

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4232 OF 2015

Suresh Babu Patil

... Petitioner

Vs.

State of Maharashtra & Ors.

... Respondents

Mr.S.S. Kanetkar for the Petitioner

Mr.S.H. Kankal, AGP, for Resp. Nos.1 to 5

Mr.A.G. Kundekar for Respondent No.6

CORAM: **Mrs.MRIDULA BHATKAR, J.**
OCTOBER 24, 2016

ORAL JUDGMENT:

1. Rule. By consent of the parties, Rule made returnable forthwith and heard at the admission stage itself.

2. By this writ petition, the petitioner, who is a purchaser of 2/3rd share in the land in survey no.13/1, Mauje Fene, Taluka Bhiwandi, District Thane of which the respondents are the join owners. Respondent No.6 has 1/3rd share in the said survey No.13/1, Mauje Fene, Taluka Bhiwandi, District Thane and 2/3rd share in the said land is owned by his co-sharers i.e., Petitioner Nos.2 to 6 from whom the petitioner has purchased the said land by a registered sale deed dated 20.11.2009. Pursuant to the said registered sale deed, the property record was mutated by mutation entry

No.388 of Mauje Fene, Thane. Respondent No.6 who was a co-sharer and having undivided share in the said land was not aware of the said transaction. Hence, challenged the said mutation before the Tehsildar, Bhiwandi by filing dispute No.SR29 of 2010. The said dispute was decided against the petitioner i.e., respondent No.6 and mutation entry at No.388 was allowed by the Tehsildar by his order dated 10.1.2010. The said order was challenged by RTS Appeal N.197 of 2010 and SDO, Bhiwandi by her order dated 14.3.2011 upheld the order passed by the Tehsildar against which RTS Appeal No.136 of 2011 was preferred before the Deputy Collector, who partly allowed the appeal of Respondent NO.6 and orders of the SDO and the Tehsildar were set aside and mutation entry No.388 was cancelled. However, he ordered that pursuant to the sale deed dated 20.11.2009 the entry of the petitioner was taken in 7/12 extract under the head "other rights". Thereafter, the said order was challenged by the present petitioner by RTS Revision No.427 of 2012 before the Additional Commissioner, Konkan division who by his order dated 7.2.2013 allowed the appeal and set aside the order dated 13.6.2012 and restored the order passed by the SDO and Tehsildar. The said order was taken up in revision before the Government in RTS proceedings and concerned Secretary for the Government by his order dated 17.3.2015 allowed the said revision of Respondent No.6 and set aside the order passed by the Additional Commissioner, Konkan Division

dated 7.2.2013 and upheld the decision of the Deputy Collector dated 13.6.2012 and hence, this writ petition.

3. The learned Counsel for the petitioner has submitted that the order passed by the Tehsildar and the SDO is correct. It is a registered sale deed and the petitioner does not claim more than $2/3^{\text{rd}}$ of the entire land, which is the share of petitioner Nos.2 to 6, who are the co-sharers of respondent No.6 in the said land. He further submitted that the revenue authority i.e., the State has gone beyond its scope as it has decided the issue of possession while deciding the legality of the mutation pursuant to the registered sale deed. Both the learned Counsel for Respondent No.6 i.e., the contesting party and the learned Government Pleader supported the order passed by the State cancelling the mutation entry No.388. The learned Counsel for Respondent No.6 has submitted that he relied on the judgment of the Supreme court in the case of **Ramdas vs. Sitabai**¹ in respect of section 44 of the Transfer of Property Act.

4. Perused the orders passed by the Secretary for State and the other authorities. It is an admitted position that respondent No.6 is having $1/3^{\text{rd}}$ share and petitioner Nos.2 to 6 are having $2/3^{\text{rd}}$ undivided share in the said land. Petitioner Nos.2 to 6 have sold their undivided right by registered sale deed. As the property is sold by registered sale deed, right of the

1 2009 (6) Mh.L.J. 886

petitioner being the purchaser of the said land is created and therefore, his name is entered in the record of rights. I do not find any illegality in entering the name in the record of rights pursuant to the registered sale deed. However, the petitioner cannot be put in possession on the basis of that registered sale deed or the mutation i.e., No.388 as the interest and the ownership is undivided for want of partition. On the basis of one map prepared by the private parties no division by metes and bounds of the plot is possible. Respondent No.6 has filed suit i.e., RCS No.273 of 2011 for partition claiming 1/3rd share in the suit property i.e., the said land. He has prayed that the partition is to be made by metes and bounds. The said suit is pending against all the petitioners and petitioner No.1 is a purchaser who is defendant No.6 in the said suit. Sub-division in 1/3rd and 2/3rd shares by metes and bounds is a matter of evidence and is to be decided by the civil Court and it cannot be decided by the revenue authority. It is also a settled position of law, as laid down in **Ramdas vs. Sitabai (supra)**, that without there being any physical formal partition of an undivided landed property, a co-sharer cannot put a vendee in possession although such a co-sharer may have right to transfer his undivided share. Thus, the suit for partition by metes and bounds is still an issue and pending before the civil Court and that will be decided by the said Court. However, the order passed by the Secretary canceling the mutation entry No.388 is not correct as the name of the petitioner No.1

was entered in the record of rights pursuant to the registered sale deed of the said land. Hence, the said order dated 17.3.2015 is set aside and the orders passed by the Collector, Tehsildar and S.D.O. are restored.

5. Rule is accordingly made absolute in terms of prayer clauses (a) and (b).

(MRIDULA BHATKAR, J.)