

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

WRIT PETITION NO. 414 OF 2016

Abdul Gani Fazalkhan

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....
Mr. A.B. Kale, Advocate for petitioner.

Mr. P.F. Patni, Advocate for Respondent Nos. 6 to 8.

....

**CORAM : RAVINDRA V. GHUGE, J.
DATED : 31st JULY, 2017**

ORDER :

1. The petitioner has put forth a prayer below clause 16B which reads as under:-

“The judgment and order passed by the then Tahasildar Gangapur, dated 17.03.1999 and the judgment and order dated 13.3.2000 passed by the Ld. Sub Divisional Officer Aurangabad, in appeal No. 2000/ROR/A/06 and the judgment and order dated 28.8.2012 in ROR.REV/92/2008 passed by the Dy. Commissioner, Aurangabad and judgment and order passed by the Hon'ble Minister dated 19.9.2014 in APPEAL/2013/CASE 241/J05 and the judgment and order passed by the Additional Commissioner in review petition No. 07/2014/A dated 16/12/2015 may kindly be quashed and set aside.”

2. I have considered the submissions of the learned Counsel for the respective sides. A family tree is prepared by the learned Counsel for the petitioner which is placed on record. Since the same is not disputed, it is marked as "X" for identification and shall be a part of this order.

3. Fazal Khan is the original owner of the land Gut No. 214 in Mauje Bhendala, Tq. Gangapur, Dist. Aurangabad. Fazal Khan passed away in 1962. Admittedly his legal heirs are Abdul Raheman – elder son, Abdul Gani – second son and seven sisters by name Maharajbi, Fatemabi, Saberabi, Akhtarbi, Taherabegum, Habibabi and Sagirabi.

4. It is stated that Abdul Raheman is a special person and is not of a stable mind. The Mutation Entry No. 648 was entered on 10th June, 1978 showing the names of both the sons and their seven sisters after the passing away of Fazal Khan. It is undisputed by the parties that under the Muslim Law unless Fazal Khan would have passed away, none of these seven siblings would have any right to claim any of his movable and immovable properties. It is equally undisputed that Shahajadibegum, during the life time of his husband - Abdul Raheman, cannot have any right over the properties and cannot claim the shares of Abdul Raheman when he is still alive.

5. The impugned Mutation Entry No. 1691 dated 17th March, 1999 is apparently passed on two facts as under:-

A) The application for seeking an alteration in the mutation entry was filed by Shahajadibegum and her husband Abdul Raheman is not a signatory and is not before the revenue authorities.

B) The said mutation entry is based on the judgment of the Civil Court in R.C.S. No. 125 of 1992, copy of which is shown by the petitioner, that indicates that it is a matter between Prabhakar Hariharrao Sadavarte and Dinkar Hariharrao Sadavarte Vs. Pandurang Hariharrao Sadavarte and Bhaskar Laxmanrao Pathe with regard to the land Gut No. 43 in village Nawabpur, Tq. Gangapur, Dist. Aurangabad.

6. Mr. Patni, learned Counsel for the respondents submits that R.C.S. No. 125 of 1992 is wrongly mentioned in the impugned mutation entry. He submits that it could be read as R.C.S. No. 135 of 1992 which was decreed by order dated 17th July, 1992 on the compromise terms dated 17th July, 1992 filed by the litigating sides which includes Abdul Gani Fazal Khan and the sons of Abdul Raheman. Upon going through the copy of the decree, I find that it is with reference to the Gut No. 80/2 at village Bagadi, Tq. Gangapur, Dist. Aurangabad. This decree has nothing to do with the land at Bhendala which is a subject matter of the first Mutation Entry No. 648 dated 10th June, 1978 or the impugned Mutation Entry No. 1691 dated 17th March, 1999.

7. It is therefore apparent that under the Muslim Law, neither Shahajadibegum could have made any application for alteration in the mutation entry, much less claim any right or title or interest over the suit property during the life time of her husband Abdul Raheman.

8. It is altogether a different issue that if Abdul Raheman is said to be of unstable/unsound mind, what would be the procedure for Shahajadibegum to follow in order to step into the shoes of Abdul Raheman during his life time. I am not required to deal with the said aspect since the record does not reveal that any legal procedure as may be permissible in law, was followed by Shahajadibegum so as to step into his shoes during the lifetime of Abdul Raheman. So also, the names of the seven sisters could not have been eliminated from the impugned mutation entry merely because Shahajadibegum claims 50% of the share in the property, considering the provisions under the Muslim Law and as it is undisputed that the property of the deceased Fazal Khan would be divided into three portions, each going to Abdul Raheman, Abdul Gani and $\frac{1}{3}^{\text{rd}}$ share to the seven sisters or as is permissible under the Muslim Law.

9. Considering the above, this petition is allowed in terms of prayer clause (B) reproduced above. However, it is made clear that Respondent No.5 –

Tahsildar, Gangapur shall be extremely careful and cautious while considering any application from any legal heir for seeking alteration in the mutation entry with regard to the land Gut No. 214 admeasuring 31 Acre 19 Gunthas at village Bhendala, Tq. Gangapur, Dist. Aurangabad and shall follow the procedure laid down in law before effecting any change in the mutation entry and after hearing all the parties concerned as is observed above. Until then, the earlier Mutation Entry No. 648 dated 10th June, 1978 shall continue and shall be subject to a change only by following the procedure as mentioned above. In the event of any pending Civil Court proceedings between the parties, the mutation entry shall then be covered by the judgment / decree of the Civil Court in such litigation.

10. Needless to state, any of the competent persons who are the legal heirs of the deceased Fazal Khan, would be at liberty to make an application for alteration of the Mutation Entry No. 648 dated 10th June, 1978, if it is so permissible in law and the same shall therefore be dealt with in accordance with law, in the light of the contentions of the litigating sides and in the light of the observations recorded above.

(RAVINDRA V GHUGE, J.)

SSD