

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7147 OF 1998

Shri. Pandurang Tatoba Waingade
aged about 54 years, occupation service,
At & Post Ramanand Nagar (Burli),
Taluka Tasgaon, Dist. Sangli.

... Petitioner

vs.

1. Shri. Ganpati Kashinath Shinde
aged 59 years, occu. Cinema-Griha,
2. Tatyra Rama Waingade, deceased,
through Krishna Tatyra Waingade,
aged 26 years,
3. Smt. Chingutai Tatyra Waingade
aged 67 years, all residing at
Ramanand Nagar (Burli),
Taluka Tasgaon, Dist. Sangli.
4. State of Maharashtra
5. The Secretary, Revenue Department,
Mantralaya, Mumbai – 400 032.
6. The Addl. Collector, Sangli, at Sangli. ... Respondents

Mr. B. D. Joshi a/w Ms. Bharti Mahant, Advocate for the petitioner.

Mr. S. D. Rayrikar, A.G.P. for the State.

Mr. Sandesh Patil, Advocate for respondent no.6.

Coram : Smt. R. P. SondurBaldota, J.

Date : 19th October, 2016

JUDGMENT :

1. The petitioner, herein had filed Civil Suit No. 38 of 1979 for partition of the joint family properties consisting of land at Gat No. 1050/1, Gat No. 1050/2, Gat No. 1957, “gharpad” land at Gat No. 1276/B, 1270, 1011, “ganjikhana” land at Gat No. 1276/C and residential house bearing Gram-panchayat House No.84. The defendants to the suit were the parents of the petitioner along with other family members and the purchasers of the property including respondent no.1 herein, who was defendant no.6 to the suit. The petitioner had claimed $\frac{1}{4}$ th share in all the suit properties. Respondent no.1, one of the purchasers had contested the suit to the extent of the lands purchased by him i.e. the land at Gat no. 274 admeasuring 6R from original defendant no.9 to whom respondent no.2, the father, had sold the land on 26th August, 1966. By it's judgment and order dated 28th February, 1989 the trial Court passed the preliminary decree. It declared the petitioners share as of 14/52th and gave following directions as regards the partition.

“Plaintiff is entitled to 14/52th share in the suit properties except 6 areas land, purchased by the defendant no.6 from defendants no.9 originally bearing Survey No.129(a)(1)/1 plus 2 plus 3/4(c)/1 (Gat No.274) described in sale deeds Exhibits 135 and Exhibit 135.

Defendant no.6 is entitled to equities, that the land purchased by him from defendant No.1 be allotted to the share of his alienor i.e. defendant No.1 to the extent of his $\frac{1}{4}$ th share in the entire properties and possession of the properties of 14/52th share of the plaintiff shall be delivered to the plaintiff, out of remaining properties of the defendant No.1.”

Thus the property at Gat no. 274 purchased by respondent no.1 was excluded from partition and the right to and possession of respondent no.1 to the land admeasuring 34R at Gat no.1050 is protected. The record shows that the land admeasuring 34R from Gat no.1050 is already demarcated separately and numbered as Gat no.1050/2. This is evident from the description of the properties stated in the plaint itself. This decree has not been challenged by any party to the suit and thus the preliminary decree stands confirmed.

2. The dispute reflected in the present petition arises out of the application for execution filed by the petitioner being Regular Darkhast No. 49 of 1989. By an order passed in the proceedings, the trial Court directed the Collector, Sangli to take steps for actual partition of the land in accordance with the decree. The District Inspector of the Land Records proposed partition of the properties and Tahasildar, Tasgaon passed his order dated 22nd July, 1993 of partition by metes and bounds and fixed date of 31st July, 1993 for possession. Respondent no.1 challenged the order by way of appeal to the Sub-Divisional Officer since the land admeasuring 34R purchased by him from Gat No.1050 was included by the Tahasildar in the properties to be partitioned thereby depriving the property to respondent no.1. The Sub-Divisional Officer, Miraj, District-Sangli by his order dated 30th November, 1993 dismissed the appeal. Respondent no.1 then preferred appeal under Section 247 of the Maharashtra Land Revenue Code, 1966, to the Additional Collector, Sangli. By his judgment and order dated 31st March, 1994, the Additional Collector allowed the appeal and remanded the matter to the Tahasildar, Tasgaon for allotting the share as per the Court's

order with a specific direction that the Tahasildar, while distributing the land should take care that the share of respondent no.1 to the extent of 34 R in Gat no. 1050 is not affected. The Additional Collector noted the direction given by the Court as regards the portion of the land at Gat No. 1050 purchased by respondent no.1 and observed that the Tahsildar had not followed the instructions given by the Civil Court. Therefore, the matter had to be remanded for allotment of the shares as per the instructions given in the judgment. The petitioners challenged this order before the Additional Commissioner, Pune by way of revision under Section 247 of the Maharashtra Land Revenue Code. The Additional Commissioner dismissed the revision by the judgment and order dated 27th September, 1995. While dismissing the revision, the Additional Commissioner noted that the petitioner was protracting the litigation due to wrong interpretation and comprehension of the judgment of the Civil Court where as a matter of fact, there is no scope for the interpretation sought to be put by the petitioner on the order. He further observed that the intention of the executing body should be that convenience of both the sides should be ensured while implementing the order and at the same time the letter and the spirit of the Civil Court's order should be strictly adhered to. Not being satisfied with the order, the petitioner carried it further by way of revision application to the Secretary and Officer on Special Duty (Appeal), Government of Maharashtra, Revenue and Forest Department. By the detailed order dated 8th October, 1998 his application was dismissed upholding the orders of the Additional Commissioner, Pune and the Additional Collector. In his order the Secretary commented upon not only the conduct of the Tahasildar

regarding the directions of the Court but also on the conduct of the petitioner. The Secretary noted that respondent no.1 after purchase of land admeasuring 34R in Gat No. 1050/2 in the year 1974 constructed a Cinema Theatre thereon. Therefore he had an equitable right to demand that the same be allotted the share of respondent no.2, the father of the petitioner, which right had been recognised by the Court and the necessary direction given. The Secretary observes as follows :

“But the stand taken by the Applicant is basically wrong and inconsistent with the decision of the Court and which cannot be accepted. It appears that the Applicant himself interprets the Judgment of the Court wrongly and unnecessary dispute is created on the point of re-examination.”

“12. The Additional Collector's order is dated 31.3.1994 and accordingly, he has ordered re-examination. But it appears that the Applicant is so stubborn that he has taken objection for re-examination. Though he suffered failure in the revision before the Additional Commissioner, he has place the issue of the said revisional proceedings. In fact, there should not be any objection for re-examination. Though such a re-examination is done, the applicant shall have 14/52 share in the family property as per the Court decision, there cannot be any change. This being the position, it is clear that stubbornness seen on the part of the Applicant is complete indication of his quarrelsome attitude. I feel that it is necessary to put break on such quarrelsome attitude. The revision application would not be successful and I do not see any reason to interfere with the orders of the Additional Collector and Additional Commissioner.”

3. Mr. Joshi, the learned advocate for the petitioners

submits that the District Inspector Land Records and the Tahsildar had in fact obeyed the directions of the trial Court and while effecting the partition of the properties given only 14/52th share to the petitioner. He submits that at the time of actual partition respondent no.1 was not present and the other family members had given specific consent for the partition by metes and bounds as per the proposal of the District Inspector Land Records. According to him, thereafter many of the properties have been transferred by sale by different family members and therefore re-inquiry into partition by metes and bounds by the Tahsildar cannot be carried out. According to him, bare perusal of the order of the Tahsildar is sufficient to note that the Tahsildar had followed directions as regards division of the property at Gat no. 1050.

4. The order of the Tahsildar was passed on 22nd July, 1993. Within a few days thereafter i.e. on 31st July, 1993 respondent no.1 challenged the same by way of an appeal before the Sub-Divisional Officer, Miraj, District-Sangli. Since then the matter has remained subjudice. Besides the trial Court is yet to pass an order of final decree based on the report of the Tahsildar of actual division of the properties by metes and bounds. As such, firstly there could not have been any transfer by any of the family members and secondly any transfer of the properties by the members of the family would be subject to the final decision of the suit. Therefore there can be no substance in the argument that in view of the transfer by the family members re-inquiry into partition is not possible. It is patent that the petitioner has mischievously carried the correct order passed by the Additional Collector to the Additional Commissioner, Pune then

to the Secretary Revenue Department and thereafter to this Court. The observations of the Secretary as regards the conduct of the petitioner are apt and correct. They are required to be and are fully endorsed by this Court. The petition is therefore deserves to be dismissed with exemplary costs. The petition is dismissed. The petitioner shall pay costs quantified at Rs.5,00,000/- to respondent no.1. Costs to be paid within a period of ten weeks from today.

[Smt. R. P. SondurBaldota, J.]