IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3321 OF 1996

1 Gangubai Digambar Kotmad,
Age Major, Occupation Agri,
R/o Kuntoor, Taluka Biloli,
District Nanded.

2 Janabai Rama Kotmad,
Age : Major,
Occupation : Agri,
R/o as above.

...PETITIONERS

-VERSUS-

1 Nagnath Mahajan Kotmad,
Age : Major,
Occupation : Agri,
R/o Kuntoor, Taluka Biloli,
District Nanded.

2 Mahajan Khirappa,
Age : Major,
Occupation : Agri,
R/o as above.

3 The State of Maharashtra.
(formal party).

...RESPONDENTS

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Advocate for the Petitioners : Shri G.N.Chincholkar.
Advocate for Respondents 1 and 2 : Shri P.P.Mandlik.
AGP for Respondent 3/ State : Shri S.K.Tambe.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 11th December, 2017

<u>Oral Judgment</u> :

1 During the pendency of this petition, it is informed that, Petitioner No.1 (Gangubai Digambar Kotmad) has compromised with Respondent No.2 (Mahajan Khirappa Kotmad). Consequentially, the land Gat No.407 has been handed over by Petitioner No.1 (Gangubai) to Respondent No.2 (Mahajan Khirappa Kotmad) and the dispute between these two parties is now settled. Petitioner No.1, therefore, is not prosecuting this petition.

2 By the compromise purshis filed in this Court dated 09.07.1998 in between Petitioner No.1 (Gangubai) and Respondent No.2 (Mahajan Khirappa), Gangubai has handed over 0.81 R in Gat No.407 to Respondent No.2 (Mahajan Khirappa), who in turn, has handed over 0.30 R in Gat No.406 to Petitioner No.1 (Gangubai). It is mentioned that Respondent No.2 has given the land to the extent of 0.92 R from Gat No.870 and Petitioner No.1 is the owner and possessor of the above lands. Mutation Entry No.754 would, therefore, be binding upon Petitioner No.1 Gangubai and Respondent No.2 (Mahajan Khirappa).

3 Shri Chincholikar, learned Advocate for the Petitioners, submits that the dispute survives between Petitioner No.2 (Janabai) and Respondent No.1 (Nagnath Mahajan Kotmad) with regard to the land Gat No.327.

4 The Additional Divisional Commissioner, by his judgment dated 02.12.1995, delivered under Section 257 of the Maharashtra Land Revenue Code, 1966 in Case No.1994/Rev/R-245, which is a revision petition preferred by the two Respondents herein, has concluded that there were three registered sale deeds in between 1966 to 1979. There was no contention by the litigating sides that the lands included in the three registered sale deeds were purchased out of the joint family property funds or that they were shown out of the common hotchpotch of the joint/ undivided family.

5 Shri Chincholkar submits that Respondent No.1 was about 3 to 4 years old when the sale deeds were registered. The record reveals that while Mutation Entry No.754 was mutated on 12.08.1992 with regard to both lands Gat Nos.327 and 407, it was so done on the basis of the registered sale deeds. Shri Chincholkar submits that Petitioner No.2 (Janabai) is now not only praying for setting aside the Mutation Entry, but she is also agitating for her right and title over the land Gat No.327.

6 This Court has concluded, in the matter of *Shrikant R. Sankanwar and others vs. Krishna Balu Naukudkar, 2003 (3) BCR 45,* that the mutation entries are meant only for fiscal purposes and they do not decide the right, title or interest of any person over the land. While carrying out the mutation entry, the best evidence available is to be scrutinized.

7 In the instant case, Respondent No.1 (Nagnath) had purchased the land Gat No.327 from Hanumant Ramchandra Ritewad in 1977. Respondent No.2 (Mahajan Khirappa) had purchased the land Gat No.407 from Venkat Nagoba Adkine. This was done on the basis of the registered sale deeds. Petitioner No.2/Janabai now contends that the said property was purchased from the joint family property earnings and she, therefore, has a share in the said property since it being purchased out of the earnings of the ancestral property.

8 In my view, keeping the law laid down in Shrikant Sankanwar (supra) in focus, the right, title and interest in respect of the immovable property cannot be decided at the hands of the Revenue authorities and surely not on the basis of the Mutation Entry. If Petitioner No.2/Janabai has any interest in the said land and desires to lay her claim to the portion of the property on the basis of her contention that it is ancestral property or purchased out of the earnings of the ancestral property, she would have to file a suit for seeking partition, separate possession and declaration.

9 Considering the above, though Mutation Entry No.754 taken on 12.08.1992 may not be faulted insofar as the fiscal purposes are concerned, I find that Petitioner No.2/ Janabai is now left with no option, but to prefer appropriate proceedings before the appropriate Civil Court for seeking a declaration of her title over the property bearing Gat No.327.

10 In the light of the above, this Writ Petition is disposed of with

liberty to Petitioner No.2/ Janabai to initiate appropriate proceedings before the appropriate competent civil court for the redressal of her grievance.

11 Needless to state, considering the law laid down by this Court in Shrikant Sankanwar (supra), all mutation entries shall be subject to the result of the adjudication in the civil suit.

12 Rule is discharged.

kps (**RAVINDRA V. GHUGE, J.**)