

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

WRIT PETITION NO. 2351 OF 1993

Nagnath s/o Yeshwanta Gadge,
Age: 46 years, Occu: Agri.,
R/o. Ahmedpur, Taluka Ahmedpur,
District Latur

...Petitioner

versus

1. Shaikh Ismail s/o Shudusahed,
Age: 56 years, Occu: Agri.,
R/o. Ahmedpur, Tq. Ahmedpur,
Dist. Latur.
(Petition stands dismissed against
R.No.1 as per Court's order
dated 19/09/2014)

2. Vaijinath s/o Yeshwanta Gadge,
Age: Major, Occ: Agri.,
R/o. Ahmedpur, Tq. Ahmedpur,
Dist. Latur.

3. The Additional Commissioner,
Divisional Commissioner's office,
Aurangabad.

...Respondents

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Mr. H.B. Nandagavale, Advocate h/f Mr. V.G. Sakolkar, Advocate for
petitioner
Mr. R.V. Dasalkar, A.G.P. for respondent No. 3

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CORAM : N.W. SAMBRE, J.

DATE : 26th NOVEMBER, 2015

ORAL JUDGMENT :

Heard learned Counsel for the petitioner. The subject
matter of present petition is the legality and validity of M.E. No. 728
pertaining to Survey No. 268/1 admeasuring 1H 81R of village

Ahmedpur. It is case of the petitioner that Vaijinath was owner of the above referred property with whom he has entered into agreement to sale on 14/03/1980. He then pleaded that by registered sale deed dated 03/10/1980 the above referred land was sold by said Vaijinath to Shaikh Ismail.

2. In view of registered sale deed, property in question came to be mutated in the name of respondent Shaikh Ismail.

3. The present petitioner thereafter preferred an appeal before Sub Divisional Officer, Udgir to cancel the M.E. No. 728 sanctioned in favour of Shaikh Ismail after considering that agreement of sale in favour of petitioner dated 14/03/1980, which is prior in point of time and that of registered sale deed dated 03/10/1980 in favour of Shaikh Ismail.

4. The above referred appeal was allowed by Sub Divisional Officer, Udgir and sanction of M.E. No. 728 of village Ahmedpur in respect of land Survey No. 268 hissa 1/1 was rejected.

5. Shaikh Ismail-respondent herein thereafter preferred an appeal before Additional Collector, Latur, who has maintained the above referred order passed by Sub Divisional Officer, Udgir by order

dated 17/04/1986, which prompted him to prefer Revision before Additional Commissioner, Aurangabad Division, Aurangabad vide Case No. 86.Rev.R.56. The said revision came to allowed. As such, present writ petition.

6. Learned Counsel for the petitioner, while trying to make out case for quashing the order of the Additional Commissioner, would urge that since there is an agreement to sell in favour of petitioner executed on 14/03/1980, same will have more weightage than registered sale deed dated 03/10/1980 executed in favour of respondent Shaikh Ismail. In addition to above, according to him, once the Sub Divisional Officer and Additional Collector having concurrently held in his favour that said mutation entry is not justifiable in favour of Shaikh Ismail, revisional authority exercised excess revisional jurisdiction and allowed the revision.

7. Learned A.G.P. supported the order of Additional Commissioner, as according to him, same is based on material evidence that is placed on record which was in the nature of documentary evidence.

8. Having considered submissions made by learned Counsel for the petitioner and learned A.G.P., it is not in dispute that respondent No. 2 was owner of the property in question, who has executed agreement to sell on 14-03-1980 in favour of present

petitioner, which is admittedly unregistered document.

9. Apart from above, respondent No. 2 executed registered sale deed in favour of respondent No. 1 on 04/10/1980 and by virtue of registered sale deed, title of the suit property stood vested in respondent No. 1 from respondent No. 2. In such eventuality, once title is created by virtue of lawful instrument in favour of respondent No. 1, the submission of the petitioner that unregistered agreement executed prior in point of time i.e. on 14/03/1980 will be weighed in his favour than registered sale deed is without any basis of law, as such rightly rejected by revisional Court. Revisional Court, while exercising powers, was alive of the scope of revisional jurisdiction and has noticed an error apparent on the face of record, committed by authorities below in giving weightage to unregistered agreement to sell over registered sale deed.

10. In my opinion, the order impugned passed by Additional Commissioner, Aurangabad Division, Aurangabad is in tune with the requirements of law. No illegality could be noticed. The writ petition is devoid of merit, as such, fails, dismissed. Rule stands discharged.

[N.W. SAMBRE, J.]