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the meanwhile, Respondent No.32-Sautibai passed away and therefore, only Respondent No.33-Rajmal was sought to be transposed and the same was permitted by order dated 30th March 2022.

2. I have heard Mr. Khandeparkar, learned counsel appearing for the Petitioner and Mr. Shah, learned counsel appearing for Respondent Nos. 1 & 2 on 25th November 2022.

3. On 25th November 2022, Mr. Khandeparkar, learned counsel appearing for the Petitioner submitted that the order dated 11th May 2021 was passed in Writ Petition No.302 of 1997 without impleading heirs and legal representatives of deceased Ghevarchand Kapoorchand Jain i.e. Sautibai Ghevarchand Jain and Rajesh @ Rajmal Ghevarchand Jain and therefore, eviction decree has been passed against the said persons without impleading them as party.

4. To appreciate the said submission, it is important to note that the said order of this Court passed in Writ Petition No.302 of 1997 dated 11th May 2021 was challenged in Supreme Court by filing Special Leave to Appeal © No. 12207 of 2021 and Supreme Court confirmed the said order by order dated 11th

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August 2021. After perusal of the SLP which has been annexed to the affidavit in reply filed by the Respondent Nos. 1 and 2 it was noticed by this Court that said Sautibai Ghevarchand Jain and said Rajesh Ghevarchand Jain have been described as proforma Respondent No.7 and 8 respectively. In the title of the SLP, it is made clear that their position in the Writ Petition in the High Court was as Respondent No.1A and 1B. Thus, it is clear that both of them were parties to the Writ Petition and statement made on behalf of the Petitioner was totally incorrect.

5. It is further significant to note that the Respondent Nos. 1 and 2 filed Darkhast No.35 of 2021 seeking to execute above referred decree which is confirmed upto Supreme Court. In the said proceeding, Miscellaneous Application was filed on 16th November 2021 before the learned Executing Court under Order XXI, Rule 97 of CPC, 1908 inter alia by said Sautibai Ghevarchand Jain and Rajmal Ghevarchand Jain for obstructing the execution of decree inter alia on the ground that they are not made parties to the eviction proceedings. As noticed hereinabove, the said statement has been found to be

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totally incorrect as they were parties to the Writ Petition as well as the SLP. After this was pointed out to Mr. Khandeparkar, learned counsel appearing for the Petitioner sought time to take instructions.

6. Thereafter, parties have decided to file the Consent Terms. Accordingly, the Consent Terms are filed today and the same are taken on record and marked 'X' for identification. The said Consent Terms read as under:

**“MINUTES OF THE ORDER/CONSENT TERMS/
UNDERTAKING ON BEHALF OF THE PETITIONERS”**

1. As discussed between both the parties, the Petitioners have time till 31st March 2023 to vacate the suit premises i.e. Shop No.533, Centre Street, Camp, Pune -411 001, subject to the undertakings as under:
2. We state that I Mahendra Balchand Jain and Rajmal Ghewarchand Jain are the only ones in physical possession of the said suit premises.
3. We undertake that no third party rights are created till today and will not be created till handing over of the said suit premises.
4. We undertake that no third party rights will be created till handing over of the possession, that is till 31st March 2023.
5. We undertake that the physical possession of the suit premises shall be handed over peacefully to the Respondent Nos. 1 and 2 on or before

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31.03.2023 and no further extension shall be sought on any grounds whatsoever.

6. We, the petitioners shall pay the compensation of Rs.35,000/- per month to Respondent Nos. 1 and 2 till handing over of the possession of the suit premises, that is till 31st March 2023.

7. We ensure that we will sign the consent terms and abide by the undertaking.

8. We undertake to withdraw all proceedings filed by the present petitioners or by way of a power of attorney thereby obstructing the handing over of possession to the Respondent Nos. 1 and 2 and shall not challenge the Order dated 11.05.2021 passed by the Hon'ble Bombay High Court in Civil WP. No.302/1997 and as confirmed by the Hon'ble Supreme Court vide Order dated 11.08.2021 in any proceedings whatsoever that shall obstruct the handing over of peaceful possession of the suit premises to the Respondent Nos. 1 and 2.

9. We accept that a Court Receiver should be appointed in the said suit premises and we the Petitioners will be acting as the agents and the Court Receiver will handover the possession to the said Respondents accordingly on 31st March 2023."

7. In the Minutes of Order/Consent Terms/Undertaking, it is specifically mentioned that Mahendra Balchand Jain and Rajmal Ghevarchand Jain are the only persons in the physical possession of the suit property. Mr. Mahendra Jain is personally present in Court. He confirms the contents of the

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Consent Terms. He state that as Mr. Rajmal Ghevarchand Jain who is also in possession of the suit property along with him, is of advanced age and not well and therefore, not personally present in the Court. He states that both of them will handover possession of the suit property to the Respondent Nos. 1 and 2 on or before 31st March 2023.

8. Mr. Ashwin Shah is present on behalf of the Respondent and he states that Consent Terms are acceptable to Respondent Nos. 1 and 2.

9. The Writ Petition is disposed of in terms of the Consent Terms. Undertakings in the Consent Terms are accepted.

10. Mrs. Sunetra G. Joshi, Superintendent, District and Sessions Court at Pune is appointed as the Court Receiver of Shop No.533, Centre Street, Camp, Pune-411 001.

11. The Court Receiver to appoint Mr. Mahendra Balchand Jain and Rajmal Ghevarchand Jain as agents of the Court Receiver without payment of any royalty. However, Petitioners to pay Rs.35,000 per month to the Respondent Nos. 1 and 2 on or before 5th day of each month till the period upto handing over possession of the suit premises.

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12. The Court Receiver to hand over the possession of the Shop No.533, Centre Street, Camp, Pune-411 001 by 31st March 2022 to the Respondent Nos. 1 and 2.

13. As the Petitioners have made incorrect statement before this Court, Mr. Mahendra Balchand Jain who is present in Court states that cost of Rs.50,000/- will be paid to Pune District Law Library within a period of two weeks from today. Statement of Mr. Mahendra Balchand Jain is accepted.

14. Cost and charges of the Court Receiver will be paid by the Petitioner.

15. Court Receiver stands discharged on handing over possession of the suit premises to the Respondent Nos. 1 and 2, without passing of account.

16. Writ Petition is disposed of in above terms.

17. In view of the disposal of the Writ Petition, the Interim Applications are disposed of.

[MADHAV J. JAMDAR, J.]

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