A RAMESHCHANDRA DAULAL SONI & ANR.

v.

DEVICHAND HIRALAL GANDHI (DEAD) THR. LRS.
SMT. GULABBAI DEVICHAND GANDHI & ORS.

B (Civil Appeal No. 9834 of 2016)

NOVEMBER 14, 2019

[R. BANUMATHI, A. S. BOPANNA AND HRISHIKESH ROY, JJ.]

C *Bombay Rents, Hotels & Lodging Houses Rates Control Act, 1947 – s.5(11) – Eviction – Plaintiff purchased a property – As on the date of purchase the predecessor of defendants No.1 and 2 was the tenant of the said property – Defendants No.1 and 2 thereafter continued as the tenants – The plaintiff informed the defendants No.1 and 2 through the communication dated* D *06.12.1986 about the purchase and had sought for payment of the rents – Defendants failed to pay the same – The plaintiff termed the defendants No.1 and 2 as defaulters and instituted a regular civil suit seeking eviction – Trial Court decreed the suit and directed the defendants to handover actual physical possession of the suit* E *property – Aggrieved, defendants No.1 and 2 filed appeal and the same was dismissed by the Appellate Court – The Revision Applications were also dismissed by the High Court – Defendants No.1 and 2 contended that in view of the death of the original tenant, two sisters who were also the legal heirs but were not made defendants – It was also contended by all the legal heirs that the* F *suit property was an agricultural property and such rights* inter-se *between the parties were governed under the Maharashtra Tenancy and Agricultural Lands Act (MTAL Act) and the Civil Court did not have the jurisdiction – On appeal, held: The evidence available on record was assessed by the Trial Court as also the Appellate* G *Court and have recorded a finding of facts – That such a finding was based on the oral evidence tendered and the documents that were relied upon and marked before the Trial Court, the finding of fact recorded cannot be considered as perverse so as to interfere in a proceeding of the present nature – So far as two sisters of defendants No.1 and 2 are concerned, their claim to be considered* H *as the tenants under the statutory tenant is a belated claim as an*

after thought – Defendant No.1 in his evidence stated that he used the premises for storing food grain etc., there was no reference to the business being carried on jointly with his sisters – Further, the said sisters did not take any steps in any of the earlier proceedings from 1989 to 2015 to get themselves impleaded by contending that they were proper and necessary party – Insofar, contention to the effect that the suit property was an agricultural property, the said contention was never raised in the suit or as to whether the issue in the suit should be referred to the Authority under the MTAL Act – Further, there is no document to indicate the procedure contemplated under the MTAL Act was followed so as to conclude that the predecessor of defendants No.1 and 2 had become landlord of the property by operation of law so as to bar the jurisdiction of the Civil Court – Therefore, contentions urged by the defendants No.1 and 2 as also by all the legal heirs unsustainable.

Dismissing the appeals, the Court

HELD: 1. The provision in Section 5(11)(c)(ii) of Bombay Rents, Hotels & Lodging houses Rates Control Act, 1947 noted supra is clear that the persons carrying on the business with the statutory tenant at the time of death would be entitled to continue as a tenant. The second part of the said provision is that in the absence of such member any heir of the deceased tenant as may be decided by the Court in default of agreement, would get the right. In the instant case the contention being urged that the two daughters of the deceased tenants were also entitled to be considered as the tenants under the statutory tenant, is a belated claim as an afterthought. As taken note while considering the factual aspect it has come on record that the plaintiff after having purchased the property under a registered sale deed had issued the notice dated 16.12.1986 as at Exhibit 80 and the trial court has also recorded a finding that through the said notice the plaintiff had informed the defendants No. 1 and 2 about the purchase of the suit property. That apart, subsequently a notice as at Exhibit 96 was issued to the defendants No. 1 and 2 demanding the arrears of rent. The said notice in fact had been replied by the defendants No. 1 and 2 through the reply marked at Exhibit 99. Neither at the first instance when the notice at Exhibit 80 was issued was it indicated by the defendants No. 1 and 2 that their sisters had also become the statutory tenants

and the notice in the nature of attornment of tenancy should be issued to them as well, nor in the reply which had been issued when the arrears of rent was demanded did the defendants No. 1 and 2 contend that they were not the only one who were involved in the business along with the original statutory tenant and, therefore, all the legal heirs had succeeded as tenants on the death of the statutory tenant and, therefore, the demand, if any, is to be made from all of them. [Para 12] [58-B-G]

2. Though such contention is put forth the defendants No.1 and 2 did not attribute any right in favour of the sisters. In fact, as noted by the trial court the defendants No. 1 and 2 have filed on record pursis with a Exhibit 137-A claiming to have deposited Rs. 1000/- on 09.9.2007 at 'C' Register No. 465 without prejudice to their rights towards the rent, causes of the suit etc. This in opinion of this Court would indicate that the defendants No. 1 and 2 were claiming right for themselves and did not at that stage state about the right if any, possessed by their sisters as well and have now raised the contention as an afterthought. Further in the evidence of defendant No. 1 he states that his grandfather took the suit premises on lease for the purpose of business of cotton ginning factory and he further states that the defendant No. 1 used the premises to store food grain and equipment of agricultural and also cement. This would indicate that the defendant was referring to the business being carried on by him alone and there is no reference to the business being jointly carried on with his sisters or that none of the legal representatives including defendant No. 1 were carrying on business with the statutory tenant so as to claim benefit of the second part of Section 5 (11) (c) (ii) and claim joint inheritance of tenancy. Further the said position is also clear from the evidence of the one defendant witness 'V' who was examined to indicate that the premises was being used for the business and in that regard, in the course of his evidence he has stated that the defendants No. 1 and 2 are keeping cement and food grain in the godown and that he is serving with the defendants 1 and 2 since last 10 to 12 years but has not stated about the sisters also being involved in the business. If that be the position even from the evidence of the said witness, it would

be clear that only first part of Section 5 (11) (c) (ii) would be available and the sisters of defendant No. 1 and 2 cannot claim right merely due to the fact that they are the legal heirs of the deceased tenant. That apart the suit had been filed in the year 1989 and the same had crossed the stage of appeal as well as revision before the High Court which had come to an end on 20.07.2015. In none of these proceedings the said sisters of defendants No.1 and 2 have taken any steps to get themselves impleaded by contending that they are proper and necessary parties failing which their right would be affected. [Paras 13 and 14] [58-G-H; 59-A-F]

3. Further, having taken note of the contention of defendant No. 5 what is noticed at the outset is that the predecessor of the appellants, namely, the defendant No.5 did not choose to file the written statement in the suit. In that circumstance the contention to the effect that the suit schedule property or a portion thereof was an agricultural property was never the contention raised in the suit or as to whether the issue in the suit should be referred to the Authority under the MTAL Act. In that view no issue in that regard arose before the trial court to consider as to whether the Civil Court had the jurisdiction to entertain the suit. That apart the undisputed fact is that the legal representatives of defendant No.5 had assailed the judgment of the court below in CRA No.114/2012 which was considered along with CRA No.112/2012 and claiming to be aggrieved by the dismissal of the CRA No.114/2012 had preferred SLP(C) No.31644/2015 before this Court. This Court through the order dated 23.11.2015 had dismissed the Special Leave Petition. Despite failing in the very proceeding relating to which the execution petition has been initiated the said legal representatives of defendant No.5 filed the application in execution proceedings claiming to be agricultural tenants and defeat the execution by terming the decree as a nullity. It is in the said proceedings the executing court having taken into consideration all aspects, dismissed the application by the order dated 15.10.2018. The executing court thus having taken into consideration the order dated 20.07.2015 passed by the High Court in CRA Nos.112, 113 and 114 of 2012 has dismissed the

application. Further the right as claimed by the said legal representatives based on the entry contained in 7/12 extract has been rejected. There is no error committed by the executing court for the following reasons. [Para 16] [61-H; 62-A-E]

4. In view of this Court even assuming for a moment that the name of the predecessor was indicated in the 7/12 extract, the basis of such entry is not demonstrated to be made after the procedure being followed. Though the reference contained in the lease deed dated 22.05.1928 has been relied upon that the hut of the agricultural tenant is situate in the leased land, there is no reference made to the name of such tenant so as to indicate that the reference is to their predecessor i.e. defendant No.5 nor can the co-existence of the agricultural operations being carried out in the land which was leased for storage of goods be assumed without definite material or demarcation indicated from records. The reference is only to the existence of a hut. That apart even if the same is taken as a reference to the defendant No.5 in the year 1928 the tenancy being continued and being operational on the tiller's day i.e. 01.04.1957 is to be established to claim right under MTAL Act. Further while the MTAL Act creates right in favour of the agricultural tenant as on the appointed day the further procedure as contemplated is also required to be followed under Section 32G of the said Act. In the instant case apart from the fact that no such contention was urged in the suit by filing a written statement, no document to indicate that the procedure contemplated under the MTAL Act has been followed is available so as to conclude that the defendant No.5 had become the landlord of the property by operation of law so as to bar the jurisdiction of the Civil Court. [Para 17] [62-F-H; 63-A-B]

Damadi Lal & Ors. v. Parash Ram & Ors. **(1976) 4 SCC 855 : [1976] Suppl. SCR 645 ;** *Gian Devi Anand v. Jeevan Kumar & Ors.* **(1985) 2 SCC 683 : [1985] 1 Suppl. SCR 1 ;** *Uttam v. Saubagh Singh & Ors.* **(2016) 4 SCC 68 : [2016] 2 SCR 100 - referred to.**

Amrit Bhikaji Kale and Ors. S. Kashinath Janardhan Trade & Anr. **(1983) 3 SCC 437 : [1983] 3 SCR 237 – held inapplicable.**

Case Law Reference

[1976] Suppl. SCR 645	**referred to**	**Para 11**
[1985] 1 Suppl. SCR 1	**referred to**	**Para 11**
[2016] 2 SCR 100	**referred to**	**Para 11**
[1983] 3 SCR 237	**held inapplicable**	**Para 15**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9834 of 2016.

From the Judgment and Order dated 20.07.2015 of the High Court of Judicature at Bombay, Bench at Aurangabad in Civil Revision Application No. 112 of 2012.

With

Civil Appeal No. 8450 of 2019.

Siddharth Bhatnagar, Siddhartha Dave, Sr. Advs., Aditya Sidhra, Nirnimesh Dube, Dilip Annasaheb Taur, Ms. Jemtiben AO, Ms. Saumya Gupta, Siddhant Krishna Dave, Advs. for the Appellants.

Uday B. Dube, Adv. for the Respondents.

The Judgment of the Court was delivered by

A. S. BOPANNA, J.

1. Though different orders, dated 20.07.2015 passed in CRA No.112/2012 and dated 15.10.2018 passed in CRA No.157/2018 are assailed in these two appeals, issues for consideration however arise out of the common lis between the parties based on the judgment passed in the Regular Civil Suit No.253/1989 to which the appellants in C.A. No.9834/2016 were defendants No.1 and 2 while the predecessor of appellants in C.A. No.8450/2019 was defendant No.5. Hence both these appeals were taken together for hearing and are being disposed by this common judgment. For the sake of convenience and clarity the parties would be referred in the same rank assigned to them in the suit. Since the claim of the appellants in C.A. No.8450/2019 is in the capacity of

A legal representatives of the deceased original defendant No.5, the case put forth by them will be considered by referring to them as defendant No.5.

2. The brief facts noticed for the purpose of disposal of these appeals is as hereunder. The property bearing S.No. 9/1/A measuring
B 22 guntas situate at Chahurana Bk., Taluka Nagar, Ahmednagar District presently bearing Plot No.19 within Ahmednagar Municipal Limits, measuring 2656 sq mtrs (hereinafter referred to as the 'suit property') which earlier belonged to Deshmukh Brothers was purchased by the plaintiff under a Sale Deed dated 08.08.1986. The plaintiff thereafter
C secured the Revenue entries to be recorded in his name. As on the date of purchase the predecessor of defendants No.1 and 2 was the tenant in respect of the suit property paying the rent of Rs.31/- per annum. The defendants No.1 and 2 thereafter continued as the tenants. The plaintiff informed the defendants No. 1 and 2 through the
D communication dated 06.12.1986 about the purchase and had sought for payment of the rents. The defendants No. 1 and 2 failed to pay the same and since according to the plaintiff the defendants were also not using the premises for the purpose for which it was let out, the plaintiff termed the defendants No. 1 and 2 as defaulters and instituted the Regular Civil Suit No.253/1989 seeking eviction of the defendants No.
E 1 and 2 as also the defendants No.3 to 7 whom the plaintiff described as the sub-tenants in the premises.

3. The defendants in the suit were issued with the suit summons. The defendants No. 1 and 2 appeared and filed their respective written
F statement. The defendants No. 3 and 5 did not choose to file the written statement while the defendants No. 4, 6 and 7 did not appear before the Trial Court and were therefore, proceeded ex-parte. The defendants No. 1 and 2 opposed the claim made in the plaint on merits, apart from contending that the suit was barred by limitation. The fact that their predecessor had taken the premises under lease deed dated 22.05.1928
G for a period of 31 years on the annual rent of Rs.31/- was admitted and that the lease deed expired by efflux of time on 22.05.1959 was also stated. The said defendants however contended that they were not informed about the purchase by the plaintiff. The Trial Court based on the rival pleadings had framed as many as eleven issues. The parties
H in order to discharge their burden cast under the issues had tendered

evidence. The Trial Court by its judgment dated 13.10.1998 decreed the suit and directed the defendants No.1 to 7 to handover actual physical possession of the suit property and also to pay the amount of Rs.162/-. Further, enquiry regarding mesne profits was also ordered. The defendants No.1 and 2 claiming to be aggrieved by the said judgment preferred an appeal before the Principal District Judge, Ahmednagar in Regular Civil Appeal No.315/1998. The Appellate Court having adverted to the rival contentions has dismissed the appeal through the judgment dated 18.02.2012. The cross objections filed by the plaintiff and the defendants No.2 to 6 was also dismissed. The defendants No.1 and 2 claiming to be aggrieved by the said judgment were before the High Court of Judicature at Bombay, Bench at Aurangabad in CRA No.112/2012. The High Court having taken note of the rival contentions has by a detailed order dismissed the revision application. The analogous Civil Revision Applications filed by the remaining defendants in CRA No.113/2012 and 114/2012 were also disposed of by the same common judgment dated 20.07.2015. It is in that background, the defendants No.1 and 2 claiming to be aggrieved by the concurrent judgments are before this Court in this appeal. The connected appeal in C.A. No. 8450/2019 is against the order dated 15.10.2018 arising out of execution proceedings in regular darkhast No. 15 of 2016.

4. We have heard Mr. Siddharth Bhatnagar, learned senior advocate for the appellants in C.A. No.9834/2016 (defendants No.1 and 2), Mr. Siddhartha Dave, learned senior advocate for the appellants in C.A. No.8450/2019 (legal representatives of defendant No.5) Mr. Uday B. Dube, learned counsel for the respondent (plaintiffs in the suit) and perused the appeal papers.

5. As noticed, the suit in question was filed by the plaintiffs seeking eviction of the defendants No.1 and 2 who were the tenants and also the remaining defendants who were described as the sub-tenants. Before adverting to the nature of contentions put forth by the respective learned senior advocates for the defendants which is emphasised on the very maintainability of the suit, it is necessary to, at the outset, take note of the nature of consideration made by the Trial Court which has been upheld by the Lower Appellate Court and the High Court respectively. The nature of the contentions put forth by

the parties is adverted to above. On the rival pleadings to that effect the Trial Court framed the following issues which read as hereunder:

ISSUES

	ISSUES
1.	Does the plaintiff prove that there is relation of tenant and landlord between the defendant and himself ?
2.	Does the plaintiff prove that defendants are wilful defaulter?
3.	Whether suit notice given by the plaintiff is legal and valid?
4.	Does the plaintiff prove that suit premises is not used by the defendants for more than 6 months before filing this suit without reasonable cause?
5.	Whether plaintiff proves that defendant Nos. 1 and 2 have sub-let some portion of the suit premises to the defendants Nos.3 to 7?
6.	Whether the suit is barred by Law of Limitation?
6A.	Is the suit bad for mis-joinder of necessary parties?
6B.	Is the suit properly valued stamped?
6C.	Whether this Court has jurisdiction to try the suit?
7.	What due towards the defendants?
8.	Is plaintiff entitled to receive amount mentioned in para No.7 of the plaint?
9.	Is plaintiff entitled for actual physical possession of suit property from defendants Nos.1 to 7 after removing structure thereon?
10.	Is plaintiff entitled for damages from the defendants from the date of suit till recovery of the possession?
11.	What order and decree?

6. In the background of the issues framed, the plaintiff No.1 examined himself as PW-1 and the Trial Court has taken note of his deposition as at Exhibit 78. The manner in which the plaintiff had acquired right to the property has been stated and the Sale Deed was also marked in evidence as Exhibit 77/4. The fact of purchase was informed to the defendants No.1 and 2 through the notice dated 16.12.1986 which was marked as Exhibit 80. The said notice was essentially in the nature to attorn the tenancy whereupon the defendants No.1 and 2 were required to recognise the plaintiff as the landlord and pay the rent accordingly. The fact that the defendants No.1 and 2 were continuing as the tenants in respect of the suit schedule property under

the lease deed dated 16.07.1928 was also brought in evidence by marking the same as Exhibit 100 whereunder the predecessor of the vendors of the plaintiff had leased the property to the predecessor of the defendants No.1 and 2. The fact that the lease was for 31 years was established and the Trial Court in that regard had also taken into consideration that the lease had come to an end by efflux of time as contemplated under Section 111 of the Transfer of Property Act. In that circumstance, the defendants No.1 and 2 were considered to be the statutory tenants under the Bombay Rents, Hotel & Lodging Houses Rates Control Act, 1947 ('Rent Act' for short). Thus, having determined the relationship of landlord and tenant between the plaintiff and the defendant No.1 and 2 the Trial Court proceeded to consider the other aspects of the matter. In that regard the provision as contained in Section 5(11) of the Rent Act was taken note.

7. Insofar as the defendants No.3 to 7 though the plaintiffs had contended that they are the sub-tenants under the defendants No.1 and 2, in the absence of there being plausible evidence relating to subletting, the Trial Court rejected the contention and held them to be the trespassers liable to be evicted and, in such event, directed all the defendants to vacate. Insofar as the ground on which the eviction was sought, namely, the defendants No.1 and 2 had failed to pay the rent and, therefore, they were defaulters and also that the property was not being put to use for the purpose which it had been rented out, the trial court considered these aspects while answering issue Nos.2 to 4. In that regard the notice issued by the plaintiff at Exhibit 96 and the postal receipts at Exhibits 97 and 98 was taken into consideration whereby the plaintiff had demanded for payment of the rents. In that background the reply issued by the defendants No.1 and 2 at Exhibit 99 was taken note and the Court was of the view that the defendants No.1 and 2 did not indicate their readiness and willingness to pay the arrears of rent. Further the evidence tendered by defendant No.1 at Exhibit 106 was taken note wherein he had stated that the rent had not been paid from the year 1959 as nobody had demanded the rent from him. While taking note of the same the trial court has taken into consideration that the said statements of defendant No.1 cannot be accepted inasmuch as the plaintiff in fact had issued the notice on 01.09.1988 whereby the demand had been made. In that background the default in payment of rent was accepted and held against the defendants No.1 and 2.

A 8. Insofar as the non-user of the premises for the purpose which it had been rented out, the evidence to the effect that the premises was given for the purpose of storage of goods namely cotton was taken into consideration. The fact that there was a shed and the same not being put to use for the last several years as it was in a dilapidated condition was also taken note. Though a report of the Commissioner B as at Exhibit 10 was available on record the same was not taken into consideration and relied upon for technical reasons. Be that as it may, the trial court has also taken into consideration the deposition of the defendant No.1 that he has been practising as an advocate in the High Court of Bombay and that at the point when the premises was taken C on lease the grandfather of defendant No.1 was doing business of cotton ginning factory and he was also doing business in foodgrain. He had admitted that the business of cotton ginning factory is closed due to ban imposed by Maharashtra Cotton Act and the premises is not used for storage of cotton but was being used for storing agricultural equipments and cement. In that view, the trial court had also held that D the premises was not being used for the purpose it had been leased and accordingly the grounds on which the eviction petition had been filed was upheld.

9. On the contention relating to the defendants Nos.3 to 5 the same was considered while answering issue No.5 and as indicated above E though they were not accepted to be the sub-tenants as claimed by the plaintiff, the trial court has held that they are trespassers and not entitled to continue in the premises. The lower appellate court had taken note of the evidence, reappreciated the same and in that background had upheld the judgment passed by the trial court.

F 10. On the factual aspects of the matter though Mr. Siddharth Bhatnagar, learned senior advocate sought to assail the concurrent judgements, we notice that the evidence available on record has been assessed by the trial court as also the appellate court and have recorded a finding of fact with regard to the relationship between the parties and also the ground on which the eviction had been sought. In that G circumstance when we notice that such finding is with reference to the oral evidence tendered and the documents that were relied upon and marked before the trial court, the finding of fact recorded cannot be considered as perverse so as to interfere in a proceeding of the present nature. The learned senior advocate would, however, contend H that the suit schedule property admittedly was leased to the predecessor

of defendants No.1 and 2 and in view of the death of the original tenant the defendants No.1 and 2 have been arrayed as parties. It is contended that the defendants No.1 and 2 had two sisters who were also the legal heirs of the original tenant but not made defendants. In that regard it was contended that in a circumstance where the predecessor was a statutory tenant, on the death of such statutory tenant the tenancy is inheritable by all the legal heirs and all of them were proper and necessary parties. To contend so the learned senior advocate has referred to the provision contained in Section 5(11)(c)(ii) which reads as hereunder:

> "In this Act unless there is anything repugnant to the subject or context.
>
> (11) "rent" means any person by whom or on whose account rent is payable for any premises and include,
>
> (c)(ii) in relation to any premises let for the purposes of education, business, trade or storage, when the tenant dies, whether the death has occurred before or after the commencement of the said Act, any member of the tenant's family using the premises for the purposes of education of carrying on business, trade or storage in the premises, with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided in default of agreement by the Court."

11. The learned senior advocate in that regard, to contend that all the legal representatives of the statutory tenant would be entitled to continue as tenants and that the High Court has committed an error in holding that they are not the tenants in common, has referred to the decisions in the case of **Damadi Lal & Ors. vs. Parash Ram & Ors.** 1976(4) SCC 855 wherein inter alia it is held that the statutory tenancy under the Rent Act is heritable. To the same effect the decision in the case of **Gian Devi Anand vs. Jeevan Kumar & Ors**. 1985 (2) SCC 683 is relied upon. Further, the decision in the case of **Uttam vs. Saubagh Singh & Ors.** 2016 (4) SCC 68 is relied upon to contend that when a male Hindu dies after commencement of Hindu Succession Act 1956, and in view of the second exception engrafted on proposition (i) is contained in the proviso to Section 6, which states that if such a male Hindu had died living behind a female relative specified in class 1 of the schedule such female relative surviving him would have interest in the coparcenary property to contend that the statutory tenancy being

A heritable with rights attached to it, the sisters of defendants No. 1 and 2 are also entitled to such right.

12. Having taken note of the contentions put forth, to the extent of the position of law as enunciated in the decisions cited supra there can be no quarrel whatsoever. However, what is necessary to be taken B note is the fact situation in the instant case to arrive at a conclusion. The provision in Section 5(11)(c)(ii) noted supra is clear that the persons carrying on the business with the statutory tenant at the time of death would be entitled to continue as a tenant. The second part of the said provision is that in the absence of such member any heir of the deceased tenant as may be decided by the Court in default of C agreement, would get the right. In the instant case the contention being urged that the two daughters of the deceased tenants were also entitled to be considered as the tenants under the statutory tenant, is a belated claim as an afterthought. As taken note while considering the factual aspect it has come on record that the plaintiff after having purchased D the property under a registered sale deed had issued the notice dated 16.12.1986 as at Exhibit 80 and the trial court has also recorded a finding that through the said notice the plaintiff had informed the defendants No. 1 and 2 about the purchase of the suit property. That apart, subsequently a notice as at Exhibit 96 was issued to the defendants No. 1 and 2 demanding the arrears of rent. The said notice E in fact had been replied by the defendants No. 1 and 2 through the reply marked at Exhibit 99. Neither at the first instance when the notice at Exhibit 80 was issued was it indicated by the defendants No. 1 and 2 that their sisters had also become the statutory tenants and the notice in the nature of attornment of tenancy should be issued to them as well, F nor in the reply which had been issued when the arrears of rent was demanded did the defendants No. 1 and 2 contend that they were not the only one who were involved in the business along with the original statutory tenant and, therefore, all the legal heirs had succeeded as tenants on the death of the statutory tenant and, therefore, the demand, if any, is to be made from all of them.

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13. Though such contention is put forth the defendants No.1 and 2 did not attribute any right in favour of the sisters. In fact, as noted by the trial court the defendants No. 1 and 2 have filed on record pursis with a Exhibit 137-A claiming to have deposited Rs. 1000/- on 09.9.2007 at 'C' Register No. 465 without prejudice to their rights towards the H rent, causes of the suit etc. This in our opinion would indicate that the

defendants No. 1 and 2 were claiming right for themselves and did not at that stage state about the right if any, possessed by their sisters as well and have now raised the contention as an afterthought. Further in the evidence of defendant No. 1 he states that his grandfather took the suit premises on lease for the purpose of business of cotton ginning factory and he further states that the defendant No. 1 used the premises to store food grain and equipment of agricultural and also cement. This would indicate that the defendant was referring to the business being carried on by him alone and there is no reference to the business being jointly carried on with his sisters or that none of the legal representatives including defendant No. 1 were carrying on business with the statutory tenant so as to claim benefit of the second part of Section 5 (11) (c) (ii) and claim joint inheritance of tenancy. Further the said position is also clear from the evidence of the defendant witness Shri Vanaji Dhoodiram Dani who was examined to indicate that the premises was being used for the business and in that regard, in the course of his evidence he has stated that the defendants No. 1 and 2 are keeping cement and food grain in the godown and that he is serving with the defendants 1 and 2 since last 10 to 12 years but has not stated about the sisters also being involved in the business. If that be the position even from the evidence of the said witness, it would be clear that only first part of Section 5 (11) (c) (ii) would be available and the sisters of defendant No. 1 and 2 cannot claim right merely due to the fact that they are the legal heirs of the deceased tenant.

14.That apart the suit had been filed in the year 1989 and the same had crossed the stage of appeal as well as revision before the High Court which had come to an end on 20.07.2015. In none of these proceedings the said sisters of defendants No.1 and 2 have taken any steps to get themselves impleaded by contending that they are proper and necessary parties failing which their right would be affected. At this stage it is necessary to take note that the learned counsel for the parties have brought to the notice of this Court that the said two sisters have filed a Civil Suit bearing No.516/2015 for declaration of their right which is pending before the Civil Court. The very sequence noticed above would indicate that the said sisters had not put forth their claim earlier and the present suit appears to be a ploy to put a spoke in the wheel on realising that the contention as put forth by defendants No.1 and 2 did not yield the desired result inasmuch as the Civil Revision Application came to be dismissed in the year 2015. Hence, neither the

A provision of the Rent Act or the decisions relied upon supra will be of assistance to the defendants No. 1 and 2. In that circumstance the contention as put forth by the learned senior advocate for the defendants No.1 and 2 is liable to be rejected, which we accordingly do.

15. Mr. Siddhartha Dave, learned senior advocate for the legal B representatives of defendant No.5 would contend that defendant No.5 was an agricultural tenant in respect of the suit schedule property and as such the rights inter-se between the parties is governed under the Maharashtra Tenancy and Agricultural Lands Act ('MTAL Act' for short). He contends that under the said Act there is a bar contemplated under Section 85 of the Act against the Civil Court entertaining any C question which is required to be settled, decided or dealt with by the Mamlatdar or Tribunal, Manager, the Collector or the Maharashtra Revenue Tribunal. In that view, it is contended that the suit schedule property being an agricultural property, the Civil Court did not have the jurisdiction. The learned senior advocate has referred to a document D at Annexure P-1, namely, 7/12 extract to indicate that the name of the defendant No.5 is depicted as tenant in respect of a portion of the suit schedule property. It is his further contention that in the lease deed dated 22.05.1928 (Annexure P-2) executed by the predecessor of the plaintiff in favour of the predecessor of the defendants No.1 and 2, in Clause 6 thereof it makes a reference to the existence of a hut of the E agricultural tenant in the land and that it should be kept as it is and that the lessee will not obstruct them. In that view, it is contended that the said document would establish that the land in question is an agricultural land and the Civil Court ought not to have entertained the suit. The learned senior advocate in that regard has referred to the decision in F the case of ***Amrit Bhikaji Kale and Ors. Vs. Kashinath Janardhan Trade & Anr***, (1983) 3 SCC 437 wherein it is held as hereunder:

> "6. The Tenancy Act was comprehensively amended by Amending Act 15 of 1957. The amendment brought in a revolutionary measure of agrarian reforms making tiller of the G soil the owner of the land. This was done to achieve the object of removing all intermediaries between tillers of the soil and the State. Section 32 provides that by mere operation of law, every tenant of agricultural land situated in the area to which the Act applies shall become by the operation of law, the owner thereof. He is declared to be a deemed purchaser without anything more H on his part. A Constitution Bench of this court in *Sri Ram Ram*

*Narain Medhi*v. *State of Bombay* [1959 Supp 1 SCR 489, 518-19 : AIR 1959 SC 459 : 1959 SCJ 679] held that:

> "The title of the landlord to the land passes immediately to the tenant on the tillers' day and there is a completed purchase or sale thereof as between the landlord and the tenant. The title of the land which was vested originally in the landlord passes to the tenant on the tillers' day and this title is defeasible only in the event of the tenant failing to appear or making a statement that he is not willing to purchase the land or commit default in payment of the price thereto as determined by the Tribunal."

Therefore, it is unquestionably established that on the tillers' day, the landlord's interest in the land gets extinguished and simultaneously by a statutory sale without anything more by the parties, the extinguished title of the landlord is kindled or created in the tenant. That very moment landlord-tenant relationship as understood in common law or Transfer of Property Act comes to an end. The link and chain is broken. The absent non-cultivating landlord ceases to have that ownership element of the land and the cultivating tenant, the tiller of the soil becomes the owner thereof. This is unquestionable. The landlord from the date of statutory sale is only entitled to receive the purchase price as determined by the Tribunal under Section 32-G. In other words, the landlord ceases to be landlord and the tenant becomes the owner of the land and comes in direct contact with the State. Without any act of transfer inter vivos the title of the landlord is extinguished and is created simultaneously in the tenant making the tenant the deemed purchaser. It is an admitted position that on April 1, 1957 Tarachand was the landlord and Janardhan was the tenant. Tarachand landlord was under no disability as envisged by Section 32-F. Therefore on April 1, 1957 Janardhan became deemed purchaser and Mr Lalit could not controvert this position."

16. The position of law and decision cited cannot be applied in abstract. Therefore, the fact situation is to be noticed. Hence having taken note of the above contention what is noticed at the outset is that the predecessor of the appellants, namely, the defendant No.5 did not choose to file the written statement in the suit. In that circumstance

A the contention to the effect that the suit schedule property or a portion thereof was an agricultural property was never the contention raised in the suit or as to whether the issue in the suit should be referred to the Authority under the MTAL Act. In that view no issue in that regard arose before the trial court to consider as to whether the Civil Court had the jurisdiction to entertain the suit. That apart the undisputed fact
B is that the legal representatives of defendant No.5 had assailed the judgment of the court below in CRA No.114/2012 which was considered along with CRA No.112/2012 and claiming to be aggrieved by the dismissal of the CRA No.114/2012 had preferred SLP(C) No.31644/ 2015 before this Court. This Court through the order dated 23.11.2015
C had dismissed the Special Leave Petition. Despite failing in the very proceeding relating to which the execution petition has been initiated the said legal representatives of defendant No.5 filed the application in execution proceedings claiming to be agricultural tenants and defeat the execution by terming the decree as a nullity. It is in the said proceedings
D the executing court having taken into consideration all aspects, dismissed the application by the order dated 15.10.2018. The executing court thus having taken into consideration the order dated 20.07.2015 passed by the High Court in CRA Nos.112, 113 and 114 of 2012 has dismissed the application. Further the right as claimed by the said legal representatives based on the entry contained in 7/12 extract has been
E rejected. We find no error committed by the executing court for the following reasons.

17. In our view even assuming for a moment that the name of the predecessor was indicated in the 7/12 extract, the basis of such entry is not demonstrated to be made after the procedure being
F followed. Though the learned senior advocate has relied on the reference contained in the lease deed dated 22.05.1928 that the hut of the agricultural tenant is situate in the leased land, there is no reference made to the name of such tenant so as to indicate that the reference is to their predecessor i.e. defendant No.5 nor can the co-existence of the agricultural operations being carried out in the land which was leased
G for storage of goods be assumed without definite material or demarcation indicated from records. The reference is only to the existence of a hut. That apart even if the same is taken as a reference to the defendant No.5 in the year 1928 the tenancy being continued and being operational on the tiller's day i.e. 01.04.1957 is to be established to claim right under MTAL Act. Further while the MTAL Act creates right in favour of
H the agricultural tenant as on the appointed day the further procedure

as contemplated is also required to be followed under Section 32G of the said Act. In the instant case apart from the fact that no such contention was urged in the suit by filing a written statement, no document to indicate that the procedure contemplated under the MTAL Act has been followed is available so as to conclude that the defendant No.5 had become the landlord of the property by operation of law so as to bar the jurisdiction of the Civil Court.

18. In that view, the decision referred to supra by learned senior advocate would not be of assistance in the present case since the said decision only indicates the legal position and was applicable in the said case since in that case it was an admitted position that as on 01.04.1957 Tara Chand was the landlord and Janardan was the tenant. On the other hand, in the present facts as already noticed no such contention was taken at the first instance nor has it been conclusively established that the defendant No.5 was an agricultural tenant more so in the circumstance where the suit schedule property did not continue to exist as an agricultural property but was within Ahmednagar Municipal Limits which was a Town Planning Scheme as on the date of the suit. Though we are not oblivious to the fact that certain agricultural properties would subsequently get included in the Town Planning Scheme, in the instant facts if the claim of the defendant No.5 is to be taken note, not only the reliance on 7/12 extract but a subsequent inclusion of the name in the Municipal records based on any right that was crystalized in favour of defendant No. 5 based on the MTAL Act was also necessary to be established. In the absence of the same the contention put forth by the learned senior advocate cannot be accepted.

19. In the above circumstance, when the contentions as urged by the learned senior advocate for defendants No.1 and 2 as also the defendant No.5 are unsustainable and in that background when we have noticed that all three Courts have concurrently appreciated the material available on record and have recorded a finding of fact to order eviction of the defendants, we see no reason to interfere either with the judgment dated 20.07.2015 passed in CRA No.112/2012 or the judgment dated 15.10.2018 in CRA No.157/2018.

20. Both the appeals accordingly stand dismissed with no order as to costs. Pending applications if any are also disposed of.

Ankit Gyan Appeals dismissed.