

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Application No.89 of 2015

* Kashinath S/o Sivappa Deshmane,
Age 58 years,
Occupation : Retired,
R/o. Bhagyoday Nagar,
Ambad Chowk,
Near Police Ground, Jalna,
District Jalna. **.. Applicant.**

Versus

- 1) The State of Maharashtra,
Through Investigating officer
Police Station Ambajogai City
Ambajogai, District Jalna.
- 2) Shivling s/o Santaram Deshmane,
Age 80 years,
Occupation : Agriculture,
Through its General Power of
Attorney -
Shivraj S/o Shivling Deshmane,
Age 46 years,
Occupation : Agriculture,
R/o Lokhandi Sawargaon,
Taluka Ambajogai, District Beed. **.. Respondents.**

Shri. S.V. Suryawanshi, Advocate, holding for Shri.
Abhijeet P. Avhad, Advocate, for applicant.

Shri. K.M. Suryawanshi, Additional Public Prosecutor, for
respondent No.1.

Shri. N.V. Gaware, Advocate, for respondent No.2.

**CORAM: T.V. NALAWADE
INDIRA K. JAIN, JJ.**

DATE : 29th APRIL 2015

JUDGMENT:

1) Rule, rule made returnable forthwith. Heard by consent of both the sides for final disposal.

2) The proceeding is filed under section 482 of the Code of Criminal Procedure for relief of quashing of F.I.R. of CR No.198/2014 registered in Ambajogai City Police Station, District Beed for offences punishable under sections 420, 463, 471, 192, 201, 218, 166, 34 of the Indian Penal Code. The crime is registered on the basis of private complaint filed by respondent No.2 in which the order of investigation is made by the learned Judicial Magistrate, First Class, Ambejogai under section 156(3) of the Code of Criminal Procedure. Respondent No.2 is uncle of the applicant. Santaram was the father of complainant. Santaram left behind three sons like Shivappa, Vishnu and Shivling (complainant). Shivappa is dead and applicant is son of Shivappa. Agricultural land bearing Gat No.75 to the extent of 2 hectares 28 R was owned by Santaram.

3) It is the case of the complainant that out of aforesaid portion, land admeasuring 1 hectare 14 R is entered in the name of the complainant and land admeasuring 1 hectare 14 R is entered in the name of Vishnu. It is contended that there was no entry of the name of either Kashinath or his father Shivappa in the revenue record of this land and present applicant was never in possession of this land. It is contended that present applicant was staying outside due to his service.

4) It is the case of the complainant that present applicant had no concern with this land but he sold 86 R portion of this land by registered sale deed dated 4-5-1999. It is contended that the revenue authorities, officers of revenue who are also made accused, made some mutations in favour of Kashinath, the applicant, and they joined hands with him to create false record. It is contended that as many as 12 mutations were falsely made between the years 1999 and 2014 in respect of this land. In view of this allegation, order was made by learned Magistrate to make investigation.

5) Learned counsel for the applicant took this Court through some revenue record which includes a copy of Mutation No.96 which was sanctioned in the year 1965. This mutation was made after the death of Santaram. At the relevant time father of the applicant was also dead and so names of Vishnu, complainant and present applicant were entered as the successors of Santaram in respect of land Survey Nos.104/A and 105/A. It is not disputed that Sy. No.104-A was given Gat No.75 during implementation of consolidation scheme. 7/12 extracts of this Gat number starting from the year 1981-82 show that name of Kashinath was also entered as one of the owners of the land. Similarly name of applicant Kashinath was entered as successor of Santaram in respect of land Gat No.76 which was probably bearing Survey No.105/A in the past. There are 7/12 extracts of land Gat Nos.76 and 78 and they show that names of these three branches were entered in the revenue record of this land also.

6) The complainant has produced 8A extract created in favour of Shivling and it shows that he was having 1.14 hectare portion in land Gat No.75. On the

basis of this record, learned counsel for the complainant submitted that there was no separate Khata prepared in favour of applicant Kashinath and he had no right to sell any portion of land Gat No.75. This contention is not at all acceptable. In the complaint itself it is specifically mentioned that portion admeasuring 2.28 hectares had come to the share of Santaram, predecessor of both present applicant and the complainant. If at all there was any partition each branch would have got equal share though not 86 R. Nothing is contended about the partition or family arrangement which could have been made amongst the heirs of the three branches of Santaram. The parties are Hindu and in ordinary course Kashinath would have got one-third share in the aforesaid properties. Even if it is presumed that partition was not effected, Kashinath could have sold his one-third share.

7) The first mutation is of the year 1965 and the entries were made in the revenue record accordingly. Even in absence of such mutation and the revenue record it was open to Kashinath to contend that he has one-third share in all the aforesaid properties. Thus by no stretch of

imagination it can be said that Kashinath committed offence of creation of false record or of cheating. Such allegations are not tenable also against the revenue officers. Though the revenue officers have not filed any proceeding, in view of the aforesaid facts of the case, this Court holds that the entire F.I.R. needs to be quashed and set aside. Learned counsel for the complainant submitted that there should be liberty to approach the Civil Court. The complainant can approach the Civil Court if there is any dispute of that nature.

8) In the result, the application is allowed. The First Information Report of Crime No.198/2014 registered in Ambajogai (City) Police Station, District Beed for offences punishable under sections 420, 463, 471, 192, 201, 218, 166, 34 of the Indian Penal Code is quashed and set aside. Rule made absolute in those terms.

Sd/-
(INDIRA K. JAIN, J.)

Sd/-
(T.V. NALAWADE, J.)

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