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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 240 OF 2001**

- | | | |
|-----|--|------------------|
| 1. | Shri Sadashiv Laxman Shelar |] |
| | since deceased through heirs and |] |
| | Legal representatives, |] |
| 1A) | Shri Kisan Sadashiv Shelar, |] |
| 1B) | Shri Santosh Sadashiv Shelar, |] |
| | Nos.1A and 1B resident of Naragaon. |] |
| 1C) | Smt. Lila Krushna Pote, |] |
| | C/o. Tushar Krushna Pote, |] |
| | Khardanda, 05/11 Amangul Pathan Chawl, |] |
| | Mumbai. |] |
| 1D) | Sau. Shobha Sadashiv Sonvane, |] |
| | Residing at & post Ahire, Taluka Satara, |] |
| | District – Satara, Pine Code 412 802. |] |
| 1E) | Sau. Janaki Namdeo Sonvane, |] |
| | R/at – Swagat Co-op Housing Society, |] |
| | Building No. 52/1, Scheme No. -11, |] |
| | Yamunanagar – Triveninagar Chowk, |] |
| | Sector – 21, Yamunanagar, Nigadi |] |
| | Pune 411 044. |] |
| 1F) | Pramila Tulshidas Adsul, |] |
| | At & Post Rishe, Taluka Purandar, |] |
| | District – Pune. |] ... Appellants |
| | V/s. | |
| 1. | Shri Maruti Laxman Shelar |] |
| | Agriculturist. |] |

2. Shri Namdeo Laxman Shelar]
 since deceased through]
 heirs and legal representative]
 2A) Shri Tukaram Namdeo Shelar,]
 Occupation: Agriculturist.]
 2B) Shri Dattatraya Namdeo Shelar,]
 Occupation: Agriculturist.]
 2C) Smt. Gangubai Namdeo Shelar,]
 2D) Sau. Ashabai Dattatraya Sonawane]
 Resident of Sonwadi, Taluka Daund,]
 District- Pune.]
 2E) Sau. Malan Vasant Shinde]
 Residing at Alegaon Page, Taluka]
 Shirur, District Pune.]
 3. Shri Khandu Laxman Shelar]
 Agriculturist.]
 4. Shri Mahadu Laxman Shelar(since]
 deceased through legal heirs and]
 legal representatives:]
 4A) Smt. Yashodabai Mahadev Shelar,]
 4B) Ramesh Mahadev Shelar,]
 Occupation: Agriculturist.]
 4C) Mrs Rukmini Vasant Suryavanshi,]
 4D) Popat Mahadev Shelar,]
 Occupation: Agriculturist.]

All are residing at and Village]
Nagargaon, Taluka: Shirur,]
District: Pune.]..Respondents

Mr. U.B. Nighot for the Appellant.

Mr. Rahul Soman a/w. Mr. Shivraj R. Patil i/b. Mr. Aditya Shirke
for Respondent No.1.

Mr. Y.S. Bhate for Respondent Nos. 4A to 4D.

CORAM : GAURI GODSE, J.
RESERVED ON : 2nd APRIL 2026
PRONOUNCED ON : 2nd JULY 2026

JUDGMENT :-

1. The appellant is the original defendant no.1. Respondent no.1 is the original plaintiff and respondent nos. 2 to 4 are the original defendant nos. 2 to 4. The suit filed by respondent no.1 for partition and separate possession is decreed by the trial court, granting 1/5th share to the plaintiff. In the appeal preferred by defendant no.1, the trial court's decree is confirmed. Hence, this second appeal challenges the concurrent judgments and decrees granting partition and separate possession. The second appeal is admitted on the substantial question of law formulated in the order dated 10th August 2001, which reads as under:

"Heard learned counsel for the Appellant.

Admit on the following question of law:

In the facts and circumstances of the case, whether the civil court had a jurisdiction to determine the question relating to the tenancy and/or joint tenant.”

BRIEF FACTS:

2. The relationship between the parties is undisputed. One Sahadu was the original holder of the suit property who had two sons, Ramu and Laxman. According to defendant no. 1, a partition took place between Ramu and his brother Laxman prior to 1953. The plaintiff is one of Laxman's sons. Defendant nos. 2 to 4 are the other sons of Laxman. According to the plaintiff, Laxman died in 1961. The suit properties were given to Laxman's share in the partition between Ramu and Laxman. Hence, according to the plaintiff, he had a 1/5th share in the suit properties being the son of Laxman.

3. The appellants are heirs of defendant no. 1, who opposed the suit claim on the ground that the suit property was partitioned in 1972, except land Gat No. 354. He contended that the Gat No. 354 was not the joint family property and that after the death of

Laxman, the name of defendant no. 1 was entered as Karta of the joint family in respect of the properties except Gat No. 354. According to defendant no.1, Gat No. 354 was owned by one Kondabai and Krishna Shelar, and his uncle Rama Shelar, i.e. brother of his father Laxman, was the tenant in respect of the said Gat number. With the consent of his uncle, the name of defendant no. 1 was entered as a protected tenant as he was cultivating the same. He therefore claimed exclusive ownership over Gat No. 354 and opposed partition in respect of the said property. Defendant nos. 2 to 4 appeared; however, the suit proceeded without their written statement.

4. The trial court held that all the suit properties were the joint family properties and the theory of partition pleaded by defendant no.1 was not proved. Defendant no. 1's claim of exclusive ownership over Gat No. 354 was also not accepted by the trial court. There was no dispute with respect to the other suit properties, and the only issue to be decided was whether Gat No. 354 was joint family property and whether the parties were entitled to partition. The trial court held that all suit properties, including Gat No. 354, were the joint family property and the parties were co-sharers. Accordingly, the plaintiff and the defendants were each

entitled to a 1/5 share in the suit properties. The trial court's decree was confirmed by the first appellate court upon dismissal of the appeal of defendant no. 1.

SUBMISSIONS ON BEHALF OF APPELLANTS:

5. Learned counsel for the appellants submitted that on 20th February 1972, the order under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 ("Tenancy Act") was passed in favour of defendant no.1 on the ground that he was the permanent tenant of Gat No. 354. Initially, the Agricultural Lands Tribunal ("ALT") had passed an order in favour of defendant no. 1; however, it was reversed by the Sub-Divisional-Officer in the appeal preferred by the landlord. However, in the revision application filed by defendant no.1 before Maharashtra Revenue Tribunal ("MRT"), the order passed by the ALT in favour of defendant no.1 was confirmed.

6. Hence, in view of the orders passed by the tenancy authorities, the order under Section 32G, fixing the purchase price in the name of defendant no.1, stood confirmed. Hence, the findings recorded by both the courts to hold that Gat No. 354 was the joint family property are without jurisdiction. The findings by the

Tenancy Authorities on the status of Gat No. 354 holding that it was the tenanted property of defendant no.1 could not have been set aside by the civil court by holding that it was the joint family property. Learned counsel for the appellants submitted that defendant no. 1's name was entered as the karta of the joint family in respect of the other properties, which was admittedly the joint family property. Hence, only on the ground that defendant no.1's name was entered as Karta of the joint family, Gat No. 354 would not automatically become the joint family property.

7. Learned counsel for the appellants submitted that the trial court wrongly imposed a burden upon defendant no.1 to prove that Gat No. 354 was his exclusive property. He submits that once the order was passed by the Tenancy Authority holding defendant no.1 as tenant and fixing the purchase price in the name of defendant no.1, the burden was upon the plaintiff to prove that it was the joint family property, as the suit was filed for partition and separate possession on the ground that it was the joint family property. He therefore submits that issue no.1 and the decision on issue no.1 is without jurisdiction in view of the order under Section 32G in favour of defendant no.1. So far as issue no. 3 and its findings are concerned, the same wrongly shifts the burden on defendant no.1.

The orders passed in favour of defendant no.1 by the Tenancy Authority are not properly appreciated by both the courts.

8. In view of the order passed by the Tenancy Authority holding defendant no.1 as the protected tenant and fixing the purchase price in his name, it is sufficient evidence to hold that the suit property is the exclusive property of defendant no.1. Hence, the partition granted in respect of the said Gat number, exclusively owned by defendant no.1 would not be sustainable. The question of law, therefore, must be decided in favour of the appellants, and the impugned judgments and decrees be set aside. Learned counsel for the appellants relied upon the decision in the case of *Krishnabai Babya Navale Vs. Shankar Lahu Gharat and Ors*¹, *Ramakant Ganesh Naik and Ors Vs. Anusaya Shantaram Naik and Ors*² and *Suman Vishnu Pathak and Ors Vs. Usha w/o Prabhakarrao Koparkar and Ors*³.

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 1:

9. Learned counsel for respondent no. 1 (“ plaintiff ”) submits that the orders passed by the ALT do not deal with whether

1 2025 DGLS(Bom.) 3333

2 2024(3) Mh.L.J. 389

3 2013(2) Mh.L.J 268

the Gat No. 354 was of exclusive tenancy of defendant No. 1 or he was cultivating the same on behalf of the joint family. The order passed under Section 32G, fixing the purchase price in the name of defendant no. 1, would not give any exclusive title to defendant no. 1. When the joint family nucleus is not disputed, the Section 32G order in the name of Karta of the joint family would not confirm any exclusive title in the name of Karta. Defendant no. 1 failed to plead and prove that the purchase price was paid from his exclusive and/or independent source of income.

10. When the orders passed by the tenancy court do not decide the issue of exclusive tenancy, the civil court's jurisdiction would not be barred to hold that the Section 32G order was passed in favour of defendant no. 1 in the capacity of Karta. The issue of whether the property was joint family property or exclusive property falls within the domain of the civil court and cannot be decided by the tenancy court. Hence, the findings recorded by both the courts hold that Gat No. 354, belonging to the joint family property, cannot be held to be without jurisdiction. To support his submissions, learned counsel for the respondent relied upon the decision in the case of ***Shri Rajaram Bandu Gadade Vs. Shri Govind Sonba Gadade and***

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CONSIDERATION OF SUBMISSIONS AND ANALYSIS:

11. The relationship between the parties is undisputed. The only controversy in the matter pertains to whether defendant no.1 can claim exclusive ownership over Gat No. 354. Despite the orders under the Tenancy Act, passed in the name of defendant no. 1, fixing the purchase price under Section 32G in his name, both courts have held that defendant no. 1 is acting as Karta of the joint family. Hence, the order under Section 32G of the Tenancy Act would not confirm exclusive ownership over defendant no.1. In view of this controversy, the question of law to be decided in this second appeal is whether the findings recorded by the civil court relating to Gat No. 354 belonging to the joint family are without jurisdiction.

12. There is no dispute that defendant no. 1 was acting as Karta of the joint family, and accordingly, his name was entered in the revenue record as Karta. Based on such a mutation entry, it is contended by the plaintiff that the Section 32G order fixing purchase price in his name was in the capacity as Karta of the joint

⁴ Second Appeal No. 147 of 2011, Judgment dated 6th January 2025.

family. As against this mutation entry, defendant no.1 relied upon the record of right entering his name as ordinary tenant in respect of Gat No. 354. The plaintiff has relied upon the 7/12 extract produced at Exhibit 42, which records that the father of the plaintiff and the defendant, i.e., Laxman, were cultivating Gat No. 354. Hence, in view of the name of defendant no.1, entered as Karta of the joint family in respect of other joint family properties, both the courts concurrently held that Gat No. 354 belongs to the joint family.

13. The legal principles governing the civil court's jurisdiction to decide whether the tenancy was in an individual capacity or in respect of land belonging to the joint family are well established. By referring to the well settled legal principles this court in the case of ***Rajaram Bandu Gadade***, held that the controversy regarding existence of the joint family and whether the certificate issued under Section 32M of the Tenancy Act was issued on behalf of the joint family or in individual capacity cannot be decided by the tenancy court as it would be exclusive province of the civil court to decide the said controversy. Hence, this court held that the orders passed by the tenancy authority can be dealt with by the civil court

to decide whether the orders are passed on the ground that it was the tenancy of a Hindu joint family or exclusive ownership, as such an issue would be within the exclusive domain of the civil court. A similar view is taken by this court in ***Ramakant Ganesh Naik***, holding that when the tenancy court had not conducted any inquiry and had no occasion to decide the claim of members of the joint family, the civil court's jurisdiction would not be ousted. In the present case, the issue of whether defendant no. 1 was the exclusive owner or was acting as the karta of the joint family, and whether Gat No. 354 was exclusively owned by defendant no. 1, is not within the jurisdictional scope of the Tenancy Authorities/Court. No claim of exclusive tenancy or joint tenancy of the members of the joint family is decided by the Tenancy Authorities/Court. Hence, in the present case, the civil court has not dealt with any issue which falls within the exclusive jurisdiction under the Tenancy Act, that oust the civil court's jurisdiction.

14. In the decision of ***Krishnabai Babya Navale***, relied upon by the learned counsel for the appellants, the view taken by this court is on the facts of the said case. However, this court held that the legal principles settled in ***Ramakant Ganesh Naik*** are not ipso facto

applicable to all cases where the tenanted property is in the name of a family member, contending that it was his individual right. Thus, it is held that until and unless the evidence on record justifies that the property belongs to the joint family, the legal principles settled in the decision of *Ramakant Ganesh Naik* will not ipso facto apply to all cases.

15. Therefore, the question whether a land belongs to the joint family or to an individual member falls within the exclusive domain of the civil court. Only the issues of tenancy to be dealt with and decided by the Tenancy Authorities/Court under the Tenancy Act would be beyond the civil court's jurisdiction. In the facts of the present case, no issue decided by the civil court falls within the exclusive jurisdiction of the Tenancy Authorities/Courts under the Tenancy Act.

16. In the decision of *Suman Pathak*, relied upon by the learned counsel for the appellant, this court held that when a property stands in the name of an individual member, the burden rests on the party asserting it to be of joint family to prove it. In the present case, there is no dispute that a joint family and its nucleus existed. There is no dispute that defendant no. 1 was acting as Karta of the

joint family, and his name was entered as Karta after his father's death. Revenue record is produced by the plaintiff to show that Gat No. 354 was cultivated by the family and the name of their father was entered in the cultivation column. Nothing is produced by the defendant no. 1 to prove that he had any individual income source. Hence, the legal principles settled in *Suman Pathak* would not assist the arguments raised on behalf of the appellant. Only on the ground that an order under Section 32G is passed in favour of the defendant no. 1, it would not confer any exclusive title in his favour.

17. Based on the evidence on record, both the courts concurrently held that defendant no. 1 was acting as Karta of the joint family. Hence, the order passed under Section 32G is on behalf of the joint family. Defendant no.1 has not proved that the purchase price was paid from his independent source of income. Hence, the concurrent findings of fact recorded cannot be interfered with in this second appeal.

18. The question of law framed at the time of admission of the second appeal is of the civil court's jurisdiction to determine the question relating to the tenancy or the joint tenancy. In the present case, the issue of tenancy is not decided by the civil court.

However, based on the admitted facts, the existence of the joint family and the defendant no.1 acting as Karta of the joint family, both the courts have concurrently held that the order passed under Section 32G in the name of defendant no.1 was on behalf of the joint family. Hence, by recording the findings of fact that Gat No. 354 belongs to the joint family, both the courts have granted a decree for partition and separate possession. The findings recorded by both the courts are governed by the view taken by this court on the issue of civil court's jurisdiction as discussed in the above paragraphs. Hence, in view of the well-settled legal principles, the impugned judgments and decrees would not require any interference in this second appeal.

19. The question of law is accordingly answered by holding that in the facts and circumstances of this case, the civil court had the jurisdiction to determine the question whether the land belonged to the joint family and therefore the Section 32G order in the name of defendant no. 1 is on behalf of the joint family.

20. The second appeal is therefore dismissed.

(GAURI GODSE, J.).