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IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO. 1790 OF 1991
WITH
CIVIL APPLICATION NO. 997 OF 2005
WITH
CIVIL APPLICATION NO. 1255 OF 2005
WITH
CIVIL APPLICATION NO. 2036 OF 2006
WITH
CIVIL APPLICATION NO. 2966 OF 2012**

Janardhan Kothmire .. Petitioner/Applicant

Versus

Babu S. Tamboli and Ors. .. Respondents

Mr. A.A. Kumbhakoni, Sr. Advocate along with Umesh Mankapure for the petitioner in W.P. No. 1790 of 1991 and applicant in C.A. No. 997 of 2005 and 1255 of 2005.

Mr. Shailesh Chavan i/by Milind Deshmukh for the applicant in C.A. No. 2036 of 2006.

Mr. S.K. Chinchalikar for the applicant in C.A. No. 2966 of 2012.

Vaishali Nimbalkar, A.G.P. for respondent nos. 3 and 4 in W.P. No. 1790 of 1991.

**CORAM : M.S. SONAK, J.
DATED : February 16, 2015**

P.C.

This petition impugns the judgment and order dated 12th September, 1990 made by the Maharashtra Revenue Tribunal (M.R.T.) in the Revision Applications preferred by the petitioner against the order dated 27th

February, 1989 made by the S.D..O. Pandharpur. By the impugned order, the Revision Petitions came to be dismissed.

2. For the order which is proposed to be made, there is no necessity to advert to the factual issues in any great details. Suffice to note that the Agricultural Land Tribunal (A.L.T.) made an order dated 7th May, 1981 recording surrender of tenancy by Babu Tamboli in favour of the original landlord Hari Mirasdar. The record indicates that even before such surrender was recorded, the said original landlord by a registered sale deed dated 30th April, 1981 transferred the property in favour of the petitioner herein. Babu Tamboli questioned the order dated 7th May, 1981 before the Sub Divisional Officer who by order dated 27th February, 1989 set aside the same. Petitioner's revision application came to be dismissed by the M.R.T. by judgment and order dated 12th September, 1990 (impugned order).

3. If the orders made by the M.R.T. as well as the order dated 27th February, 1989 made by the Sub Divisional Officer are perused, it does appear that both the authorities have failed to advert to the entire material available on record as also the legal provisions in the matter of surrender of tenancies. The legal provisions being section 15 of the Bombay Tenancy and Agricultural Lands Act, 1956 (said Act) and rule 9 of the Bombay Tenancy and Agricultural Lands Rules, 1960. This was necessary particularly

in view of the transfer of the property by a registered sale deed dated 30th April, 1981 even before recording of surrender. Besides, as has been held by the Supreme Court, that the provisions of section 15 of the said Act are mandatory in nature and surrender is required to be effected in accordance with the terms and the procedure prescribed by the statute. Both the orders when perused, would indicate that such relevant material as well as legal provisions have not been considered by the two authorities. Accordingly, it would be appropriate if not only the impugned order dated 12th September, 1990 made by the M.R.T. is set aside but further, even the Sub Divisional Officer's order dated 27th February, 1989 is set aside and the matter is remanded to the Sub Divisional Officer for fresh consideration thereof. The Sub Divisional Officer upon examination of the records shall determine, whether the A.L.T.'s order dated 7th May, 1981 is legal and valid and further also determine the effect of the transfer of the said property by registered sale deed dated 30th April, 1981 even before the A.L.T. made its order dated 7th May, 1981.

4. During the pendency of the present petition, Babu Tamboli is reported to have expired. It is the case of the petitioner that Babu Tamboli has expired without leaving any legal representative/heir. On this basis, the petitioner have instituted Civil Application No. 997 of 2005 seeking appropriate orders as contemplated by Order 22 rule 4A of the Code of Civil

Procedure. One Mr. Sunil Pise has filed an intervention application being Civil Application No. 2036 of 2006 claiming to be the legal heir/legal representative of Babu Tamboli on the basis of the Will dated 29th December, 1998. There is yet another Civil Application being No. 2966 of 2012 made by the purported father of the deceased Babu Tamboli, claiming that he is the legal heir of the deceased Babu Tamboli. The proposed intervenor/legal representative i.e applicants in Civil Application No. 2036 of 2006 and 2966 of 2012 contest the petitioner's claim that Babu Tamboli left behind no legal heirs/legal representatives. On the contrary, petitioners contest the entitlement of the applicants in the said two Civil applications. Since the matter is being remanded for fresh consideration by the Sub Divisional Officer, it would be appropriate if the issues raised in three Civil Applications are also agitated by the parties before the Sub Divisional Officer itself. Accordingly liberty is granted to the parties to take out appropriate applications before the Sub Divisional Officer in support of their respective claims. The Sub Divisional Officer is directed to consider such Civil Applications on their own merits and in accordance with the law.

5. In the event, the Sub Divisional Officer comes to the conclusion that the deceased Babu Tamboli has expired without leaving behind any legal representatives, then in terms of the provisions contained in Order 22 rule 4A of the Code of Civil Procedure, the Sub Divisional Officer shall

appoint some officer or any other person as he thinks fit to represent the estate of deceased Babu Tamboli before proceeding to finally dispose of the appeal which now stands restored to the file of the Sub Divisional Officer. The Sub Divisional Officer shall not dismiss such appeal for want of prosecution or for default merely because there may be no legal representative or legal heir readily discernible to prosecute the appeal which now stands restored to the file of Sub Divisional Officer.

6. Parties to appear before the Sub Divisional Officer along with authenticated copy of this order on 16th March, 2015 at 11.00 a.m. for the direction in the matter of disposal of the remanded appeal proceedings.

7. The Sub Divisional Officer shall endeavour to dispose of the proceeding within one year from the date of this order.

8. It is clarified that this court has not expressed any opinion on the merits of the matter as also upon rival claims in the various civil applications lodged in this matter.

9. Petition is disposed of in aforesaid terms. There shall be no order as to costs. All parties to act on authenticated copy of this order.

10. Civil Applications are also disposed of in the aforesaid terms.

11. It is reported that presently the jurisdiction in respect of the suit property is vested in Sub Divisional Officer, Akluj, Taluka Malshiras, District Solapur. Accordingly the appeal shall stand remanded to the Sub Divisional Officer who shall in compliance with the directions contained in this order to act accordingly.

(M.S. Sonak,J.)