

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10158 OF 2018

- 1) Mahadev S/o Sambha Jarande,
Age major, Occ. Agriculture,
- 2) Annasaheb S/o Sambha Jarande,
Age major, Occ. Agriculture,
- 3) Sakharam S/o Sambha Jarande,
Age major, Occ. Agriculture,
- 4) Tukaram S/o Sambha Jarande,
Age major, occ. Agriculture,
- 5) Vikas S/o Annasaheb Jarande,
Age major, occ. Agriculture,
- 6) Avinash S/o Annasaheb Jarande,
Age major, occ. Agriculture,
- 7) Balasaheb S/o Sakharam Jarande,
Age major, occ. Agriculture,
- 8) Shashikant S/o Mahadev Jarande,
Age major, Occ. Agriculture,
- 9) Kalidas Sakharfam Jarande,
Age major, occ. Agriculture,
- 10) Amol S/o. Tukaram Jarande,
Age major, occ. Agriculture,
- 11) Amit S/o Tukaram Jarande,
Age major, Occ. Agriculture,

All R/o. At Ketur, Tq. Karmala,
Dist. Solapur.

....PETITIONERS

VERSUS

- 1) Smt. Rukmani Govindrao Khatmode,
Age major, Occ. Agriculture,
- 2) Sou. Sindhubai Bhagwan Kale.
Age major, Occ. Agriculture,
- 3) Shahaji Govindrao Khatmode,
Age major, Occ. Agriculture,
- 4) Sayajrao S/o Govindrao Khatmode.
Age major, Occ. Agriculture,
- 5) Sou. Jayshree Navnath Bhogle,
Age major, occ. Agriculture.
- 6) Sou. Vijaya Sukhdev Sakhare,
Age major, Occ. Agriculture.
- 7) Sou. Rajshree Viibhishan Jadhav,
Age major, occ. Agriculture.
- 8) Sou. Vanashree Tatyasaheb Jagtap,
Age major, Occ. Agriculture,
- 9) Sou. Sunita Kundlik Sakhare,
Age major. Occ. Agriculture,

All above R/o. Ketur, Tq. Karmala,
Dist. Solapur caveator Nos. 1,2 and 4 to 9
Through Power of Attorney holder No.3,
i.e. Shahji Govindrao Khatmode. R/at Ketur,
Tal. Karmala, Dist. Solapur

- 10) Narayan S/o Sambha Jarande,
Age major, occ. Agriculture,
R/at: Ketur, Tal: Karmala, Dist: Solapur

- 11) Babu Dagdu Kantode
(Deceased)
- 11(a) Babaai Babu Kantode,
Age: major, Occ. Agriculture.
- 11(b) Dadasaheb Babu Kantode,
Age: major. Occ. Agriculture.
- 11(c) Janardhan Babu Kantode,
Age: major, Occ. Agriculture,
- 11(d) Appasaheb Babu Kantode.
Age: major, occ. Agriculture,
Nos. 11(a) to 11(d)
R/at Post: Ketur. Tal: Karmala,
Dist: Solapur.
- 11(e) Mangal Gajanan Yede.
Age: major, Occ. Agriculture,
R/at: Bhilarwadi, Post: Jinti.
Tal: Karmala, Dist: Solapur.
- 11(f) Chanda Chagan Gavde.
Age: major, Occ. Agriculture,
R/at: Hawaldar Vasti, Korti.
Post: Korti. Tal: Karmala, Dist: Solapur
- 12) Smt. Kantabai Gopal Vayse.
Age: major, Occ. Agriculture,
R/at: Ketur. Tal: Karmala, Dist: Solapur.
- 13) Smt. Shantabai Maruti alias Babasaheb Gavde
(Deceased)
- 13(a) Raju Balasaheb Gavade,
Age: major, Occ: Agriculture.
R/at: Kadbanwadi, Post: Shelgaon,
Tal: Indapur, Dist: Pune.

14) Smt. Kusum Mahadev Gavade
(Deceased)

14(a) Sona Mahadev Gawade,
Age: major, Oce: Agriculture,
R/at: Hawaldar Vasti. Korti.
Post: Korti, Tal: Karmala. Dist: Solapur

15) Subhash S/o Krishna Mergal,
Age: major, Occ. Agriculture.
R/at: Shelgaon, Tal: Indapur.
Dist. Pune.

....RESPONDENTS

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Mr. Yashodeep Deshmukh i/b Mr. Vinod P. Sangvikar for the Petitioners.
Mr. Rahul S. Kadam for Respondent Nos.1 to 9.

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CORAM	:	SANDEEP V. MARNE, J.
RESERVED ON	:	DECEMBER 13, 2023.
DECIDED ON	:	DECEMBER 19, 2023.

JUDGMENT:

1 **Rule.** Rule is made returnable forthwith. By consent of the learned counsel appearing for the parties the Petition is taken for hearing and disposal.

A. THE CHALLENGE

2 Petitioners have filed this Petition challenging the order dated 17 February 2018 passed by the Minister-Revenue, allowing the Revision

Application filed by Respondent Nos.1 to 9 and setting aside order dated 5 August 2015 passed by the Additional Commissioner, Pune, order dated 21 November 2009 passed by the Additional Collector, Solapur, and confirming the order dated 29 August 2007 passed by the Sub Divisional Officer. The issue involved in the present Petition is about permissibility of Revenue Authorities to handover possession of the land in question to Respondent Nos.1 to 9 in execution of decree dated 23 September 1980 passed by the Civil Judge Junior Division, Karmala in Regular Civil Suit No.184 of 1972. It is Petitioner's contention that in a separate suit bearing Civil Suit No.171 of 1969 instituted by the predecessor in title of Respondent Nos.1 to 9, the Civil Court had declined the relief of possession of the land in question and therefore execution proceedings in Regular Civil Suit No.184 of 1972 cannot be misused for the purpose of gaining possession of the land, which has been declined by way of decree dated 23 September 1980 passed in Civil Suit No.171 of 1969. Also involved is an issue of propriety on the part of the Minister-Revenue in deciding the merits of Revision when the Order of the Additional Commissioner only directed abatement of First Revision against three deceased parties without decision on merits.

B. FACTS

3 Narration of brief factual background as a prologue to the judgment would be necessary. The land bearing Gat No.109 admeasuring 8 Acres 25 gunthas was originally owned by Maruti Ramu Atole who died on 10 February 1966, leaving behind Sonabai (wife), Babu (grandson)

and Kantabai, Shantabai, Kusum (granddaughters) and Subhash (grandson). Babu Dagdu Kantode executed registered Sale Deed of the land in favour of Govind Ravsaheb Khatmode on 25 November 1966 without obtaining permission of the District Court for sale of share of Kantabai, Shantabai, Kusum and Subhash who were minors at that time. This is how Govind Ravsaheb Khatmode started claiming ownership in respect of the land on the strength of Sale Deed dated 25 November 1966.

4 It appears that one Shri. Sambha Bapu Jarande was claiming tenancy rights in respect of the land at Gat No.109 and was in occupation of the same. Therefore, Govind Ravsaheb Khatmode filed Civil Suit No.171 of 1969 in the Court of Civil Judge Junior Division, Karmala against Sambha Bapu Jarande claiming ownership as well as seeking recovery of physical possession of the land bearing Gat No.109 from Sambha Bapu Jarande. During pendency of that suit, Babu, Kantabai, Shantabai, Kusum and Subhash filed Regular Civil Suit No.184 of 1972 against Govind Ravsaheb Khatmode and Sambha Bapu Jarande challenging the Sale Deed dated 25 November 1966 and seeking possession of the suit property from Sambha Bapu Jarande on the strength of termination of his tenancy before the Competent Authorities. It appears that this Court passed an Order for trial and disposal of both Suit Nos.171 of 1969 and 184 of 1972 together. The learned Judge of the Trial Court therefore proceeded to decide both the suits by rendering separate judgments on the same date i.e. 23 September 1980. So far as

Civil Suit No.171 of 1969 filed by Govind seeking declaration of ownership and possession from Sambha Bapu Jarande is concerned, the suit came to be dismissed holding that possession of Sambha Bapu Jarande over the suit land was of trespasser and that though his tenancy was terminated, he was cultivating the land with the consent of previous owners. The Trial Court therefore refused to order handing over of physical possession of the land bearing Gat No.109 from Sambha Bapu Jarande to Govindrao Raosaheb Khatmode.

5 So far as Regular Civil Suit No.184 of 1972 is concerned, the Trial Court partly decreed the suit holding that the Sale Deed dated 25 November 1966 executed in favour of Govind Raosaheb Khatmode was voidable in respect of Subhash Krishna Mergal but the same was binding on Kantabai, Shantabai and Kusum in view of Compromise Pursis filed by them. It was declared that Babu Dagudu Kantode (Plaintiff No.1) had 3/5th share in the land and Subhash Krishna Mergal (Plaintiff No.5) had 2/5th share in the suit land. It was declared that Govind Raosaheb Khatmode (Defendant No.1) stood in the shoes of Kantabai, Shantabai and Kusum (Plaintiff Nos.2 to 4) for possession of the suit land in view of Sale Deed dated 25 November 1966 and he was held to be entitled to the shares of Kantabai, Shantabai and Kusum. A reference was directed to the Collector, Solapur, for partition and separate possession of suit land to the extent of shares of Plaintiff Nos.1 and 5 as well as Plaintiff Nos.2 to 4 under section 54 of the Code of Civil Procedure, 1908 (**the Code**).

6 So far as the Judgment and Decree dated 23 September 1980 in Civil Suit No.171 of 1969 is concerned, the same attained finality on account of dismissal of Regular Civil Appeal No.90 of 1981 and Second Appeal No.110 of 1984 preferred by Govindrao Raosaheb Khatmode. Even the decree dated 23 September 1980 passed in Regular Civil Suit No.184 of 1972 has attained finality, except slight modification with regard to the share of one of the Plaintiffs therein. However *qua* rights of Govind Raosaheb Khatmode, there is no variance in the decree.

7 In the above background, Govind Raosaheb Khatmode initiated execution proceedings seeking possession of share of Kantabai, Shantabai and Kusum by filing Regular Darkhast No.29 of 1987. By order dated 16 December 2005, the executing Court directed all the papers to be sent to the Collector, Solapur for carrying out final decree under section 54 of the Code. In pursuance of reference so made, the Tehsildar, Karmala passed order dated 7 April 2007 directing handing over possession of land admeasuring 80 R to Subhash Krishna Mergal (Plaintiff No.5) and 2 H. 63 R in favour of Govindrao Raosaheb Khatmode (share of Kantabai, Shantabai and Kusum).

8 Petitioners were aggrieved by the Order passed by the Tahsildar and filed RTS Appeal No.43 of 2007 before the Sub Divisional Officer, which came to be rejected by Order dated 29 August 2007. Petitioners filed further Appeal No.175 of 2007 before the Additional Collector

which came to be partly allowed. The Additional Collector maintained the direction for handing over of possession of land admeasuring 80 R to Subhash Krishna Mergal (Plaintiff No.5). However he set aside the direction for handing over possession of land admeasuring 2 H 63 R to Govindrao Raosaheb Khatmode by passing order dated 21 November 2009.

9 Govindrao Raosaheb Khatmode preferred First Revision before the Additional Commissioner, Pune under provisions of section 257 of the Maharashtra Land Revenue Code (**MLR Code**). However, the Additional Commissioner noticed that Babu, Shantabai and Kusum (Respondent Nos.13, 15 and 16 to the First Revision) had expired and on account of failure on the part of Govindrao Raosaheb Khatmode to bring their legal heirs on record, the Appeal was held to have abated and was disposed of.

10 It appears that in the meantime Govindrao Raosaheb Khatmode expired. His legal heirs (Respondent Nos.1 to 9 herein) preferred Second Revision before the Minister-Revenue, challenging the decision of the Additional Collector, Pune. The Minister-Revenue proceeded to decide the merits of the entire controversy and set aside the Orders passed by the Additional Commissioner and Additional Collector and confirmed the Orders passed by the Sub Divisional Officer and Tehsildar. The net effect of the Order passed by the Minister-Revenue on 17 February 2018 is that possession of land admeasuring 2 Hectares 63 Ares out of Gat No.109 will have to be handed over to Respondent Nos.1 to 9. Petitioners claim

to be in possession of the said land admeasuring 2H 63R and have filed the present Petition challenging the decision of the Minister- Revenue.

C. SUBMISSIONS

11 Mr. Deshmukh, the learned counsel appearing for Petitioners would assail the Order passed by the Minister-Revenue by contending that a glaring error is committed by him in entering into the merits of the controversy when the only issue raised before the Minister-Revenue by Respondent Nos. 1 to 9 was failure to entertain First Revision by Additional Commissioner on account of death of Babu, Shantabai and Kusum (Respondent Nos.13, 15 and 16 to First Revision). Mr. Deshmukh would submit that there is no error in the Order passed by the Addl. Commissioner in directing the Appeal as abated on account of death of the three Respondents before him. Alternatively, Mr. Deshmukh would submit that if any error was indeed noticed by the Minister-Revenue in the approach of Addl. Commissioner in treating Appeal as abated, he ought to have remanded the proceedings before the Addl. Commissioner for decision on merits. That Minister-Revenue could not have directly determined merits of the controversy when issue before him was in narrow campus. He would therefore submit that the Order passed by the Minister-Revenue deserves to be set aside and the proceedings be remanded before the Addl Commissioner for decision on merits. Mr. Deshmukh would further submit that this Court would not be justified in entering into merits of the controversy which are yet to be decided by the Additional Commissioner.

12 On merits, Mr. Deshmukh would contend that the decree passed in Regular Civil Suit No.184 of 1972 does not envisage handing over of possession of any portion of land in Gat No.109 to Govind Raosaheb Khatmode. On the contrary, Suit No.171 of 1969 instituted by Govind Raosaheb Khatmode seeking recovery of possession from predecessor-in-title of Petitioners came to be dismissed vide decree dated 23 September 1980. Thus, Govind Raosaheb Khatmode cannot indirectly seek something which has been specifically denied by virtue of decree in Regular Civil Suit No.171 of 1969. According to Mr. Deshmukh, the decree passed in Regular Civil Suit No.184 of 1972 would only confer title on Govind Raosaheb Khatmode and the effect of decree in Regular Civil Suit No.171 of 1969 would mean continued and lawful possession of the land by the predecessor-in-title of the Petitioners. That both suits were decided by the Trial Court on the same day and the Trial Court was thus aware of the position that dismissal of Regular Civil Suit No.171 of 1969 resulted in denial of possession to Govind Raosaheb Khatmode. That the Appellate Courts have not disturbed the decree passed in Regular Civil Suit No.171 of 1969 and Govind Raosaheb Khatmode successfully lost possession battle before the District Court and this Court. That the findings about lawful possession by predecessor-in-title of Petitioners has attained finality and execution proceedings in Regular Civil Suit No.184 of 1972 cannot be utilized for misleading the revenue authorities for obtaining possession of land bearing Gat No.109, which is specifically denied by the Civil Court in Regular Civil Suit No.171 of 1969. That decree in Regular Civil Suit No.184 of 1972 cannot be subjected to

interpretation for the purpose of setting at naught the rights created in favour of predecessor-in-title of the Petitioners by way of decree passed in Regular Civil Suit No.171 of 1969. He would therefore pray for setting aside the order passed by the Minister-Revenue.

13 *Per contra*, Mr. Kadam the learned counsel appearing for Respondent Nos.1 to 9 would oppose the Petition and support the order passed by the Minister-Revenue. Mr. Kadam would accuse Petitioners of suppressing decree passed in Regular Civil Suit No.184 of 1972 and would pray for dismissal of the Petition on that ground. He would submit that dismissal of Regular Civil Suit No.171 of 1969 cannot and does not have any impact on right of Govind Raosaheb Khatmode to seek possession of share of Kantabai, Shantabai and Kusum out of Gat No.109. That in decree passed in Regular Civil Suit No.184 of 1972, the Trial Court has specifically directed handing over of possession of share of Kantabai, Shantabai and Kusum to Govind Raosaheb Khatmode.

14 Mr. Kadam would further submit that Regular Civil Suit No.171 of 1969 came to be dismissed on account of Govind Raosaheb Khatmode claiming title and possession in respect of entire land admeasuring 8 Acres 25 Gunthas. That since the Sale Deed dated 25 November 1966 was held to be voidable in respect of Babu and Subhash, Plaintiff in RCS 171/1969 (Govind Raosaheb Khatmode) has not been declared as owner in respect of the entire land and it is on that count alone, the relief of

possession of entire land bearing Gat No.109 has been declined. He would submit that the District Court has clarified this position in paragraph 8 of its judgment, in which it is specifically held that Govind Raosahbe Khatmode purchased only one half of the share belonging to the three granddaughters. That therefore dismissal of RCS No.171 of 1969 is inconsequential for execution of the decree passed in RCS No.184 of 1972.

15 So far as the propriety on the part of the Minister-Revenue in entering into the merits of controversy is concerned, Mr. Kadam would submit that the decree passed in RCS No.184 of 1972 on 23 September 1980 has not been executed for the last 43 long years and Respondent Nos.1 to 9 cannot be made to endlessly litigate for execution of the decree on account of technical objections raised by the Petitioners. That the Order passed by the Minister-Revenue saves one round of litigation between the parties and therefore the order may not be disturbed. He would pray for dismissal of the Petition.

D. REASONS AND ANALYSIS

16 The first issue is about the propriety on the part of the Minister-Revenue in entering into the merits of controversy while determining the correctness of order dated 5 August 2015 passed by the Additional Commissioner, Pune. As observed above, in pursuance of precept send by the Civil Court under Section 54 of the Code, the Tehsildar, acting for the

Collector, passed order dated 7 April 2007 directing that out of Gat No.109, land admeasuring 2H 63R be handed over to Govind Raosaheb Khatmode and 80 R to Subhash Krishna Mergal (Plaintiff No.5). The Tehsildar's decision was upheld by Sub Divisional Officer by dismissing Appeal of Petitioners on 29 July 2007. The Additional Collector however partly reversed the Tehsildar's decision. He maintained order for handing over possession of land admeasuring 80 R to Subhash Krishna Mergal (Plaintiff No.5). However, the Additional Collector set aside the Tehsildar's direction for handing over possession of land admeasuring 2 H 63 R to Govind Raosaheb Khatmode. The Additional Commissioner, Pune was determining correctness of the Order dated 21 November 2009 passed by the Additional Collector, Solapur. The Additional Commissioner however decided not to enter into merits of the First Revision No.64 of 2010. He noticed that Babu Dagudu Kantode, Shantabai Maroti Gavde and Kusum Mahadev Gavde (Respondent Nos.13, 15 and 16 before him) had expired and their legal heirs were not brought on record. On this technical ground, the Additional Collector, Pune proceeded to hold that the Appeal had abated and disposed of the same. In my view, the Additional Commissioner, Pune, was in clear error in disposing of the entire First Revision on account of death of Babu, Shantabai and Kusum. He ought to have appreciated that Govind Raosaheb Khatmode was seeking recovery of possession in pursuance of decree passed in Regular Civil Suit No.184 of 1972 from the legal heirs of Sambha Bapu Jarande (Respondent Nos. 1 to 12 before him). No relief was sought against Respondent Nos.13, 15 and 16. In such circumstances, the Additional

Commissioner could not have disposed of the entire First Revision filed by Govind Raosaheb Khatmode on technical ground of death of Babu, Shantabai and Kusum. Thus the Order passed by the Additional Commissioner, Pune on 5 August 2015 suffered from serious flaw.

17 The Minister-Revenue has noted the folly committed by the Additional Commissioner. In ordinary circumstances, the Minister-Revenue ought to have restored the proceeding on the file of Additional Commissioner, Pune by setting aside his order. However, the Minister-Revenue has proceeded to venture into the merits of the controversy. This is strongly objected to by Mr. Deshmukh, who accuses the learned Minister-Revenue of committing impropriety in venturing into the merits of the controversy. While Mr. Deshmukh cannot be said to be entirely wrong in submitting that the learned Minister need not have gone into the merits of the controversy and could have remanded the proceedings for decision on merits, the chronology of events narrated above would indicate long legal battle ensuing between the parties since the year 1969. Govind Raosaheb Khatmode purchased the land in question on 25 November 1966. Going by his age declared in Regular Civil Suit No.171 of 1969, Govind Raoshabe Khatmode's age as on the date of purchase in the year 1966 appears to be 38 years. He apparently spent most part of his life in seeking to recover possession of the purchased land by endlessly litigating before various courts and fora. During last days of his life, he was litigating before the Additional Commissioner, Pune by filing First Revision in the year 2010. He even filed Writ Petition No.1954 of 2016 in

this Court challenging the Additional Commissioner's decision dated 5 August 2015. This Court granted him liberty to file Second Revision before the State Government and at this stage apparently, he passed away after fighting long litigation since the year 1969. This is how Govind Raosaheb Khatmode has virtually devoted his entire life to recover possession of land that he purchased on 25 November 1966. Though he was unsuccessful in gaining title in respect of the entire portion of the land on account of decree passed on 23 September 1980 in Regular Civil Suit No.184 of 1972, he later continued his battle to recover possession of the land coming to the share of Kantabai, Shantabai and Kusum admeasuring 2 H 63 R. He instituted execution proceedings in the year 1987 by filing Darkhast No.29 of 1987. Till his death, the decree could not be executed. Now his legal heirs are fighting the battle for execution of the decree passed 43 years ago in Regular Civil Suit No.184 of 1972.

18 In fact it would have been much easier for this Court to pass a simple order of remand of proceedings before the Additional Commissioner, Pune by setting aside the learned Minister's Order and in ordinary course, this Court would have adopted such a course of action. However, considering the long legal battle that has ensued between the parties and also considering the fact that both Mr. Deshmukh and Mr. Kadam have advanced extensive submissions on merits of the controversy, I deem it appropriate to examine the Order passed by the learned Minister on merits, rather making an order of remand.

19 The decree passed by the Trial Court in RCS No.171 of 1969 and RCS No.184 of 1972 may appear to be contradictory in the first blush. This is more so because the decree passed in RCS No.171 of 1969 denies possession of any portion of land bearing Gat No.109 to Govind Raosaheb Khatmode. On the contrary, decree passed in RCS No.184 of 1972 suggests grant of possession of land falling to the share of Kantabai, Shantabai and Kusum to Govind Raosaheb Khatmode. However on a deeper scrutiny of both the decrees, it is clear that there is no such contradiction. It would be necessary to reproduce the relevant findings recorded in both the decrees. In RCS No.171 of 1969, the Trial Court had framed issues and recorded findings with regard to possession of Sambha Bapu Jarande (predecessor-in-title of Petitioners) as under:

	<u>"Issues</u>	<u>Findings</u>
1)	Does plff. proved his exclusive title in the suit lands?	In negative.
2)	Does plff. prove that deft. unauthorisedly occupied suit lands on or about 11-1-67?	In negative.
3)	Does deft. Prove that he is tenant in the suit lands and in capacity as a tenant he is in actual possession of suit lands?	In negative.
4)	Is plff. entitled to get actual possession of suit lands?	No.
5)	Is plff. entitled past mesne profits of Rs.300/- for the year 1966 and 1967 and future mesne profits?	Does not arise.
6)	Does deft. prove that, sale deed executed by Sadashiv Bapu Hagare, for himself and for guardian of minors in favour of plff. is illegal?	In affirmative.
7)	What order and decree ?	See final order.

10) **Issue No.2:-** It is the case of the plaintiff that, the defendant is trespasser in the suit land from 11/1/67 because his tenancy is terminated by the Tenancy Court, Karmala from the suit land. It is no doubt true that, tenancy of the defendant is terminated from the suit land by the tenancy court, Karmala by its judgment vide Exh.65, but it does not mean that, from 11/1/67 the defendant was unauthorisedly occupying the suit land because prior to that, he was cultivating the suit land with the consent of Maruti Atole and Sonabai Atole. Defendant has filed the 7/12 extract of the suit land which shows that, cultivating the suit land as tenant of the Maruti Ranu Atole vide Exh.88 on the basis of tenant. Unfortunately for the defendant his tenancy over the suit land is legally terminated by the Tenancy Court. It does not mean that, he was illegally in possession of the suit land on 11/1/67 and prior to that.

11) As against this, it is the case of the plaintiff that, he may be in possession of suit land on the basis of sale deed vide Exh.96. Hence, in short I answer issue No.2 accordingly by taking into consideration the reasonings given in issues in Regular C. Suit No. 184 of 1972.

12) **Issue No.3:-** It is the case of the defendant that, he is a tenant of the suit property and in that capacity he was in possession of the suit land. Therefore, the matter in Regular Civil Suit No.184/72 the issue No.6 was referred to the Tenancy Court vide Section 85-A of B.T. & A.L. Act, 1948 for necessary finding on this issue. The Tenancy Court decided this issue against the defendant as per judgment of Tenancy Authority in Appeal No.415 of 68. It is declared that the defendant and one Kokne are not the tenants of the suit property. The necessary judgment of the Tenancy Court is at Exh.65 in Regular Civil Suit No.184/72. Therefore the same findings is applicable to the present issue No.3 and on relying with the judgment of Tenancy Court, it may be said that, the defendant is not a tenant of the suit land on the date of the suit. So his possession over the suit land is of trespasser. Hence, I answer issue No.3 in negative.

13) **Issue No.4:-** In view of finding given in issue No.1 and 2, and Issue No.6 it may be said that, the plaintiff is not entitled to get actual possession of the suit land. Therefore, I answer issue No.4 accordingly.'

20 Thus in RCS No.171 of 1969 the Trial Court held that though tenancy of Sambha Bapu Jarande was lawfully terminated by the Tenancy Court, his cultivation in the land continued with consent of the previous owner. The Trial Court therefore concluded that his possession was not illegal. However the Trial court also held that his possession over the land was that of a trespasser.

21 In Regular Civil Suit No.184 of 1972 the relevant findings with regard to possession are as under:

24. **Issue no.12.**-In view of reasonings given in issue nos.1 to 5, it may be said that Plaintiff No.1 and Plaintiff No.5 are entitled to the possession of the suit lands to the extent of their share which I have already stated while giving reasonings for issue no.10. The Plaintiffs Nos. 2 to 4 are not entitled for their shares because their share are already purchased by Defendant No.1 vide sale-deed at exhibit 77. So for the shares of Plaintiffs Nos, 2 to 4 the Defendant No.1 will be in picture and for the shares of Plaintiff No.1 and Plaintiff No.5 they are entitled for the possession of the suit lands. In other words, the Plaintiff No.1 is entitled to the extent of his 3/5th share in the suit lands and Plaintiff No.5 will be entitled to her share to the extent of 2/5th in both the suit lands. Hence Plaintiffs are not entitled directly to take possession of suit lands from Defendant No.2. The matter will have to be referred to the Collector, Solapur for partition and separate possession of the suit lands to the extent of share of Plaintiff No.1 and Plaintiff No.5. I will pass that order at the end of my discussion. Hence, I answer issue no.12 in negative by answering it *as no.* and it may be further held that Plaintiffs cannot directly take possession of the suit land for Defendant No.2”

22 The operative portion of the decree in RCS No.184 of 1972 reads thus:

“Order

No. 1.- Suit is partly decreed. Both the parties shall bear their own costs.

No. 2. - It is declared that sale deed vide exhibit 77, is voidable for the case of Plaintiff No.5. It is not binding on the Plaintiff No. 1. It is binding for the case of Plaintiffs Nos.2 to 4 in view of their compromise *pursis* at exhibit 36.

No. 3.- Plaintiffs Nos.1 and 5 are not entitled for perpetual injunction against the Defendants Nos.1 and 2.

No. 4.- Plaintiff No. 1 and Plaintiff No. 5 are not directly entitled for possession of the suit land from Defendant No. 2.

No. 5.- Sale deed at exhibit 7, is declared as voidable transaction.

No. 6.- It is held that Plaintiff No.1 has only 3/5th share in both the suit lands as he is a son of Janabai Dagdu Kantode and Janabai was daughter of Maruti Ranu Atole.

No. 7.- The Plaintiff No.5 has 2/5th share in the suit lands as she is a daughter of Anusayabai w/o Sadashiv Hajare and admittedly Anusayabai was daughter of Maruti Atole.

No. 8.- The Defendant No.1 stands in the shoes of Plaintiff Nos.2 to 4 for the possession of the suit land in view of sale-deed at exhibit 77. He will be entitled for the shares of Plaintiffs Nos. 2 to 4 in the suit land.

No. 9.- Matter be referred to the Collector, Solapur for partition and separate possession of the suit land to the extent of share of Plaintiffs Nos.1 and 5 and Plaintiffs Nos.2 to 4 vide section 54 of C. P. C.

No. 10- Decree be drawn accordingly.”

23 The combined reading of the decrees passed on 23 September 1980 in RCS Nos.171 of 1969 and 184 of 1972 would indicate that the Trial Court did not direct or permit the sharers in land in Gat No.109 (Dagudu, Babu, Subhash and Govind Raosaheb Khatmode) to directly

obtain possession of land coming to their share from Sambha Bapu Jarande, who was held to be in possession of the land as trespasser. This is why the Trial Court directed that *'hence plaintiffs are not entitled directly to take possession of suit lands from defendant no.2'* instead it directed that the reference be made to the Collector, Solapur for partition and for separate possession. Though Mr. Deshmukh has sought to lay emphasis on mention of only Plaintiff No.1 and Plaintiff No.5 by the Trial Court for ordering reference for separate possession, I do not find any logic behind excluding Defendant No.1 (Govind) who had stepped into the shoes of Plaintiff Nos.2 to 4 (Kantabai, Shantabai and Kusum) for separate possession of land coming to their share. Thus, the net effect of the two decrees passed on 23 September 1980 in RCS No.171 of 1969 and RCS No.184 of 1972 is that the parties, in whose favour share in suit land was allotted, were expected to be handed over possession by Collector after effecting partition. Till handing over of such separate possession after effecting of partition by the Collector, possession of Sambha Bapu Jarande's was protected. This would be the harmonious construction of the two decrees passed by the Trial Court on same day who was aware of the fact that decree passed in one suit could not negate benefit granted by way of decree passed in another suit.

24 If Mr. Deshmukh's contention about finality to denial possession to Govind Raosaheb Khatmode in RCS No.171 of 1969 is to be accepted, the same would render the decree passed in Regular Civil Suit No.184 of 1972 in favour of Govind Raosaheb Khatmode to be nugatory.

Mr. Deshmukh did attempt to suggest that the decree in RCS No.184 of 1972 envisaged handing over of possession only to Babu (Plaintiff No.1), Subhash (Plaintiff No.5) about whom the Petitioners have no dispute. However, such interpretation sought to be made by Mr. Deshmukh would completely nullify the direction of the Trial Court for grant of possession of share allotted to Govind Raosaheb Khatmode in decree passed in RCS No.184 of 1972. In my view, therefore, the correct reading of two decrees would envisage effecting of partition in pursuance of preliminary decree drawn by the Trial Court in RCS No.184 of 1972 and handing over of possession of land allotted to the share of Babu, Subhash and Govind by the Collector. Upon effecting partition by the Collector, Sambha Bapu Jarande and his legal heirs were to lose possession of land Gat No.109 to the extent of shares allotted to Babu, Subhash and Govind.

25 The order passed by the Minister-Revenue, clearly recognizes the above position. I therefore do not find any patent error in the order passed by the Minister-Revenue, which results in final determination of the rights between the parties with regard to possession of the land in pursuance of the partition effected for execution of decree in RCS No.184 of 1972. The parties have fought a long legal battle over the issue of possession. Time has come to draw curtains on unending litigation between the parties. I am, therefore, not inclined to order remand of the proceedings to the Additional Commissioner which would result in three more rounds of litigations (before Additional Commissioner, Minister-Revenue and this Court) between the parties.

E. ORDER

26 I therefore do not find any error being committed by the Minister-Revenue, in passing the impugned order. The Writ Petition, being devoid of merits, is dismissed with no orders as to costs. Rule is discharged.

(SANDEEP V. MARNE, J.)

27 After the judgment is pronounced, Mr. Deshmukh, the learned Counsel appearing for the Petitioners would request for continuation of the interim order. Request is opposed by Mr. Kadam, the learned Counsel appearing for the Respondent Nos.1 to 9. Considering the fact that interim relief is operational for a long period, same is extended for a period of six weeks from today.

(SANDEEP V. MARNE, J.)