

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

WRIT PETITION NO. 5819 OF 2012

1] Bhausahab s/o Eknath Wagh
Age : Major, Occu-Agril
R/o Loni (K) Tq. Vaijapur
District Aurangabad

2] Shantabai w/o Eknath Wagh
Age : Major, Occu-Agril
R/o Loni (K) Tq. Vaijapur
District Aurangabad.

... PETITIONERS

Versus

1] The State of Maharashtra
Through its Secretary
Revenue Department
Maharashtra State,
Mantralaya, Mumbai-32.

2] Trimbak s/o Dhondiba Wagh
Age Major, Occu-Agril
R/o Loni (K) Tq. Vaijapur
District Aurangabad.

3] Assistant Collector,

Division, Vaijapur,
District Aurangabad.

4] Additional Collector,
Aurangabad.

5] Additional Commissioner
Aurangabad

.. RESPONDENTS

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Mr.N.R.Solunke, Adv. for petitioners

Mr.P.S.Patil,AGP for respondents no.1 & 3 to 5

Mr.S.S.Thombre Adv. for Respondent no.2

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CORAM : V.L.ACHLIYA,J.

DATED : 15TH APRIL,2016

ORAL JUDGMENT :

Rule. Rule returnable forthwith. With consent of parties, Petition is heard finally at the stage of admission.

2] Petitioners have filed this Petition challenging the orders dated 21/12/2003 passed by Assistant Collector, Vaijapur, District Aurangabad and consequently order dated 22/8/2006 passed in Appeal by Additional Collector, Aurangabad as well as the order dated 21/01/2012 passed in Revision by Additional Commissioner, Aurangabad on the grounds set out in the petition.

3] Before advertizing to appreciate the submissions advanced, it is necessary to consider few facts leading to filing of the petition. The fact is not in dispute that land admeasuring 1 Hectare 82 R out of Gat No.27 was standing in the name of late Kausabai W/o Laxman Wagh and the land admeasuring 1 Hectare 2 R out of said same Gat was standing in the name of her husband Laxman Wagh. The fact is also not in dispute that Kausabai died on 1/1/1994 leaving behind her husband Laxman as a sole legal heir to inherit the right, title and interest in her property. The land which was standing in the name of Kausabai as well as the land which was standing in the name of Laxman was sold by Laxman to petitioners no.1 and 2 respectively vide separate Registered Sale Deed executed on 3/11/2001 for sale consideration of Rs.1,80,000/-. After execution of Sale Deed Laxman died on 22/11/2001. Petitioners made application to the Tahsildar, Vaijapur District Aurangabad to record their names in the record of rights. While the application moved by the petitioners was pending for consideration before the Tahsildar, Vaijapur, the respondent no.2 raised an objection. In the objection filed, the purchaser raised the plea that Laxman had executed the Sale Deed while his wife was not alive and the names of the legal heirs of Kausabai were not recorded in relevant record of rights. Upon considering the objections raised, the Tahsildar, Vaijapur has rejected the objections and directed to record the names of petitioners by following the procedure provided in the Rules.

4] The order passed by the Tahsildar, Vaijapur was challenged in Appeal before the Assistant Sub Divisional Officer, Vaijapur who in turn set aside the order by observing that unless the names of the legal heirs of Kausabai are brought on record, the mutation entry in the name of petitioners cannot be taken. The order passed by Assistant Collector, Vaijapur was challenged in Appeal before the

Additional Collector, Aurangabad. The Additional Collector though observed in the order that the Sale Deed executed in favour of the petitioners has not been challenged but maintained the order passed by Assistant Collector, Vaijapur. In the Revision filed before the Additional Collector the order has been maintained on same grounds. Being aggrieved by said orders passed by respondents no.3 to 5, the petitioners have preferred this Petition.

5] Mr.Solunke, learned counsel for the petitioners assailed the order passed by respondents no.3 to 5 with contention that Kausabai died in the year 1994 leaving behind her husband as a sole legal heir to succeed the right, title and interest in the property. The Sale Deed executed in favour of the petitioners has not been challenged, therefore, the revenue authorities cannot refuse to take the mutation entry only for the reason that the name of Laxman the sole legal heir of late Kausabai was not recorded in record of rights before execution of Sale Deed. On the other hand, learned counsel for respondent no.2 supported the orders passed. It is contended that the land in question was not self-acquired property of Kausabai but the same was inherited by Laxman which he has transferred in the name of Kausabai. It is further contended that respondent no.2 has filed Civil Suit seeking partition in respect of said same land and said Suit is pending. In counter to this submission, learned counsel for petitioners has placed on record the copy of the judgment and order dated 17/06/2013 passed by III Joint Civil Judge, Junior Division, Vaijapur, District Aurangabad to point out that the Suit filed by the respondent no.2 is already dismissed way back in the year 2013.

6] On due consideration of the submissions advanced, in my view, the orders passed by respondents no.3 to 5 are not sustainable in law. It is an admitted fact that the land which was purchased by

petitioner no.2 was owned by Kausabai who died in the year 1994 leaving behind her husband Laxman as sole heir to succeed to her estate. After the death of Kausabai, by virtue of inheritance, Laxman has become sole owner of the property which was held by Kausabai. Therefore, the right, title and interest in the property was devolved upon Laxman after the death of Kausabai. It is no one's case that she had executed Will or any other document conferring her right, title and interest in favour of some other person. By Sale Deed executed in the year 2001, the husband of Kausabai i.e. Laxman sold piece of land which was inherited by him from Kausabai as well as his land standing in his own name in favour of petitioners no.1 and 2. Therefore, they are well within their right to apply for mutation entry on the basis of the Sale Deed. Only for the reason that after death of Kausabai, the name of Laxman was not mutated in the record of rights, the request of petitioners to record their names in the record of rights cannot be refused by revenue authorities. The reasons recorded by Assistant Collector and subsequently confirmed by respondents 4 and 5 are per se incorrect and unsustainable in law. There was no valid reason for the Assistant Collector, Vaijapur to set aside the order passed by the Tahsildar. The reasons recorded for setting aside the order passed by Tahsildar, Vaijapur appear to be strange and contrary to law. In view of this, the orders passed by respondents no.3 to 5 are not sustainable in law. Respondent no.2 has no right, title and interest in the property so as to object to record the mutation entry in the name of petitioners. Apart from this, the Suit filed by the respondent no.2 has been dismissed on merit by judgment and order dated 17/6/2013 delivered by III Joint Civil Judge, Junior Division, Vaijapur, Dist.Aurangabad. In view of above, Writ Petition deserves to be allowed. Accordingly, Writ Petition is allowed in terms of prayer clause "B" and consequential to that the order passed by Tahsildar, Vaijapur dated 30/5/2003 stands

restored. Accordingly the respondents are directed to take further steps as per order dated 30/05/2003 passed by Tahsildar, Vaijapur to record the names of petitioners in the revenue record pertaining to said property.

7] Rule made absolute in above terms. There shall be no order as to costs.

(V.L.ACHLIYA,J.)

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