Kalam 32 F Pg No 71

BEFORE THE MEMBER (JUDICIAL), MAHARASHTRA REVENUE TRIBUNAL, BENCH AT PUNE.

Presided over by : V.B.Kulkarni, Member (Judicial)

No.SH/VII/1/1993

Suresh Dhondiba Chougule,
R/o.Bhose, Tal.Mangalwedha,
Dist.Solapur. .....Applicant

VS.

1) Gena Aba Koli,
D/H—Shamu Gena Koli & otrs.,
R/o.Halsang, Tal.& Dist.Bijapur.
2) Smt.Kerubai Totappa Lawange
D/H—Opponent No.3 to 7
3) Mallappa Totappa Lawange
D/H—
(a) Samathan Mallappa Lawange
(b) Santosh Mallappa Lawange
4) Shivappa Totappa Lawange
5) Smt.Subabai Digamber Gopale
6) Smt.Sugalabai Manik Dhole
No.3 to 6 R/o.Bhose, Tal.Mangalwedha,
Dist.Solapur.
7) Smt.Shantabai Siddheshwar Kamble
D/H—
Smt.Reshmabai Sagar Shete,
R/o.Javala, Tal.Sangola, Dist.Solapur. .....Respondents

Revision Application U/s 76 of
the B.T.& A.L.Act,1948.

Appearance :- Adv. Shri J.P.Dhaytadak for Revision Applicant.
Adv. Shri S.G.Kudale for Respondents

DATE:- 7th JULY, 2018

JUDGMENT

Being aggrieved by the order of remand passed by Ld.appellate tribunal i.e. Sub-Divisional Officer, Pandharpur (hereinafter referred as the "appellate tribunal") in Tenancy Appeal No.52/92, dt.27/4/1993, the aggrieved respondent / landlord has preferred the present revision application by invoking the provisions of Sec.76 of B.T.& A.L.Act, 1948 (hereinafter referred "the Act"), on the grounds more particularly set out in revision application. For the purpose of brevity and convenience, parties hereinafter referred in the same sequence and chronology in which they were referred before the ALT, as the applicants or the respondents as the case may be. Facts either admitted or otherwise not seriously disputed or otherwise duly proved by way of documentary evidence as well as the admissions given by the parties to the *lis* can be summarized as under.

2. The land Gat No.767, 771/1, 779, 777 & 774 (hereinafter referred as the "disputed lands") situated at Village Bhose, Tal.Mangalwedha, was originally owned by one Smt.Parvatibai Chougule. Shri.Gena Koli & Totappa Shivappa Lavange were & are claiming the right of tenancy over those disputed lands, ½ share each therein since prior to 1/4/1957 respectively. It is an admitted or otherwise proved fact on record, that the landlady Parvatibai Chougule was the widow on 1/4/1957. Therefore, legal effect u/s 32G of the Act, was postponed having legal dis-ability of widoworship with the landlady. During the lifetime of landlady Parvatibai, adopted Suresh, so as to represent the family and estate of Chougule Family left by Shri.Dhondiba Chougule. Parvatibai reported dead on 15/10/1987. After her death M.E.No.1389 came to be certified in revenue record on 21/12/1988 in the name of Suresh as the adoptive son of Dhondiba Chougule. As such ownership of Suresh over the disputed lands after the death of landlady and relationship of Gena Koli & Totappa is an admitted as well as proved fact.

3. With these short undisputed facts, the application moved by landlord for the restoration of possession u/s 32F(1A) came to be registered as a tenancy file No.6/90 before ALT. After holding due enquiry and recording statements of parties thereto, then ALT pleased to allow the application by order dt.13/8/1992 holding that both the tenants being failed to exercise their right to purchase within the stipulated period, sale has become ineffective and the landlord is entitled for restoration of possession. Being aggrieved by the said judgment & order in the first round of litigation, the aggrieved tenants / opponents have preferred tenancy appeal No.52/92, which came to be allowed by order dt.27/4/1993. While allowing the appeal the Ld.appellate tribunal come to the conclusion that the matter requires re-hearing and thereby, remanded the matter for fresh trial before ALT Magalwedha. Being aggrieved by the said order of remand, the landlord has taken the matter before MRT through revision application No.1/93. My Ld.Predecessor has decided the said revision application by order dt.2/9/1997 and found that the

order of remand was not justified and thereby, confirmed the order of restoration of possession in favour of the landlord. Being aggrieved by the said order passed by this Tribunal, the aggrieved tenants have preferred two separate Writ Petitions before the Hon'ble High Court. Writ Petition No.5427/1997 came to be filed by Gena Koli & another Writ Petition No.2546/1998 came to be filed by the LRs of the Totappa Lavange. Hon'ble High Court has decided both the Writ Petitions by separate judgments. However, while passing the separate judgments in both the Writ Petitions, Hon'ble High Court has set aside the order passed by this Tribunal and matter is remanded to this Tribunal to re-consider the issues involved in the matter by offering proper opportunity to both the parties.

4. Accordingly, full opportunity was given to the respective parties to argue the matter on facts as well as law. Opportunity of oral submission was also given to both the parties. In addition thereto, they have submitted their written notes of arguments on record in support of their rival contentions. They have also kept reliance on several precedents as referred in their written notes in support of their rival contentions.

5. After perusing the entire R&P received from tribunals below and submissions made before this Tribunal, it has become evident that, parties have not disputed the relationship interse since even prior to the *"tillers' day"*. The only Issue contested by the parties can be summarized as under.

> "While claiming the relief of restoration, landlord has specifically contended that both the tenants have failed to exercise their statutory right of purchase within the stipulated period in proper form as prescribed u/s 32F(1A) of the Act, and thereby, order of restoration passed by Ld.trial tribunal should have to be confirmed."

6. As against this advocate for the respondent / tenant made twofold submissions. At one hand the Ld.advocate has submitted that both the tenants are the "*permanent tenant*" within the definition of the Act. Therefore, the provisions of Sec.32 to 32R are not applicable to them. Therefore, compliance of intimation contemplated u/s 32F(1A) is not mandatory for the present respondents. Therefore, soon after the death of landlady their right of deemed purchase has got renewed automatically and effect thereof shall have to be followed. On second hand the Ld.advocate for the respondent strongly submitted that both the tenants in their respective capacity validly and effectively exercised option of purchase by giving legal and effective notice to the landlord and thereby, intimated their right to purchase the property within the limitation prescribed u/s 32F(1A) of the Act. Therefore, on both the counts the landlord is not entitled for possession. On the contrary, order u/s 32G of the Act, ought to have been confirmed by the tribunals below and as it has not been confirmed, this Tribunal should grant the said relief.

7. After considering all these submissions made at length and precedents relied by the respective advocates before this Tribunal, following points arise for my determination. I have recorded my findings with reasons thereon as under :-

	Points	**Findings**
1.	Whether the opponents / tenants have proved that they being a *"permanent tenant"* over the disputed property rigger of Sec.32F(1A) is not applicable to them?	Negative
2.	Whether the opponents have exercised the right of purchase within limitation by giving effective and valid intimation as per u/s 32F(1A) r/w rule-20 made under the Act?	Yes, as against Gena Koli to the extent of 1/2 share. No, as against LRs of Totappa to the extent of remaining 1/2 share in disputed land.
3.	Whether the judgment & order passed by the tribunals below calls for interference therein? If yes, upto what extent?	Yes, as per final order.

Reasons

8. Point No.1:- While submitting written notes of arguments and while making oral submissions, Ld.advocate for the opponent / tenants for the first time made a statement that, both the tenants are *"permanent tenant"* as per Sec.2(10A) of the Act. Therefore, rigger of u/s 32F(1A) is not applicable to them. Consequences thereof is that, compliance of valid and effective intimation will not come into play, so as to dis-entitled the tenant to treat them as a "*deemed purchaser*" or no right has been accrued for the landlord seeking restoration of possession on the ground of sale being ineffective. While considering this aspect at first I may state here, that the plea of *"permanent tenant"* is an issue of fact, which must be specifically pleaded and must be supported by sufficient revenue record and asserted in oral evidence to that effect. However, no *iota* of pleading placed on record by the opponents before the Ld.trial tribunal, asserting their status as a *"permanent tenant"* . Therefore, the evidence laid if any or mere submissions made to that effect will not take the place of proof required, for lack of pleadings or evidence. In support of above observations, I may keep reliance on the precedent laid down by our Hon'ble Supreme Court in the *case of* ***Bachhaj Nahar Vs. Nilima Mandal, (2008)17-SCC-491,*** wherein Their Lordships have ruled as under:

> *"No amount of evidence can be looked into upon a plea, which was never put forward in form of pleadings. A question which does not*

arise from the pleadings and which was not the subject matter of an issue, cannot be decided by the Court. A court cannot make out a case, which is not altogether pleaded."

9. I have gone through the above precedent very carefully and do find that the Issue of claim of *"permanent tenant"* being a mixed question of fact and law required to be specifically pleaded. One may say, that the rule of pleading as inserted in Order-6 of CPC is not applicable to the Tribunal, as the procedure contemplated for the business of the Tribunal is governed by Mamlatdars' Courts Act, 1906. I do not find strong substance therein. On the contrary, the draft of Mamlatdars' Courts Act, is the subsistence of the CPC, and the trial and procedure which is required to be followed by this Tribunal is also covered by CPC, though not strictly, but, as a rule of prudence and guidance. Therefore, by overruling the objection to that effect, I hold that the submissions made by the Ld.advocate for the claim of *"permanent tenancy"* over the disputed land is not sustainable before this Tribunal for the first time without pleadings and proof and the law laid down in the above precedent certainly guides me to that effect.

10. Now while appreciating oral as well as documentary evidence placed on record to that effect, it has become evident that, on behalf of both the tenants Shri.Bhima Gena Koli has entered in the witness box, whose deposition is recorded at page-123 from the record of ALT. He is the POA on behalf of the tenant. He has not specifically deposed or even asserted right of *"permanent tenancy"* in his deposition for both the tenants. In short, the deposition is also silent in respect of the assertion of plea of *"permanent tenancy"* put forth before this Tribunal for the first time is not tenable.

11. In addition thereto after perusing the revenue record, it has become evident that, the name of both the tenants came to be recorded in revenue record as a *"protected tenant"* through M.E.No.1133 which is at Page-189 from the record of ALT. After perusing the recitals of the said entry, it has amply suggests that the so called tenancy has recorded in favour of the respective tenants w.e.f. 1946-47 as a *"protected tenant"* and not as a *"permanent tenant"* . The said entry has reached to its finality by giving its effect in the column of other rights of the disputed lands. None of the tenants have disputed the correctness of the said entry conferring status of the *"protected tenant"* in their favour. Even otherwise the name of both the tenants is appearing in revenue record either in the column of other rights or in the column of cultivation gives an indication right of *"protected tenant"*. The entry in revenue record as a *"permanent tenant"* was not ever recorded in favour of both the tenants.

12. Now, point still remains, what is meant by *"permanent tenant"* . The word *"permanent tenant"* has been defined in Sec.2(10A) of the Act. Certain rights are conferred in favour of the *"permanent tenant"* . However, while

defining the word *"permanent tenant"* the Legislatures have restricted its application as under:-

(i) *A person who cultivates the land as* ***Mulgenidar or Mirashidar*** *or by custom or decree of Civil Court holds the land on* ***permanent lease.***

(ii) The word Mirashidar means Archak / Pujari, who holds the land as the Office Hereditary.

(iii) Mulgenidar means the tenant holding the land on perpetual lease.

13. There is no *iota of evidence* of perpetual lease in favour of both the opponents. Therefore, I do find that the submissions made by the Ld.advocate for the opponents, claiming the status of permanent tenants does not sustain in eye of Law for want of pleadings, evidence and strict compliance of Sec.2(10A) of the Act. In support of above observations, I may keep reliance on the precedent laid down by the Hon'ble Gujrat High Court in the case of ***Desai Navinkant Vs. Prabhat, 1968-GLR-694,*** *wherein* His Lordship has ruled as under:

"The "permanent tenant" means-

(i) person who holds land as Mulgenidar or Mirasdar, immediately before the commencement of the Act, 1955; or

(ii) exist custom or decree of Civil Court holds the land of "permanent tenant" ; or

(iii) the tenant whose tenancy rights or commencement or duration of tenancy cannot satisfactorily be proved by reason of antiquity and includes a tenant whose name has been entered in ROR or; any other revenue public record as "permanent tenant" before 1955. ***The entry even if exist its physical existence in ROR would not be sufficient to prove "permanent tenancy".***

Therefore, I hold that rigger of u/s 32F(1A) is strictly applicable to the *"protected tenant"* opponents in this case. With these observations, I answer the **'Point No.1 in Negative'.**

14. Point No.2&3:- Admittedly, ownership of the landlord / applicant as the adoptive son of landlady is not in dispute. So also the legal effect of postponement of *"tillers' day"* on the ground of legal dis-ability with the landlady on the ground of widoworship is also not disputed. Admittedly, Parvatibai died on 15/10/1987. The legal representative of the landlady / present a has not exercised right of possession within first one year from the death of the landlady as per Sec.32F of the Act. Therefore, subsequent effect thereof conferring right in favour of the tenant to exercise the option to

purchase the property by giving legal and effective intimation to the landlord as well as the tribunal comes into play. On this touchstone the case of both the tenants has to be examined independently as both have got separate facts of the case.

So far as the case of Gena Koli is concerned, he has issued intimation to the landlord through postal service on 11/10/1989.The copy of such intimation was also sent to ALT. After considering the date of death of landlady, the limitation prescribed for exercising the right of purchase for both the tenants comes to an end on 14/10/1989. Admittedly, intimation issued to the LR of landlord and the tribunal concerned is on record, which is at Page-139 from ALT's record. Acknowledgment appearing the seal of the office of ALT, is at Page-135 and acknowledgment addressed to the LR of the landlady is at Page-107. After perusing these four documents consistently, it amply suggests that the tenant Gena Koli has not only exercised his option in time before 14/10/1989, but, it has been duly served against the landlord as well as the tribunal concerned within time before 14/10/1989.

15. While contesting the claim of Shri.Gena Koli, the Ld.advocate for the applicant / landlord Shri.Dhaytadak, strongly submitted that, acknowledgment which is on record at Page-107, bears the thumb impression of the recipient. The applicant / landlord being well educated has never put his thumb more in token of execution at any point of time. Therefore, acknowledgment is not proper and legal. In support of his submissions he has called my attention towards the cross-examination of the applicant, which is at Page-103 from the ALT's record, which runs as under:

"´Öß †–ÖÖ-Ö †ÃÖ»Öê-Öê ¾Ö¸ü ¤üÖ×¾Ö»Öê»µÖÖ ¯ÖÖê"Ö¯ÖÖ¾ÖŸÖß¾Ö¸ü †ÓÖÖšüÖ êú»ÖÖ Æêü ´Æü ÖÖê Ö¸êü -ÖÖÆüß".

I do not find any substance in the mere submissions put forth in the tress of cross-examination. Postal acknowledgment which is on record at Page-107 is a public document, for which the presumption u/s 114 of Indian Evidence Act, r/w Sec.27 of General Clauses Act, is ever easily available. Mere denial of thumb impression on the postal acknowledgment is not sufficient. Ample opportunity was available for the applicant / landlord to dis-prove the thumb impression by calling experts' opinion. It is well settled principle of law, that the science of fingerprint has reached to its extreme accuracy in comparison of science of handwriting. Therefore, whether the thumb impression is of recipient or not? has remained un-answered and mere denial is not sufficient to discard the presumption attached to the act of Government Officials. After all, it is well settled principle of law, in the given set of facts, Court may draw inference and presume its correctness if other circumstances are favourable to the sender. In the given set of facts merely because the thumb impression of the recipient being obtained on postal acknowledgment,

though the recipient was literate, such act will not make the acknowledgment doubtful. On the contrary, in the light of above observations mere denial of thumb impression will not take the place of "fact disproved". Therefore, even otherwise though the applicant was literate and thumb impression is appearing on ack.due, still then same is valid and effective service.

16. Herein this case, the landlord has tried to put up twofold case. At one hand claim of minority at the material time and at second hand denial of thumb impression on the acknowledgment receipt. Who has prevented the applicant to examine the witness, who has attested the thumb impression which is appearing in the acknowledgment has remained un-answered. Therefore, I am of the view, this is the fit case where the Tribunal shall draw inference about the effective and proper service of intimation given by the tenant to exercise his option to purchase the suit land atleast to the extent of the share of Gena Koli. In support of above observations I may keep reliance on the following precedents.

(i) Krishna Jadhav Vs. Smt.Shankari, 2005(4) MhLJ-577,
(ii) Basawant Sing Vs. Roman Kathalic Mission, AIR-2002-SC-3537.

The preposition of Law laid down therein can be summarized as under:

> *"In view of the statutory presumption contends in Sec.27 of General Clauses Act, mere denial of service due is not sufficient reason to rebut presumption. Therefore, it is not necessary to examine the Postman to prove postal endorsement in case of such vague plea. Once it is proved, that letter was sent by RPAD on correct address through ack.due, lost or mislead or has not been received by the Court within 30 days, the Court shall presume effective service."*

17. I have gone through the above precedents very carefully and do find that, herein this case option in form of the attesting witness against the acknowledgment at Page-107 not examined, experts' opinion not obtained to disprove thumb impression sufficient to hold that, the presumption available for the effective service is not properly rebutted. With these observations, by keeping reliance on the documentary evidence laid and copy of intimation served to the competent authority including the applicant, it has been duly proved, that the opponent / tenant Shri.Anna Gena Koli has proved the effective intimation about his right to purchase the land, for which he has got right to purchase u/s 32G of the Act. To that extent the claim of landlord alleging that the sale has become ineffective or the possession of the tenant Shri.Anna Gena Koli, has become illegal, does not sustain in eye of Law. Therefore, the applicant / landlord is not entitled to claim possession to that extent through the present proceedings initiated by him. Therefore, the order passed by ALT to that extent deserves to be set aside.

18. Now, while examining the claim of Shri.Mallappa Totappa Lavange, it is pertinent to note here that, the limitation for exercising the right u/s 32F(1A) has started for both the tenants from 16/10/1987 onwards and comes to an end on 14/10/1989. Meantime original tenant Totappa died on 15/8/1989. After the death of father, his one of the LR Mallappa had issued intimation on 21/8/1990 and far later than 14/10/1989. It is well settled principle of law, that the legal dis-ability once exhausted cannot be continued in favour of the succeeding owner /tenant. In short, legal dis-ability is in favour of the person who was availing the same within the meaning of u/s 32F(1A) of the Act, and not available to the subsequent owner or LRs of the tenant. In short, Mallappa ought to have issued intimation as contemplated u/s 32F(1A) in between 16/8/1989 to 14/10/1989 irrespective of the death of Tottappa, which took place on 15/8/1989. Merely because the father of opponent was dead during the subsistence of the legal right, further period prescribed under the Act, cannot be extended on any legal count. On the contrary, death of Tottappa is not the legal dis-ability so as to postpone the action proposed, for exercising the right of purchase by giving effective intimation. At this juncture Ld.advocate for the opponent / tenant strongly submitted that the landlord was claiming minority when Tottappa was died. In support of his submission he has called my attention towards the succession entry certified in the name of present applicant, which is at Page-191. No doubt, in the said entry, age of the LR of deceased has shown 10 years, but, by documentary evidence in form of School Leaving Certificate, which is at Page-203, date of birth of applicant recorded in school register is 25/4/1969. In short, in any case when the cause of action has arisen for initiating the proceedings by giving effective intimation by both the tenants, the LR of the deceased landlady was major in eye of Law. Therefore, in continuation of above observations, I may state here that, neither there was a chance for subsequent extension of legal dis-ability nor there was any reason to extend the period prescribed u/s 32F(1A) of the Act, so far as the claim of Mallappa in respect of the right to purchase of the disputed land to the extent of his 1/2 share only. In support of above observations, I may keep reliance on the following precedents.

(i) Chintaman Datir Vs. Ananda Bhat, 1991 MhLJ(1)-435
(ii) Madhav Vs. Shakuntalabai, 2011(2) MhLJ-895

Wherein by following the preposition of Law laid down by our Hon'ble High Court, in the case reported in ***AIR-1980 Bom.1998 (DB),*** our Hon'ble High Court, has ruled as under:

> *"The postponement of right to purchase the land conferred on the tenant by the provisions of the Act, can take place only once and further postponement on the same or new ground not permissible. Such right should be exercised within two years in any case from the date of the death of widow. The provision of Law and language of*

Sec.32F being quite clear period of one year as provided in u/s 32F(1A) of the Act, that the tenant can exercise his right cannot be extended on the ground, that the tenant had no knowledge about the death of widow landlady."

19. After going though both the precedents referred supra, it has become evident on record that the LRs of the deceased tenant i.e. Mallappa has failed to exercise his right by giving effective intimation to the landlord as well as tribunal below within two years from the date of death of landlady i.e. on or before 15/10/1989. Therefore, ultimate effect and consequences thereto shall have to be followed so as to hold that, the sale has become ineffective by legal fiction for which separate order is not necessary, so far as the land in possession of Mallappa is concerned. In that sequence the order passed by ALT does not survive in eye of Law.

20. At this juncture Ld.advocate for the opponent / tenant by keeping reliance on several precedents submitted that neither the provisions of Sec.32 to 32R are applicable to the case at hand nor the possession of the tenants have become unauthorized in the eye of Law. Therefore, the effect of "*deemed purchase*" shall have to be followed in favour of them. In support of his submissions Ld.advocate for the opponent / tenant kept his reliance on the following precedents.

(i) Parappa Vs. Siddhappa, 1985(2)-SCC-43
(ii) Chand Shaikh Vs. Dattatraya Malkhare, 1974, MhLJ-44
(iii) Vishnu Joshi Vs. Dangseva Mandal, 1984, MhLJ-279
(iv) Nimbraj Jagtap Vs. Ramkrishna Narkhede, 2011(3) MhLJ-858
(v) Arvind Vs. Gena, 2009(3) Bom.CR-858
(vi) Harshawardhan Vs. Mahadu Gangurde, AIR-1980 Bom.198

21. I have gone through the above precedents very carefully and do find that none of the precedent have got identical facts and circumstances that too with the case at hand. Each precedent quoted supra has decided and laid down the law, which was touching to the subject matter involved in the *lis* concerned. However, none of the precedent quoted supra deals with the effect of failure of tenant to exercise the right of purchase as per u/s 32F(1A) of the Act. Once I have hold that the case is perfectly governed by the provisions of Sec.32F(1A), and rigger of Sec.32F(1A) of the Act, has to be followed as the plea of permanent tenancy raised have been overruled. While deciding the case of *Parappa*, referred supra, right of tenant inducted by widow and remedy of possession through Civil Court, was under consideration. While deciding the case of *Chand Shaikh*, referred by tenant, tenancy created by widow in 1949-50 who died in 1962 and the proceedings u/s 84C of the Act, were conducted by ignoring the mandate of u/s 32F(1A) of the Act. In that light the law has been laid down without touching to the legal effect of failure to exercise the right of purchase within time prescribed. While deciding the case of *Vishnu,* issue of u/s 32F(1A) of the Act, was not

at all under consideration. While deciding other cases quoted supra, Hon'ble High Court has considered the effect of issue of relationship of sub-judice and the point of cause of action when it will accrued, so as to exercise the right u/s 32F(1A) of the Act, and not directly on the facts identical with the case at hand.

22. After going through the above quoted precedents relied by the Ld.advocate for the opponent, with due respect to the Law laid down therein I most humbly submit that, none of the precedent is strictly applicable to the case at hand directly or indirectly. Therefore, the Law laid down therein cannot be applied to the case at hand. On the contrary, as observed supra the tenant Gena Koli and his LR have rightly exercised their right of purchase in time with effective service intimation as contemplated u/s 32F(1A) of the Act, r/w Rule-20 made under the Act. As against this the LRs of Totappa have failed to exercise their right to purchase in strict sense as contemplated u/s 32F(1A) of the Act, r/w Rule-20 made under the Act. With these observations, I hold that the judgment & order passed by ALT does not sustain in eye of Law to the extent of 1/2 portion from the disputed land which is in possession of Gena Koli. At the same time the order passed by ALT deserves to be confirmed so far as to the remaining 1/2 portion from the suit land. which is in possession of the LRs of Totappa. In consonance thereto, the judgment & orders passed by tribunals below deserves to be interfered by this Tribunal, by invoking its revisional jurisdiction within the limitations of Sec.76 of the Act. With these observations, I answer the **'Point No.2 partly in Affirmative to the extent of share of Gena Koli and Negative to the extent of share of Totappa' & answer the 'Point No.3 in terms of operative order passed by this Tribunal'.**

23. In view of above observations possession of the LRs of Totappa to the extent of ½ share in the suit lands has become unauthorized, illegal and atleast from the date of the order of this Tribunal they are not supposed to remain in possession as a legal possessor. In short keeping in mind their status of possession over the disputed land to the extent of that share, I do find that if a specific directions are given in respect of the enquiry of future mesne profit, that will meet the ends of justice. With these observations, I proceed to pass the following order.

ORDER

The revision application is allowed.

The judgment & orders passed by the tribunals below are hereby set aside and in place thereof following order shall follow:

The application moved by the applicant / landlord for the possession to the extent of ½ share in the disputed lands which is in possession of LRs of Totappa is hereby allowed.

The opponents No 3a,3b and 4 to 7 are hereby directed to handover the possession of the disputed land in their possession to the applicant / landlord within three months from the date of this order. Failure to which separate enquiry of future mesne profit under Order 20 Rule-12(1c) of the C.P.C., shall be initiated before Ld.trial tribunal till the actual date of delivery of possession by them to the landlord.

The application moved by the applicant / landlord for the possession of remaining ½ share as against the tenants i.e.LRs of deceased of Gena Koli stands dismissed.

In the peculiar set of facts parties to the *lis* shall bear their respective costs.

R&P received from the tribunals below be sent back immediately.

Intimation of this order be sent to both the parties & lower tribunals.