SUIT FOR DECLARATION & PERMANENT INJUNCTION

**IN THE COURT OF THE CIVIL JUDGE, SENIOR DIVISION, PUNE**

**AT PUNE**

Civil Suit No. /200\_\_\_

Shri ASR \_\_.{Full Name) )

age 44 years, occupation - agriculture, ) Plaintiff

resident of Rajgurunagar, )

Taluka Khed, District Pune. )

Versus

1. Shri ABR \_\_(Full Name) )

age 69 years, occupation - agriculture, ) Defendants

 )

2. The State of Maharashtra )

A SUIT FOR DECLARATION &PERMANENT INJUNCTION

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The plaintiff abovenamed submits this plaint, praying to state as follows :

1. Suit Properties: All those pieces and parcels of lands situate within the Registration Division & District Pune, Sub-Division & Taluka Haveli, within the local limits of the Pune Zilla Parishad, revenue village Rajgurunagar, as detailed below :

(A) Gat No. 195/2, admeasuring 45 acres or thereabouts, and bounded by :

On or towards the East \_ Gat No. 195/7,
On or towards the South \_ Gat No. 200,
On or towards the West \_ Public Road, and
On or towards the North Nullah.

(B)Gat No. 196, admeasuring 55 acres or thereabouts, and
bounded by :

On or towards the East \_ Gat No. 197, On or towards the South \_ Gat No. 201, On or towards the West \_ Gat No. 202, and On or towards the North \_ Public Road.

(C)Gat No. 200, admeasuring 47 acres or thereabouts, and
bounded by :

On or towards the East\_ Gat No. 205, On or towards the South \_ Gat No. 211, On or towards the West \_ Public Road, and On or towards the North\_ Nullah.

2.That the said lands had been given to the share of the present plaintiff in partition effected on , and since the, the plaintiff has been possession and enjoying the said properties as his exclusive properties, and there is abundant evidence to establish that the present plaintiff is in actual possession and enjoyment of the said properties since the said partition, dated .

3. That, however, it appears on , the defendant No. 1 filed his return under the provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, hereinafter referred to for the sake of brevity as the "said act". The Special Deputy Collector, KhedDivision, started an enquiry into the holdings of the defendant No. 1, case No. MLS/ME/100, and by his judgment and order, dated , held that the total holding with the defendant No. 1 as on was 147 acres and 6 gunthas.

4. That it was also held by the said officer that the defendant No. 1 was the only member in his family and that he was entitled to hold 108acres of land only, and, therefore, the surplus land with the defendant No. 1 was 34 acres and 6 gunthas of land, and he proceeded to delimit the same from Survey No. 195/2 and gave further incidental directions in the aforesaid judgment and order. However, *suo motu* proceedings were started by the Commissioner, Pune Division, Pune, being Ceiling Revision Case No. SHO. 100, who, by his judgment and order passed by the Trial Court, holding that the defendant No. l's total holding was 180 acres and 26 gunthas, and on conversion, it came to 428 acres and 34 gunthas, and that the defendant No. 1 was entitled to hold 320 acres and 34 gunthas and so the surplus with the defendant No. 1 came to 108 acres, and so holding remanded the matter to the Trial Court for reconsideration of the trial under Sections 15, 16 and 21 of the said Act.

5. That against the said judgment and order, the defendant No. 1 preferred a special civil application No. 250/200\_ to the High Court of Judicature at Mumbai, which was dismissed. Their Lordships were pleased to kindly pass the following order :

(i) While calculating the ceiling areas for the holding of each of the petitioner or of his family unit, no land shall be taken into consideration more than once, (ii) Save and except for the above, the rest of the order of the

Commissioner impugned herein stands;

(iii) There will be no order as to the cost's.

6. That it is clear from this order that their Lordships have not said that
the second partition of the year 200\_\_ is to be completely ignored and only the partition has been considered is of the year 200..

7. That after remand, the case was numbered as Ceiling Case No. MLS-
W-63 in the Court of the Special Deputy Collector, Khed, who, by his judgment order, dated , held that the defendant No. 1 was entitled to hold 113 of land, i.e. on conversion, the defendant No. 1 was holding 400 acres and 8 gunthas, and the defendant was entitled to hold 108 acres of land and so the surplus came to be 292 acres and 2 gunthas, and he directed these to be taken from Survey Nos. 195/2, 196 and 200.

8. That it is pertinent to note and as will be clear from the judgment that the present plaintiff was not a party to the said proceedings after remand.

9. That against the said judgment and order, it is true that the defendant No. 1 preferred an appeal No. MRT/SH/CING/17/19 of 200\_ in the court of the Commissioner, Pune Division, who, by its judgment and order, dated , dismissed the same.

10. That the present plaintiff has a sound and substantial case, for he has been in continuous possession of these three lands since the partition in the year 1980, and the same has already been mutated in the extracts of the record of rights by mutation entry No. 268, dated 15.6.1980.

11. That the defendant No. 1 had clearly stated that these three lands were given to the share of the present plaintiff and that the plaintiff has been continuously and uninterruptedly in possession of the same, and the defendant No. 1 has then never challenged the said partition during all these years.

12. That it is clear that the defendant No. 1 had fraudulently concealed all these facts from the notice of the authorities as well as from the knowledge of this plaintiff and offered the said lands as surplus holding in his case, and, as such, the said order of the Surplus Land Determination Tribunal has been obtained by the defendant No. 1 by fraud, and hence, it is null and void.

13. That the present plaintiff has been cultivating the said lands every year and taking crops like sugarcane, cotton, jowar, what, etc., and he is also a producer-member of the Ganesh SahakariSakharKarkhana for the last 25 years, and every year, he has been supplying sugarcane to the said sugar factory, for which has already received bills for the payment of such supply.

14. That it is also the contention of this plaintiff that the orders passed in the said proceeding in the case of the defendant No. 1 have been passed without joining the present plaintiff as a party, and hence, the defendant No. 2 cannot validly enforce the same against the present plaintiff.

15. That even it were to be held that the said partition were invalid, yet the facts stand that the plaintiff is in actual possession of he said property right from the date of partition, dated , and, thus, after the continuous possession of the plaintiff for more than 12 years, the plaintiff in any case obtained a perfect title by adverse possession, and therefore, in the year 1980, the defendant No. 1 had no title to the said property to offer the same by way of choice of the surplus land, and hence, also the decision is bad.

16. That it is also pertinent to note that the plaintiff all these years has
been paying the water charges and the land revenue in respect of these lands.

17. That the plaintiff, therefore, prays that -

(a)it be declared that since the defendant No. 1 had obtained the order from the Surplus Land Determination Tribunal by fraud, the same is null and void;

(b)in alternative, it be declared that since the present plaintiff was not a party to the said proceedings, the order passed in that proceeding cannot be enforced against the present plaintiff;

(c)in alternative, since the present plaintiff has been in actual possession of the said lands for more than 12 years and has obtained a perfect title to the said lands, the defendant No. 1 had no title to the said property to offer the same by way of his choice, and the said decision is, therefore, bad and null
and void.

(d) the defendants be permanently restrained from executing the said orders against the present plaintiff in respect of the said lands.

Pune, Sd/- ASR

PLAINTIFF

Dated: .

Sd/- xX x

ADVOCATE FOR PLAINTIFF

**VERIFICATION**

**I,** Shri ASR the present plaintiff, do hereby state on solemn affirmation that the contents of this plaint in paras 1 to 14 are true and correct to the best of my knowledge and belief, and I have signed hereunder at Pune this

\_\_\_ day of . 200\_ Sd/- ASR

PLAINTIFF