IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2787 OF 2002

1. Abasaheb s/o. Kashinath Jadhav .. Petitioners
   died – through LRs.

   1A. Kalyan s/o. Abasaheb Jadhav,
   Age. 48 years, Occ. Agri.,
   R/o Kachner, Tq. & Dist. Aurangabad.

   1B. Suresh s/o. Abasaheb Jadhav
   Age. 42 years, Occ. Service,
   R/o. Madha Colony, Opp. Dhoot Hospital,
   House No.364, Mukumdwadi, Aurangabad.

   1C. Bharti w/o. Dattatraya Pawar,
   Age. 35 years, Occ. Household,
   R/o.Nevargaon, Tq. Gangapur,
   Dist. Aurangabad.

   1D. Vinod s/o. Abasaheb Jadhav
   Age. 32 years, Occ. Agri.,
   R/o. Kachner, Tq. & Dist. Aurangabad.

2. Bhagwan Roopchand Jadhav
   Age. 70 years, Occ. Agri.,
   Resident of Kachner,
   Tq. & Dist. Aurangabad.

Versus

1. Smt. Meerabai w/o. Bappasaheb Jadhav.. Respondents
   Age. 47 years, Occ. Agri. & Household,
   Resident of Kachner,
   Tq. & Dist. Aurangabad.

2. The Additional Commissioner, Aurangabad, (Revenue) Commissioner's Officer, Aurangabad.

3. The Assistant Collector, Collectorate Office, Aurangabad, Tq. & Dist. Aurangabad.

4. The Additional Collector, Collectorate Office, Aurangabad, Tq. & Dist. Aurangabad.

5. The State of Maharashtra

Mr.N.K. Kakade, Advocate for the petitioners.
Mr.S.R. Yadav (Lonikar), A.G.P. for respondent/State.

CORAM : S.B. SHUKRE,J.
DATED : 21.03.2017

ORAL JUDGMENT :-

1. Heard Mr.Kakade, learned Counsel for the petitioners and Mr. S.R. Yadav (Lonikar), AGP for respondent Nos.2 to 5. None appears for respondent No.1 though duly served for final hearing.

2. The question involved in this petition is as to whether inspite of findings recorded by the Civil Court that the portion of land Gat No.498 admeasuring 4 acres has been validly purchased by petitioner No.2 from the husband of respondent No.1 and thereafter on account of valid transfer made to the petitioner No.1 by petitioner

No.2, the petitioner No.1 is in possession of the said portion of land Gat No.498, which has attained finality, could Revenue authority upset this finding by setting aside the second Mutation Entry No.538 recorded on 24.04.1981, in the name of petitioner No.1 or not.

3. According to the learned Counsel for the petitioners, in the face of finding recorded by the Civil Court, which has attained finality, this could not have been done by the Revenue Authorities. Learned AGP submits that appropriate orders be passed in this case in the light of the applicable law.

4. It is contention of petitioner No.1 that he had purchased the subject land from petitioner No.2, in the year 1981 and thereafter the subject land was mutated in his name in the revenue record vide mutation entry No.538. Petitioner No.2 had purchased this land from the husband of respondent No.1 by registered sale-deed executed on 14.04.1980, on the basis of which, the subject land was mutated in his name vide Mutation Entry No.498 dated 20.05.1980.

5. In the year 1985, respondent No.1 had filed a Civil Suit being R.C.S. No.818 of 1985 for seeking declaration that sale-deed dated 14.04.1980 executed by

the husband of respondent No.1 in favour of petitioner No.2 was null and void as at the time of execution of sale-deed, her husband was lunatic. In this suit, respondent No.1 had also sought possession of the subject land from the petitioners. This suit was dismissed by the Civil Court on 30.09.1987. One of the issues framed in this suit was whether or not the husband of respondent No.1 was lunatic at the time of execution of sale deed dated 14.04.1980 and this issue was answered in the negative. In other words, the suit was dismissed by the Civil Court holding that respondent No.1 could not prove that her husband was lunatic at the time of execution of sale-deed dated 14.04.1980 in favour of petitioner No.2. The judgment and decree were carried in appeal by respondent No.1 before the Court of District Judge by filing R.C.A. No.40 of 1988. This appeal was dismissed on 25.01.1990. The order of the learned District Judge was carried further in the Second Appeal being Second Appeal No.149 of 1991 and this Court also dismissed the Second appeal on 24.07.2014. Thus, the decree of the Civil Court passed in R.C.S. No. 818 of 1995 became final which had effect of upholding validity of sale-deed dated 14.04.1980 as well as legality of possession of the petitioners in respect of the subject land.

6. I must say that the facts so narrated above are

admitted ones. Learned AGP has also nothing to say about these admitted facts. So, the position now is that the admitted facts empathetically indicate that firstly petitioner No.2 and subsequently petitioner No.1 validly acquired the title to the subject land being the portion of Gat No.498 admeasuring 4 acres, from husband of respondent No.1 and accordingly were also validly put into possession of the same. If this is so, there was no reason for the Revenue Authority to upset the second Mutation Entry No.538 only on some technical ground that while recording this entry, respondent No.1 was not noticed. In-fact, respondent No.1 can be presumed to have had notice of these proceedings as she had subsequently filed a Civil Suit being R.C.S. No.818 of 1985 seeking declaration that sale-deed dated 14.04.1980 was null and void. Even otherwise, after having lost all claims regarding ownership and possession in respect of the subject land, there was no reason for the Revenue Authorities to have re-opened the case and upset Mutation Entry No.538. Such action on the part of the Revenue Authority amounts to interference with the findings recorded by the Civil Court, which have attained finality. Therefore, the impugned orders which are order dated 11.11.1998 passed by the S.D.O. in Appeal No. 15 of 1998, order dated 04.03.1999 passed by the Additional Collector in S.A. No.68 of 1998 and order dated

28.02.2002 passed in Revision Application by the Divisional Commissioner, are against well settled principles of law and these cannot be upheld. In the result, I am of the view that the writ petition deserves to be allowed.

7. The writ petition is allowed with costs. The impugned orders are quashed and set aside. Mutation Entry No.538 is confirmed and restored accordingly. Rule is made absolute in above terms.

[S.B. SHUKRE,J.]