

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.703 OF 2014

1. Manikchand Hiralal Nahar,
Age-55 years, Occu-Agriculturist
and Business,
2. Vaibhav Manikchand Nahar,
Age-33 years, Occu-Agriculturist
and Business,
3. Vivek Manikchand Nahar,
Age-32 years, Occu-Agriculturist
and Business,

All are R/o Wadwani,
Tq.Wadwani, Dist.Beed

-- PETITIONERS

VERSUS

1. The State of Maharashtra,
Through, the Additional Commissioner,
Aurangabad Division Aurangabad,
2. The Additional Collector, Beed,
Tq. and Dist. Beed,
3. The Sub Divisional Officer, Beed,
Tq. and Dist. Beed,
4. Bharat Abhimanyu Jagtap,
Age-Major, Occu-Business,
R/o Wadwani,
Tq. Wadwani, Dist.Beed

-- RESPONDENTS

Mr.A.B.Kale, Advocate for the petitioners.
Mr.B.V.Thombre and Mr.B.R.Sable, Advocates for respondent No.4.
Mr.S.K.Tambe, AGP for respondent Nos. 1 to 3.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 15/06/2017

ORAL JUDGMENT :

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

2. I have considered the strenuous submissions of the respective sides.

3. Two interesting factors emerge in this petition. Firstly, that respondent No.4, who has nothing to do with the property mentioned in the 7/12 extract, claims a right to be heard before carrying out mutation entries with regard to the partition and allotment of portions of the land *interse* the family members of an erstwhile undivided Hindu family. Secondly, respondent No.2 / Additional Collector, Beed has set aside the mutation entry No.735 in opposition to the law laid down by the learned Division Bench of this Court in the matter of Arvind Yeshwantrao Deshpande Vs. State of Maharashtra and others [2003(3) Mh.L.J. 1039] on the basis of which the Director General of Registration and Stamps, State of Maharashtra has issued guidelines dated 10/05/2006 which have also been violated by respondent No.2.

4. There is no dispute that respondent No.4 is not in any way related to the petitioners and has no concern of any nature whatsoever with land admeasuring 3 Hectres 7 R situated in Gat No.168 at village Kanhapur, Tal.Wadwani, Dist.Beed. The controversy at issue has its roots in petitioner No.2 and respondent No.4 having applied for allotment of a petrol pump and for which purpose, the petitioner No.2 had submitted the mutation entry No.735 to indicate that he has a title and interest in a portion of land which he desires to utilize for the purposes of establishing the petrol pump. Respondent No.4, in order to scuttle the chances of petitioner No.1 in getting allotment of the petrol pump, has raised a dispute before respondent No.3. Record reveals that respondent No.3, while passing the order dated 05/11/2012, has heard respondent No.4.

5. The petitioners contend that the land at issue was divided amongst themselves and was thus partitioned. The partition deed was reduced into writing on Rs.100/- non-judicial stamp paper. Based on the said partition deed, which is admittedly not registered, the parties moved for seeking a mutation entry in terms of such allotment of shares amongst the family members which comprise of the petitioner No.1 father and petitioner Nos. 2 and 3 sons. In the light of 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] and considering the partition deed as a best piece of evidence, the competent revenue authority proceeded to carry out the mutation entry No.735.

6. Respondent No.4 has interjected in the matter and moved the higher authority on the ground that the partition deed was not registered and hence it has no probative value. On a grievance raised by respondent No.4, the Additional Collector, by order dated 31/08/2012, apparently lost sight of the fact that respondent No.4 had no locus to question the mutation entry when all shareholders of the land at issue were before the revenue authority and there was no dispute *interse*. Respondent No.2 has interfered with the mutation entry on the ground that the partition deed was not registered and hence it had no probative value.

7. The learned Division Bench of this Court in Arvind Deshpande case (supra), by placing reliance upon the judgment of the Hon'ble Supreme Court in the matter of Digambar Adhar Patil Vs. Devram Girdhar Patil [AIR 1995 SC 1728], has specifically observed in paragraph Nos. 2, 3, and 4 as under :-

“2. Shri Deshpande, learned Counsel for the petitioner, states that petitioner, his brother and father were jointly owning the property. The father of the petitioner, who was Karta of the joint Hindu family, partitioned the property on 1-4-1995. The partition was oral, which was reduced to writing on 12-6-1996. The petitioner got property of Mouza Anjankhed. The petitioner moved an application to the Talathi to take mutation entry of Gat No. 2 in his name as per oral partition. However, Talathi has not passed any order on the said application. The learned Counsel further states that Talathi is raising an objection that the document, i.e. deed dated 12-6-1996, which demonstrates oral partition is not a registered document and, therefore, is not allowing the application of petitioner for mutation.

3. Learned Counsel Shri Deshpande further states that the joint family property received by the coparcener in the partition is not a transfer and for this purpose, the learned Counsel is relying on the judgment of the Apex Court in *The Commissioner of Income Tax, Gujarat v. Keshavlal Lallubhai Patel*, . Similarly, it is further contended that since it is not the transfer, it is not necessary to register the deed of transfer. In support of this contention, reliance is placed by the learned Counsel on the judgment of the Apex Court in *Digambar Adhar Patil v. Devram Girdhar Patil* (died) and Anr.,

4. In view of above referred decisions of the Apex Court, it is clear that the property received by the coparcener in the partition of joint Hindu family property is not a transfer and, therefore, registration of transfer deed is not necessary. We direct the respondents to dispose of the application of the petitioner for

mutation according to law, without insisting on registration of the document. With these observations, the petition is disposed of."

8. Based on the conclusions of this Court in the case of Arvind Deshpande (supra), the competent authority issued a circular dated 10/05/2006 clearly indicating that when undivided Hindu family members desire to partition the land and seek mutation entries on the basis of such partition deed, the Revenue Authorities shall not insist on the partition deed being registered as a pre-condition for considering it as a foundation for effecting mutation entries. By the said circular, clauses 1 and 3 of the earlier circular dated 26/05/1995 were set aside.

9. Apparently in the light of this crystallized position, the impugned order issued by respondent No.2 dated 26/04/2013 is unsustainable. For the same reasons, the judgment of the Revisional Authority / respondent No.1 Additional Commissioner, Aurangabad dated 16/12/2013 is also rendered unsustainable.

10. I find it surprising that respondent No.1 and 2 Authorities, who had the assistance of the law laid down by this Court in Arvind Deshpande case (Supra) and the circular of their own Department

dated 10/05/2006, have ignored the ratio laid down in the said judgment of this Court and on the basis of which the circular was issued by the State Government. The said circular was in force for about 7 years when the issue was decided by the said Authorities. So also, they have failed to assess that respondent No.4 was challenging the mutation entry without any *locus-standi* and yet these authorities have entertained the challenge which is obviously with ulterior motives.

11. Learned Advocate for the petitioners prays for costs from the State Authorities as well as respondent No.4. Learned AGP submits on behalf of the State that the impugned orders are an outcome of an 'error in judgment' and there is a possibility that either the petitioners have not cited the said judgment and the circular before the Authorities or the same was not brought to their notice. He submits that the petition does not contain any averments of malafides against the State Authorities.

12. Learned Advocate for respondent No.4 submits that he is a poor agriculturist and because of his desire to seek allotment of a petrol pump, he had initiated litigation as he was under a bonafide belief that the mutation entry was acquired by the petitioners.

13. I find that the submissions of the learned AGP could not be brushed aside as there is a possibility that respondent Nos. 1 and 2 may have suffered an error in judgment. Malafide intentions are not attributed to their conduct. However, respondent No.4 cannot be absolved of his conduct since, in order to weaken the chances of the petitioners and obtain allotment of the petrol pump, he has initiated litigation against the petitioners so as to create suspicion about the mutation entry which would result in the disqualification of the petitioners. He almost succeeded in his design since he had two impugned orders in his favour. I, therefore, find it fit and proper to impose costs of Rs.25,000/- (Rs. Twenty Five thousand only) on respondent No.4 to be paid to petitioner No.2 who was the applicant for the allotment of the petrol pump.

14. This petition is, therefore, allowed in terms of prayer clause 'C' and 'D' which read as under :-

"C. To quash and set aside the order dated 16/12/2013 passed by the Additional Commissioner, Aurangabad Division, Aurangabad in Revision No.364/2013/B.

D. To quash and set aside the order dated 26.04.2013 passed by the Additional Collector, Beed in file No.2012/C.D./Appeal/CR-65 and also the order passed by the

Sub-Divisional Officer, Beed in File No.2012/R.O.R/69 dated 05.11.2012 and for that purpose issue necessary orders.”

15. The mutation entry No.735 in land Gat No.168 of village Kanhapur, Tal. Wadwani, Dist.Beed stands restored. Respondent No.4 shall pay an amount of Rs.25,000/- as costs to petitioner No.2 by depositing the same in this Court within a period of 3 (three) months from today, failing which the said amount shall attract interest @ 6% p.a. from the date of judgment of this Court till the amount is actually paid. On depositing, petitioner No.2 can withdraw the said amount on identification by the learned Advocate.

16. Rule is made absolute in the above terms.

(Ravindra V.Ghuge, J.)