

A

LAXMI BAI

v.

DAYANU NARAYAH MOHITE (DEAD) THROUGH L.RS.

OCTOBER 9, 1991

B

[M.H. KANIA AND R.M. SAHAI, JJ.]

*Bombay Tenancy and Agricultural Lands Act, 1948:*

C

*Sections 32, 32F (1) (a) and proviso—Tenant—Deemed purchaser of land from tillers' day—Postponement of tillers' day—When arises.*

D

The appellant, was a member of a joint family with her son. She terminated the tenancy of the predecessor-in-title of the respondents, by a notice dated June 24, 1960, giving rise to litigation culminating in the appeal before this Court by the appellant, on the question whether the tenant became deemed purchaser of the land in question, in terms of Section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948, which had declared April 1, 1957 as the tillers' day and that the tenants of the lands who fell within any of the categories described in sub-section (1) were deemed to have purchased the land held by them as tenants from their landlords, free from all encumbrances subsisting thereon on that day. It was contended that in view of the provisions of clause (a) of sub-section (1) of Section 32F of the Act, the tillers' day was postponed in respect of the land in question as the appellant was a widow, and hence it must be declared that she had terminated the tenancy of the tenant before he became a deemed purchaser of the land.

E

Dismissing the appeal, this Court,

F

HELD: 1.1. The proviso to sub-section (1) of Section 32F of the Bombay Tenancy and Agricultural Lands Act, 1948, provides *inter alia* that the tillers' day would not get postponed where the widow-land owner is a member of a joint family, one of the members whereof was outside the protected categories mentioned under clause (a) of sub-section (1) of Section 32F of the Act. [457 F]

G

1.2 In the instant case, admittedly, the son of the appellant who was joint with her did not fall within any of the categories referred to in clause (a) of sub-section (1) of Section 32F of the Act. Hence the predecessor-in-title of the respondents became the owner of the said land on the tillers'

H

day as a deemed purchaser and the appellant lost her rights in the said

land. Notice given thereafter is of no avail. [457 G]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1150 of 1978.

From the Judgment and Order dated 22.9.1976 of the Bombay High Court in Special Civil Appln. No. 1544 of 1971.

B. Datta, J.P. Pathak and P.H.Parekh for the Appellant.

A.M. Khanwilkar for the Respondents.

The Judgment of the Court was delivered by

KANIA, J. The facts found in this appeal show that the appellant, Laxmi Bai, was at the relevant time a member of a joint family with her son, the partition pleaded by the appellant not having been accepted as genuine by the authorities concerned. She terminated the tenancy of the predecessor in title of the respondents by a notice dated June 24, 1960. Under the provisions of Section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the said Act"), April 1, 1957, was declared as the tillers' day and Section 32 of the said Act provided *inter alia* that the tenants of the land who fell within any of categories described in sub-section (1) of the said section were deemed to have purchased the land held by them as tenants from their landlords, free of all encumbrances subsisting thereon on the said day. The case of the appellant is that, in the present case, the tillers' day was postponed in view of the provisions of clause (a) of sub-section (1) of Section 32 F of the said Act, as she was a widow and hence, it must be held that she had terminated the tenancy of tenant, Dayanu, the predecessor in title of the respondents before he became a deemed purchaser of the land. It is not possible to accept this contention in view of the proviso to sub-section (1) of Section 32 F of the said Act which provides, *inter alia* that the tillers' day would not get postponed where the widow-land owner is a member of a joint family, one of the members whereof was outside the protected categories mentioned under clause (a) of sub-section (1) of Section 32 F of the said Act. In the present case, there is no dispute that the son of the appellant who was joint with her did not fall within any of the categories referred to in clause (a) of sub-section (1) of Section 32 F of the said Act. In these circumstances, Dayanu became the owner of the said land on the tillers' day as a deemed predecessor and the appellant lost her rights in the said land. Notice given thereafter is of no avail.

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

N.P.V.

Appeal dismissed.