

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

WRIT PETITION NO. 9194 OF 2017

Hari Tukaram Birajdar,
Age: 69 years, Occupation Agriculture,
Resident of : Jekekur Tq. Omerga,
District Osmanabad.

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through : Additional Commissioner,
Aurangabad Division At Aurangabad.
2. Sadu Venkatrao Birajdar (Died)
Through L.Rs.
- 2-A. Balaji Sadu Birajdar,
Age: 38 years, Occupation Agriculture,
Resident of : Jekekur Tq. Omerga
District Osmanabad.
- 2-B. Arun Netaji Murde,
Age: 35 years, Occupation Household,
Resident of : Kondji Tq. Omerga
District Osmanabad.
- 2-C. Kiran Vitthal Bhosale,
Age: 31 years, Occupation Household,
REsident of : Horti Tq. Tuljapur
District Osmanabad.

...RESPONDENTS

Mr. M. B. Kolpe, Advocate for the petitioner .
Mr. S. N. Kendre, AGP for the respondent No.1.
Mr. V. R. Jain, Advocate for respondent No.2.

CORAM : SUNIL P. DESHMUKH, J.

DATE : 31st JULY, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the appearing parties finally, by consent.

2. Mr. V. R. Jain, learned advocate appearing for respondent No.2-A on instructions from respondent No.2-A states that, he will file his power on behalf of respondents No.2-B and 2-C.

3. The petition is moved against order dated 15-04-2017 in proceedings bearing No. ROR/ REV /345 /2014. In 1960, partition between brothers had taken place and land bearing Gut No. 64/1 fallen to the share of father of present petitioner. It is his case that, some spurious record has been created in the year 1997 referred to as consent letter in respect of 47 Are land from Gut No.64/1 and consequently mutation entry bearing No.1853 dated 03-06-1999 had been effected. Same was subjected to challenge under Section 247 of Maharashtra Land Revenue Code, 1966 vide appeal bearing File No.2001/ROR/A-45 before Sub-Divisional

Officer, who had dismissed petitioner's request. Appeal against said order preferred bearing file No.60/RTS-59/2003 had been before Additional Collector at Osmanabad. Appeal came to be allowed and request of petitioner came to be accepted.

4. Against aforesaid order, deceased Sadu Venkatrao Birajdar had preferred revision application bearing No.162/2005 before Additional Commissioner, Aurangabad, and the same had been dismissed under order dated 16-09-2014.

5. Thereafter, said Sadu Venkatrao Birajdar had purportedly filed review petition No.345/2014 before Additional Commissioner, Aurangabad. The matter had been prosecuted through the power of attorney holder. During pendency of the review petition it appears that Sadhu Venkatrao Birajdar died on 09-06-2015. However, said position had not been recorded in the matter.

6. It appears that, no further steps had been taken after death of Sadhu Venkatrao Birajdar and decision has been rendered on 15-04-2017. In view of aforesaid undisputed position, it appears that review application stood abated for want of steps after death

of Sadu Venkatrao Birajdar. As such, decision dated 15-04-2017 is untenable and the same cannot be maintained.

7. In view of aforesaid, the writ petition is allowed. Order dated 15-04-2017 in review petition No. 345/2014 is set aside. However, this decision would not be impediment for the legal heirs of deceased Sadu Venkatrao to make an approach as would be advised in accordance with law. Rule made absolute accordingly.

(SUNIL P. DESHMUKH, J.)

vjg/-