

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8938 OF 2014

1. Gorakshanath s/o Laxman Darandale,
Age-38 years, Occu-Agriculturist,
2. Vasant s/o Laxman Darandale,
Age-33 years, Occu-Agriculturist,
3. Bhimabai Laxman Darandale,
Age-76 years, Occu-Agriculturist,

Petitioner Nos. 1 to 3 are r/o Old
Wambhori Road, Sonai, Tq.Newasa,
Dist.Ahmednagar

4. Kusumbai Bhausahab More,
Age-49 years, Occu-Household,
R/o More Chincholi, Tq.Newasa,
Dist.Ahmednagar,
5. Ushabai Pandharinath Dhokne,
Age-47 years, Occu-Household,
R/o Umbre, Tq.Rahuri,
Dist.Ahmednagar,
6. Ashabai Macchindra Kakad,
Age-27 years, Occu-Household,
R/o Jorure, Tq.Sangamner,
Dist.Ahmednagar,
7. Kalpana Babasaheb Rajdeo,
Age-34 years, Occu-Household,
R/o Bramhani, Tq.Rahuri,
Dist.Ahmednagar

-- PETITIONERS

VERSUS

1. Subhash s/o Laxman Darandale,
Age-54 years, Occu-Service,
R/o Sonai, Tq.Newasa,

Dist.Ahmednagar,

2. The Tahsildar, Newasa,
Tq.Newasa, Dist.Ahmednagar,

3. Sub Divisional Officer,
Ahmednagar,
Tal. and Dist. Ahmednagar

-- RESPONDENTS

Mr.R.K.Temkar, Advocate for the petitioners.

Mr.A.B.Kale, Advocate for respondent No.1.

Mr.N.T.Bhagat, AGP for respondent Nos. 2 and 3.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 12/07/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioners are aggrieved by the order dated 23/05/2014 delivered by respondent No.3 / Sub-Divisional Officer condoning purported delay of about 3 years and 3 months.

3. I have considered the extensive submissions of the learned Advocates for the respective sides and the learned AGP on behalf of the State Authorities.

4. The order passed in Partition Case No.SR 231/2009 is with

regard to land Gat No.3376/1 at village Sonai, Tal.Newasa. The said order has been passed u/s 85 of the Maharashtra Land Revenue Code (Hereinafter referred to as M.L.R. Code). Revenue entries have been altered by the said order purportedly on the application filed by respondent No.1. Respondent No.1 contends that he had never made such an application and that application which has been dealt with by respondent No.2 u/s 85, carries false and bogus signatures of respondent No.1. In short, the factum of filing of the application is questioned.

5. Respondent No.1, however, preferred RCS No.108/2012 (Old No.393/2010) on 06/07/2010 before the Civil Court. The suit was for declaration and partition. However, respondent No.1 specifically raised an issue of the same Mutation Entry No.26324, which has been carried out by respondent No.2 u/s 85 of the M.L.R.Code. It was specifically averred that the partition Case No.231/2009 was a false case.

6. The Trial Court dealt with the said aspect by specifically framing issue No.2 and concluded that respondent No.1 has failed in proving that the said application i.e. Partition Case No.231/2009 was a false proceeding. Similarly, issue Nos. 3 and 4 were framed to

consider whether the partition case No.231/2009 would not be binding on respondent No.1 and the Trial Court concluded that respondent No.1 has failed in establishing that the result of the said case would not be binding upon him. It is stated that a Reg.Civil Appeal No.60/2015 for challenging the judgment of the Trial Court dismissing the suit of respondent No.1 dated 17/10/2015, is pending adjudication.

7. It is, therefore, crystal clear that the issue which was dealt with by the Trial Court by judgment dated 17/10/2015 and which is subject matter of the pending appeal, is also the issue raised by respondent No.1 before respondent No.3 in which the delay has been condoned by the impugned order. There cannot be two adjudicatory processes for the same cause of action and moreso when the said issue is subject matter of the civil proceedings. Keeping in view the law laid down by this Court in the matter of Shrikant R.Sankanwar and others Vs. Krishna Balu Naukudkar [2003(3) Bom.C.R.45], the conclusions of the Civil Court as regards the rights and title of the litigating sides would directly affect the mutation entries and would be binding upon the revenue authorities.

8. At this juncture, it is informed by Mr.Kale, learned Advocate for

respondent No.1, on instructions, that RCA No.60/2015 has been filed.

9. Considering the above, this petition is partly allowed by keeping the impugned order of condonation of delay dated 23/05/2014 in abeyance till the civil proceedings between the parties are concluded. Respondent No.3 is, therefore, restrained from registering the appeal of respondent No.1.

10. Needless to state, the decision of the civil proceedings will be binding upon all the revenue authorities with regard to the mutation entries and the revenue case. Until then, the litigating parties shall not alienate the suit property and will not create third party interests.

11. Rule is made partly absolute in these terms.

(Ravindra V.Ghuge, J.)