharashtra Revenue Tribunal. Mamlatdar designated as Tehsildar, on remand held an enquiry, recorded a finding that notice terminating the tenancy was served on present appellant No. 4, but it was not served on Appellants No. 1 to 3, the heirs of Anaji Ghule. He accordingly allowed the application of the landlord for possession against Appellant No. 4 Tilekar but dismissed the same against Appellants No. 1 to 3, the heirs of Ghule.

For separate appeals came to be filed against the decision of the Tehsildar, two by two sons of Anaji, Appellants No. 2 and 3 herein, one by the landlord against the dismissal of his application against the heirs of Shri Ghule and one by Shri Tilekar against that part of the order by which he was directed to hand over possession of the land to the landlord. All the four appeals were disposed of by the Sub Divisional officer with appellate powers by a common judgment. He held that there was effective service of notice on the heirs of Shri Anaji Ghule. All other contentions of tenants were rejected with the result that appeal by the respondent landlord was allowed and appeal by tenant Tilekar was dismissed. As a result, an order was made directing both the tenants to hand over possession of land comprised in Survey No, 14/A/2.

Four separate revision applications were filed against the order of the Sub Divisional officer before the Maharashtra Revenue Tribunal. By a common judgment, a learned member of the Tribunal held that the Sub Divisional officer, while disposing of the appeals wrongly declined to admit an important piece of evidence which was sought to be produced before him by the tenants and that piece of evidence has a direct bearing on the bona fides of the landlord and therefore, the appellate court was not justified in shutting out the evidence. In accordance with this finding, the Maharashtra Revenue Tribunal allowed the two revision applications filed by the tenants and set aside the order of the Sub Divisional officer as well as of the Tehsildar and remanded the matter to the Tehsildar for decision afresh. The judgment of the Maharashtra Revenue Tribunal was challenged by the landlord in a petition under Art. 227 of the Constitution being Special Civil Application No. 1794 of 1975.

A learned Single Judge of the Bombay High Court, who heard the petition was of the opinion that the partition in the joint family of the landlord had taken place before 30th March, 1960 and the bonafides of the partition having been agitated inter-partes in the proceedings under sec. 88-C initiated by the landlord for obtaining the exemption certificate upto the High Court and decided in favour A of the landlord, the same cannot be re- opened and re-considered in a subsequent proceeding under Sec. 33-B under which a certificated landlord may sue for obtaining possession from the excluded tenant, the land in respect of which certificate is granted. Having reached this conclusion and after examining other contentions, it was held that the Maharashtra Revenue Tribunal was in error in holding that the Sub Divisional officer hearing the appeal committed error in not allowing fresh evidence to be led at the appellate stage because a party has no right to adduce additional evidence in an appeal and there was no discretion in the appellate authority either to accept or reject the additional evidence. The learned judge also observed that the Sub Divisional officer has given reason for rejecting the evidence. Approaching the matter from this angle, the learned judge held that the Maharashtra Revenue Tribunal had no justification to remand the matter for a further fresh enquiry when the parties had already taken opportunity to make out their respective cases. Accordingly, the High Court set aside the decision of the Maharashtra Revenue Tribunal remanding the matter to the Tehsildar and directed the Tribunal to decide the revision applications filed by the tenants in accordance with law.

Pursuant to this direction, the matter went back to the Maharashtra Revenue Tribunal. It was heard by a learned member of the Revenue Tribunal. The learned member formulated the point for decision as to whether the certificated landlord has been able to establish that he bonafide requires the land for personal cultivation. While examining this contention, the Tribunal observed that bonafide requirement for personal cultivation as contemplated by Sec. 33-B envisages both the compelling need to cultivate personally as well as genuine intention to do so. The learned member took note of the fact that the certificated landlord had told the land under sugarcane crop admeasuring 20 gunthas on August 11, 1960 to Bhiru Bahu Ghule and that the sale was effected 1-1/2 years before the certificated landlord approached the Tehsildar for obtaining possession of the land from the excluded tenant. This sale, according to the learned member, raised considerable doubt about the bonafides of the landlord because if he had a compelling necessity or need to cultivate the land personally, he atleast would not have sold the land which was in his actual possession. The learned member took note of the fact that landlord owns a house property in Poona City and that once upon a time, the family was the owner of extensive land holding. For these reasons, the learned member held that he was not satisfied that the certificated landlord bonafide required the land involved in the dispute for personal cultivation. He accordingly allowed the revision applications of the tenants and dismissed the application of the landlord for obtaining possession of the land.

The certificated landlord moved Special Civil Application No. 107 of 1977 in the Bombay High Court under Art. 227 of the Constitution questioning the correctness of the decision of the Maharashtra Revenue Tribunal. A learned single judge of the High Court, who heard the petition held that there was an error apparent on the face of the record when the learned member of the Tribunal held that in order to obtain possession of land by a certificated landlord from an excluded tenant under Sec. 33-B it is obligatory upon such landlord to prove the compelling necessity to cultivate the land. It

was observed that that element may be relevant and valid in an application under Sec. 31 of the Tenancy Act, wherein the landlord has to prove that the land of which he seeks possession is the principal source of income for his maintenance. The learned judge was of the view that the sale of the land admeasuring 20 gunthas prior to the commencement of the present proceedings was for a small price and cannot have an adverse impact on the bonafides of the landlord. Accordingly the learned judge allowed the application of the landlord and set aside the decision of the Maharashtra Revenue Tribunal and restored the decision of the Sub Divisional officer directing handing over of possession of the land to the landlord. It is this decision of the High Court which is questioned in this appeal.

Sec. 32 of the Tenancy Act ushered in an era of revolutionary change in the life of the tiller of the soil. It provided that every tenant of agricultural land shall be deemed to have purchased from his landlord on the Tiller's day, the land held by him as tenant free from all encumbrances subsisting on the said day subject to the various conditions therein provided which we consider unnecessary to refer here. The far-reaching change introduced by Sec. 32 was noticed by a Constitution Bench of this Court in *Sri Ram Ram Narain Medhi v. State of Bombay*(1) wherein it was held that the title of the landlord to the land passes immediately to the tenant on the Tiller's day and there is a complete purchase or sale thereby as between the landlord and the tenant. But the Legislature was aware that there was a class of landlords who if, by the operation of law, were deprived of the ownership of land would be worse off than the tillers for whose benefit the provision was made. With a view to saving such petty landlords Part II-A was introduced in Chapter III of the Tenancy Act in 1961. Simultaneously, Sec. 88-C was amended by introducing a non-obstante clause which would have the effect of excluding the land of such petty landlords who would be covered by Part II-A from the operation of Sec. 32 providing for compulsory purchase of land by the tenant. Sec. 88-C provides that save as provided by Sec. 33-A, 33-B and 33-C nothing in Sec. 32 to 32R (both inclusive) shall apply to lands leased by any person if such land does not exceed an economic holding and the total annual income of such person including the rent of such land does not exceed Rs. 1,500. In other words, petty or small landlords whose holding does not exceed an economic holding as specified in Sec. 6 and whose total annual income does not exceed Rs. 1,500 were sought to be exempted from the operation of Sec. 32. Such petty or small landlords in order to save their land from becoming subject matter of compulsory sale by the operation of law were required to obtain a certificate from the Mamlatdar as envisaged in Sec. 88-C. In order to obtain the exemption certificate the landlord had to make an application to the Mamlatdar and the Mamlatdar after holding an enquiry after giving notice to the tenant had to decide whether (1) the holding of such landlord did not exceed economic holding; and (2) his total annual income including the rent of such land did not exceed Rs. 1,500. If both the conditions were cumulatively satisfied, the Mamlatdar had to give a certificate in the prescribed form showing that the land of such landlord is exempt from the operation of Sec. 32. The effect would be that a tenant of such landlord would not become a deemed purchaser on the Tiller's day. Sec. 33-B provides that such landlord is to be designated as certificated landlord and the tenant of such land exempted from the operation of Sec. 32 was to be designated as excluded tenant. Sec. 33-B conferred a special right on the certificated landlord to terminate the tenancy of the excluded tenant in respect of the exempted land and obtain possession if landlord bonafide required the possession of such land for cultivating it personally.

Respondent landlord is a certificated landlord. The tenants-appellants had challenged the proceedings initiated by the respondent landlord for obtaining exemption certificate under Sec. 88-C inter-alia contending that the partition in the family of the landlord was not bonafide and that it was so contrived that the landlord may obtain advantage of sec. 88-C. This contention was negated by the Mamlatdar hearing the application u/s 88-C and the appeal against the decision by the tenants to the Collector and a revision petition to the Maharashtra Revenue Tribunal and a petition under Art. 227 of the Constitution to the Bombay High Court at the instance of tenants successively filed, all failed. The net outcome is that the partition was held to be bonafide and genuine. The proceedings between the landlord and the tenant for exemption certificate under Sec. 88-C came to an end with the decision of the High Court and the grant of the certificate became final and not questionable in the present proceedings which could have been commenced only by a landlord who has obtained a certificate of exemption.

The first contention raised on behalf of the appellants-tenants was that the partition in the family of the landlord was neither honest nor bonafide nor genuine but it was contrived with a view to obtaining an unfair advantage by the respondent-landlord by so allocating the share that he can get benefit of the provision of Sec. 88-C. The High Court declined to entertain this contention presumably on the ground that this very contention has been negated by all courts in the earlier round of proceedings u/s 88-C and it cannot be the subject-matter of a collateral attack in the present proceedings which can only be commenced after proceedings under Sec. 88-C are finally concluded between the parties. No serious exception can be taken to this view of the High Court. But it was urged that even if the Court may not re-examine the validity or bonafides of the partition, the question can still be gone into to ascertain the bonafides of the landlord when he moves an application under Sec. 33-B seeking eviction for personal cultivation. It is undoubtedly true that a certificated landlord is not entitled to recover possession from the excluded tenant merely for asking. He can only obtain the direction for possession if he bonafide requires such land meaning thereby the land exempted from the operation of Sec. 32 for cultivating it personally. When it is said that the landlord bonafide requires possession of the land, it would be necessary for him to prove that he is acting honestly and that the application for possession is not a device to dispossess the tenant and that he requires in the sense needs possession of the land for personal cultivation. In other words, personal cultivation is necessary to obtain the yield of the land for himself. Some element of requirement would inhere the requirement for maintenance by undertaking the avocation of personal cultivation. It is not for a moment suggested that the landlord even if he has sufficient source, of maintenance, he can seek possession merely because he wants to pursue the avocation of cultivating the land personally but this aspect hardly ever arises in an application under Sec. 33-B because such an application can only be made by a certificated landlord and none else and the certificated landlord is one whose holding does not exceed an economic holding and whose income from all sources including the rent of the land does not exceed Rs. 1, 500 per annum. It is such a small or petty landlord whose requirement for personal cultivation has to be examined under Sec. 33-B. It may be that while examining the bonafides of the requirement of the certificated landlord, the Court may take into account how the landlord became the owner of the land and if it is by partition, the bonafide of the partition may be examined. The view taken by the Bombay High Court in *Arvindlal Bhukanda v. Khandu*(1) that if a partition is made in an unusual manner it may have a bearing on the question of bonafides commends to us with this specific reservation that the

proceedings in that case arose under Sec. 32 and not under Sec. 33-B as in the present case. Having said this, let it be remembered that the appellants tenants contested the proceedings initiated by the landlord for certificate of exemption under Sec. 88-C at all levels and on all available contentions the principal being the nature and character of the partition. That having been concurrently negated, we are not disposed to re-open that question which even the High Court declined to examine. Till the certificate of exemption under Sec. 88-C subsists, two inferences now therefrom, that the landlord is a petty or small land holder and his annual income from all sources including rent of land does not exceed Rs. 1, 500. It is the bonafide requirement for personal cultivation of such landlord that the Court is called upon to examine.

After the remand, the Tehsildar on the question of bonafide requirement recorded a finding as under:

"In my opinion the deposition of the applicant in regard to his requirement and income is substantially correct and the opponents have not led sufficient and satisfactory evidence to displace the conclusions arising from the reading of his deposition as a whole Having given anxious thoughts to the evidence on record, I am satisfied that the applicant requires the land bonafide for personal cultivation".

This finding was confirmed by the first appellate court which is the last fact-finding court. The Maharashtra Revenue Tribunal interfered with this finding and remanded the case to the Tehsildar on the ground that some important piece of evidence was overlooked. This order of remand has been set aside by the High Court on an earlier occasion. In this background, it would be too late in the day to re open this finding, at this stage on the short submission that the Court declined to examine the genuineness or validity or bonafides of the partition, and we are not disposed to re-open this question more particularly for the reason that this very question in the earlier round of proceedings upto the High Court was concurrently held in favour of the landlord and by authorities in the present round of proceedings.

It was next contended that the High Court was in error in interfering with the order of remand made by the Maharashtra Revenue Tribunal. The Tribunal set aside the concurrent findings on the question of bonafide requirement of the landlord by observing that the appellate court erroneously rejected a piece of evidence which the tenants sought to produce at the appellate stage. The Tribunal observed that the delay in producing this evidence having been satisfactorily explained, the tenants ought to have been allowed to produce the evidence which has some bearing in the issues arising in the matter. The piece of evidence sought to be produced at the appellate stage by the tenants was bearing on the question of bonafide of the partition. It is the same contention differently clothed. In this connection, the Tribunal observed that despite the proceedings under Sec. 88-C having finally concluded between the parties: "It was still open to the tenants to show that the manner in which the partition was effected and the time chosen therefore and particularly the fact that the entire tenanted land was allotted to the share of one copar-

cener to the exclusion of others has an important bearing on the question of bonafides." This view was sought to be supported by relying upon Arvindlal Bhukhanda v. Khandu. The High Court in a petition under Art. 227 while setting aside the order of remand observed that the delay in producing additional evidence was unexplained looking to the protracted proceedings commencing from 1962 and the bonafide of the partition was not questioned, except at the revisional stage.

Mr. Tarkunde, learned counsel for respondents took serious exception to the second observation and pointed out that it is contrary to record. In this connection, he drew our attention to Point No. 5 framed by the Tehsildar while holding the enquiry after the remand which was as under:

"5. Whether the partition made by the landlord is valid. And whether it can be challenged in these proceedings?"

He recorded a finding that there was a partition in the landlord's family in 1959 and the same cannot be challenged in the present proceedings, In the appeal by the tenants, the Appellate Court disposed of the contention on the bonafide of the partition by observing that he was in agreement with the reasoning of the Tehsildar. The Maharashtra Revenue Tribunal in the revision petition by the tenants held that once a certificate is granted to a landlord under Sec. 88-C on the basis that he is the exclusive owner of the land it is not open to the tenant in an enquiry under Sec. 33-B to challenge the partition under it. In support of this view, the Tribunal relied upon two un-reported decisions of the Bombay High Court and finally observed that it is futile to challenge the validity of the partition. It thus appears that High Court committed an error apparent on record while observing that the validity of partition was questioned for the first time at the revisional stage. But having said this it must also be pointed out that the contention raised by the tenant about the bonafides of partition in the proceedings under Sec. 33-B has been rightly negated on the short ground that the bona fides, genuineness and validity of the partition was directly and substantially in issue in the proceedings under Sec. 88-C and concurrently held in favour of the landlord upto the High Court and the same must be held to be concluded between the parties and on this short ground, the decision of the High Court setting aside the order of remand can be confirmed.

In the view that we take in the circumstances herein discussed, the bonafides of the partition cannot be put in issue, the contention raised by Mr. Tarkunde becomes a non- issue and it will also dispose of his supplementary contention that the Sub Divisional officer hearing the appeal was in error in declining to give an opportunity to the tenants to produce additional evidence which was primarily for the purpose of showing that the partition was neither genuine nor bonafide. And in our opinion in the facts of this case it is no more relevant.

Incidentally it was urged that the landlord is staying at Poona and that he is florist and the land involved in dispute is at Village Manjari and therefore it is not possible to believe that the landlord would be able to personally cultivate the land or that he can undertake the avocation of cultivation of land by investing funds when the area available is less than an economic holding. These are pure questions of facts concurrently held in favour of the landlord and we are not disposed to re-examine them at this stage and at this distance of time.

One aspect which, frankly has dominated out thinking is the relative economic position of tenants and landlord in this case. Anaji Ghule was a tenant of 4 acres out of 7 acres and 13 gunthas of land comprising in Survey No. 14/A/2. Tilekar was a tenant of the remaining 3 acres and 13 gunthas. Anaji Ghule died leaving behind him two sons and a widow, who are appellants No. 1 to 3. Appellant " Krishnabai the widow holds excluding the leased land 16 acres and 17 gunthas of land; first son Shivaji 8 acres and 9 gunthas, and Bala the second son 8 acres and 10 gunthas of land. Presumably all the three inherited the land from Shri Ghule and therefore the total holding would be 32 acres and 36 gunthas of land. And it is interesting to note some features of the partition effected by tenants' heirs amongst themselves. The widow is allotted double the share of each son. There is nothing to show that the mother and two sons have separated. And their total holding is 32 acres and 36 gunthas. As against the holding of first set of tenants of 32 acres and 36 gunthas, the landlord seeks possession of 4 acres of land. In the case of Tilekar he holds 8 acres and 4 gunthas and the landlords 3 acres and 13 gundhas. Would it be fair to deny this very reasonable request in appeal under Art. 136 when all authorities including High Court have held in favour of this petty small landlord. We decline to interfere.

Accordingly this appeal fails and is dismissed with no order as to costs.

H.L.C.

Appeals dismissed.