IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2140 OF 1998

Babulal Hamje Khan Pathan
resident of Gulumb, Tal. Wai,
District : Satara, since deceased
by his heirs.

1) Tayyab Khan Babulal Pathan
2) Smt. Hawabi, widow of Babulal Pathan,
(deleted)
3) Ayub Khan Babulal Pathan,
No.1 to 3 residing at Gulumb, Tal. Wai
District : Satara.
4) Smt. Habib Kasam Mujawar
R/o. Kale, Tal. Karad, Dist. Satara
5) Smt. Halima Ahmed Patel, now
deceased through heirs :
a) Ahmed Kamruddin Patel,
aged about 48 years
b) Ajjum Gosiya Ahmed Patel,
aged about 22 years,
c). Amiruddin Ahmed Patel,
aged about 20 years,
d) Sahin Ahmed Patel, aged
about 15 years, through
Ahmed Patel as guardian. All
residing at Kanheri, Taluka
Pargaon Khandala, District
Satara, .....Petitioners
(Applicants)

V/s.

1. Sardar Bandekhan Pathan,
resident of Gulumb, Tal. Wai,
District : Satara, at present
residing at Taximen Co-op.
Society No.7, Block No.13,
L.B.S. Marg, Kurla (East),
Bombay-400 070.

2. Deputy Director of Land Record,
Pune Region, Pune.

3. Settlement Commissioner and Director
of Land Record, Maharashtra State, Pune.

4. Honourable Minister for State (Revenue)
Shri. Jagadish Gupta, Mantralaya,
Bombay-400 032. .....Respondents

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Mr. G.N. Salunke, Advocate for the petitioner.

Mr. P.B. Shah, Advocate for respondent no.1.

**CORAM :- SMT. R.P. SONDURBALDOTA, J.**

**DATED :- 12TH JULY, 2016.**

**JUDGMENT :-**

1). This writ petition challenges the order dated 3rd December, 1997 passed by the Hon'ble Minister for State (Revenue) on the appeal preferred by respondent no.1.

2). The facts stated in brief leading to the present petition are as follows :-

. The two pieces of land being, Survey no.573 admeasuring 9 acres 17 gunthas and Survey No.516/2 admeasuring 4 acres and 26 gunthas, together admeasuring 14 acres and 3 gunthas at Village-Gulumb, Taluka-Wai, District-Satara originally belonged to one, Abbas Babu Pathan. He died leaving behind two sons, Bandekhan and Hamjekhan. In the year 1944, there was partition between the brothers under which, each acquired one-half share in the two properties. Accordingly, the lands in question were sub-divided. Survey No.573/1 admeasuring 4 acres and 28 gunthas and Survey No.576/2-A admeasuring 2 acres and 6 gunthas came to the share of Bandekhan. The land admeasuring 4 acres and 28 gunthas from Survey No.573/2 and land admeasuring 2 acres and 20 gunthas from Survey No.516/2-B came to the share of Hamjekhan. Thus, the total land coming to the share of Bandekhan was 6 acres 34 gunthas and that coming to the share of Hamjekhan was 7 acres and 9 gunthas. The revenue records came to be mutated accordingly on 1st January, 1945 vide Mutation Entry No. 2073.

3). In the year 1957, falni was made for the purpose of making pot hissas and on the basis of the actual cultivation, the lands were divided. Survey No. 573 was divided into Survey no.573/1 to 573/4 and Survey no.516/2 into 516/2A to 516/2D. The area statement after the sub-division reads as under :-

| Survey No. 573 : | Survey No. 516/2 : |
|---|---|
| 573/1 – 4 Acre 23 Gunthas | 516/2A - 27 Gunthas |
| 573/2 - 3 Acre 5 Gunthas | 516/2B – 1 Acre 26 Gunthas |
| 573/3 - 2 Gunthas | 516/2C – 1 Acre 18 Gunthas |
| 573/4 – 1 Acre 27 Gunthas | 516/2D – 2 Acre 5 Gunthas |

The land at Survey No. 573/1 and 573/4 was shown in possession of Bandekhan and Survey No. 573/2 was shown in possession of Hamjekhan. Survey No. 573/3 was shown in common because there is a well situate thereon used in common. Further, the land at Survey No. 516/2A and 516/2C was shown in possession of Bandekhan and the land at Survey No.516/2B and 516/2C in possession of Hamjekhan. The revenue record of 7/12 extract was mutated accordingly. Consequently, the right, title and interest in one-half share in the properties of both the brothers in their respective occupation remained intact.

4). In the year 1970, the Government of Maharashtra introduced Consolidation Scheme, to the village as per the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and Notification dtd. 17th March, 1970 was issued by the Deputy Director of Land Records. The Scheme was published in the official Gazette on 23rd April, 1970 as per the mandatory provision of Sections 19 and 21 of the Consolidation Act. Thereafter certificate of transfer of the allotted lands was issued on 7th November, 1974 as per the provisions of Section 24(1) of the Consolidation Act and registered under the provisions of the Indian Registration Act. Though, the 7/12 extract carried correct division of the properties, there was some mistake while taking entries in "Shet Pustak" and for Survey No. 516/2B, 516/2C and 574. The mistake was in mentioning the names of the parties as the owners. Survey No.516/2A and Survey No.516/2B was shown for Bandekhan and was given Khata No.223. Survey No.516/2C was shown for Hamjekhan and was given Khata No. 471. Survey No.573/4 was shown against the name of Hamjekhan but no Khata number was given to it. Then, Survey No.2A and 2B were consolidated to give Gat No.1491, Survey No.516/2C was given Gat No. 1492 and Survey No.573/4 and 573/2A are consolidated to give Gat No. 1488 thereto. This was not in accordance with "Gunakar Book". Further, in "Shet Pustak", name of Bandekhan was shown for Survey No. 516/B instead of Hamjekhan and for Survey No. 516/2C and 573/4, name of Hamjekhan was shown instead of Bandekhan.

5). Being aggrieved by the order of the Assistant Consolidation Officer as regards the consolidation entries, Bandekhan preferred an appeal before the Consolidation Officer. In the appeal, Bandekhan neither disputed the partition, that took place in the year 1944 nor the terms of the partition i.e. each brother receiving 50% share in the joint property. His objection was only to the manner, in which the division of 50% share was shown by the Assistant Consolidation Officer. By the judgment and order dtd. 30th April, 1986, the Consolidation Officer allowed the appeal and directed the Assistant Consolidation Officer to, (i)Survey no.516/2A and 516/2C to the name of Bandekhan, (ii)retain Gat No.1492 for Survey No. 516/2C, (iii)consolidate Survey No.516/2A with Survey No.573/4 and give Gat No. 1491 to it and further show it in the name of Bandekhan, (iv)show Survey No. 516/2B in the name of Hamjekhan and give it separate Gat number, and (v)retain Survey No.573/2A in the name of Hamjekhan and retain Gat no.1488 for it. Hamjekhan carried the order by way of appeal to the Deputy Director of Land Records, Pune, Pune Region. The Deputy Director, by his judgment and order dtd. 29th December, 1993 dismissed the appeal and confirmed the order of the Consolidation Officer. Therefore, Hamjekhan filed the Revision Application before the Hon'ble Minister of State for Revenue, Government of Maharashtra under Section 257 of Land Revenue Code read with

Section 35 of the Consolidation Act. By the order dtd. 8th February, 1995 passed on the revision application, the matter was remitted to the Settlement Commissioner, Pune for considering the merits under Section 32 of the Consolidation Act. The Settlement Commissioner heard the parties on 13th July, 1995 and by his order dtd. 26th July, 1995 set aside the order dtd. 29th December, 1993 passed by the Deputy Director of Land Records. Being aggrieved by that order, Bandekhan preferred appeal to the Hon'ble Minister for Revenue Mantralaya and the Hon'ble Minister by the order impugned in the petition directed the Collector, Satara to give effect to Falani-12 made in the year 1957 in respect of survey no.573 to implement the order accordingly. As regards survey no.516/2, the matter was remanded for enquiry and after ascertaining whether the Falani-12 had taken place and whether effect should be given to the same in the record of rights. The petitioners, who are the heirs of Hamjekhan, feel aggrieved by this order.

6). In the impugned order, the Hon'ble Minister noted that the partition that took place in the year 1944 has been duly recorded in the revenue records. However, in the year 1955, when actual cultivation was measured, survey no.573 came to be divided in four parts. Though the measurements were signed by the respective parties, the same was not reflected in the revenue records and no attempt for that purpose was also same to be taken. There was no explanation offered by the petitioners for the excess land claimed by Hamjekhan. The same was the situation as regards the survey no.516/2. The consolidation scheme came into effect in the year 1971. The complaint made by respondent no.1 was in the year 1982.

When a grievance was made about the delay in approaching authorities for correction, the Minister noted that in the rural area, a farmer, unless his actual cultivation is disturbed does not resort to any litigation. He noted that all the documents relating to the partition in respect of survey no.573 are available. However, there was doubt as regards the documents concerning the land at survey no.516/2. Therefore, he directed that it was necessary to take proper entries into the revenue records of the partition between the parties and thereafter the consolidation scheme implemented. He, therefore gave the directions consistent to this finding. In my opinion, the impugned order passed by the Hon'ble Minister is a fair and reasonable order and it cannot be said to cause any kind of prejudice to the petitioners. There is no dispute on the part of the petitioners as regards the partition and the terms of the partition i.e. equal division of the properties between two brothers. What is required is, the correct reflection of the partition in the revenue records. The Hon'ble Minister, in fact, could have confirmed the order dated 30th April, 1986 of the Consolidation Officer. The order instead reflects more caution. Thus, there is no infirmity whatsoever in the impugned order. The petition is therefore dismissed.

7). At the request of Mr. Salunkhe, the learned Advocate appearing for petitioners, the interim order dated 18th September, 1998 is extended for a period of 8 weeks from today.

**(SMT. R.P. SONDURBALDOTA, J)**