

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10761 OF 2015

Shri. Vitthal Bandu Lokhande and others ..Petitioners
Versus

Smt. Tarabai Pilu Shinde
**(Since deceased through her heirs &
legal representatives)**

Smt. Rukmini Bhiku Kalokhe and others ..Respondents

Mr. Dilip Bodake for the Petitioners.

Mr. M. S. Athalye for the Respondent Nos.1 and 2B to 2D.

Mr. S. D. Rayrikar, AGP for the Respondent Nos.3 to 7.

CORAM : R. M. SAVANT, J.

DATE : 1st MARCH, 2017

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 29.04.2013 passed by the Revisionary Authority i.e. the Principal Secretary and Officer on Special Duty (Appeals), by which order, the Revision filed by the Petitioners came to be dismissed and thereby the order dated 01.07.2000 passed by the Additional Commissioner, Pune Division, Pune, came to be confirmed.

2 The said orders have been passed in RTS proceedings arising out of the mutation entries being Nos.4091 and 4253 which were entered in favour of the Respondent No.1 herein. The Respondent No.1 herein is the original Plaintiff who had filed a suit for partition being Regular Civil

Suit No.96 of 1976 which came to be decreed and the Respondent No.1 Tarabai was held entitled to 1/24th share in the suit property. The said Tarabai thereafter filed Regular Darkhast No.192 of 1982 after following the gamut of process by the Tahsildar the partition statement showing the share of the Respondent No.1 in the lands in question. It is on the said basis that the mutation entry No.4091 was effected in respect of the Survey No.43/2 admeasuring 23 R which was the entitlement of the said Tarabai. The said mutation entry was challenged by the Petitioners by filing an Appeal before the Sub Divisional Officer. The Sub Divisional Officer set aside the mutation entry and remitted the matter back to the Tahsildar for a de-novo enquiry. The Respondent No.1 herein filed two Appeals i.e. RTS No.168 of 1994 and RTS No.169 of 1994 under Section 247 of the Maharashtra Land Revenue Code, 1966. The said Appeals were dismissed on the ground that the National Highway was going through the said land and therefore it was necessary to consider the said aspect prior to the preparation of the partition statement.

3 Aggrieved by the order dated 01.12.1998 passed by the Additional Collector, the Respondent No.1 filed a Revision Application before the Divisional Commissioner. The Revision Application was based on the fact that the mutation entry Nos.4091 and 4253 are based on the decree of the Civil Court and therefore the said mutation entries could

not be interfered with. The Revision filed by the Respondent No.1 came to be allowed by the order dated 01.07.2000 and thereby the orders passed by the Additional Collector and Sub Divisional Officer were set aside and the mutation entries being Nos.4091 and 4253 were confirmed. The Petitioners thereafter filed a second Revision before the State Government. As indicated above, the Principal Secretary and Officer on Special Duty has by the order dated 06.04.2004 dismissed the Revision on the ground that the same was not maintainable before the Revisionary Authority. This resulted in the Petitioner's filing a Writ Petition in this Court challenging the said order passed by the State Government. The said Writ Petition came to be allowed by this Court by order dated 18.07.2011 and the Revision came to be restored. It seems that in the interregnum the Respondent No.1 has executed an agreement for sale in favour of the Respondent No.2 on 13.07.1995 and thereafter the Sale Deed on 07.12.1998. It is on the basis of the Sale Deed that mutation entry No.7181 came to be effected in favour of the Respondent No.2. It is not necessary to refer to the suit filed by the Respondent No.2 in respect of protecting his possession as the same is not relevant for the purposes of the present Petition.

4 In so far as the Petitioners are concerned, the Petitioners had filed an Appeal being No.5 of 1984 before the Sub Divisional Officer

challenging the order dated 28.06.1984 which is the order containing the partition statement which is disputed by the Petitioners. The said Appeal came to be dismissed by the Tahsildar by order dated 21.09.1984. The Appeal thereafter filed before the Additional Collector by the Petitioners came to be dismissed by the Additional Collector on 30.11.2002. It seems that Regular Darkhast No.193 of 1982 filed by the Respondent No.1 Tarabai was restored by virtue of the order dated 25.02.2011 passed by the Joint Civil Judge Junior Division, Satara. However the fact remains that the mutation entry Nos.4091 and 4253 have been effected in favour of the Respondent No.1 on account of the orders passed by the Civil Court in the suit filed by the Respondent No.1. It seems that after restoration, the Darkhast proceedings being No.193 of 1982 came to be disposed of by order dated 08.12.2014 passed by the Learned Joint Civil Judge Junior Division, Satara.

5 In my view, having regard to the aforesaid conspectus of facts where the mutation entries have been effected pursuant to the decree passed in the suit filed by the Respondent No.1 after the share of the Respondent No.1 was carved out, the same do not merit any interference at the hands of this Court in its writ jurisdiction. If the Petitioners have any grievance as regards the manner in which the decree has been executed, it would be open for the Petitioners to adopt

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appropriate proceedings for the same. This Court does not express any opinion as regards the merits of any such claim that would be made by the Petitioners. If any such proceedings are filed, needless to state that the same would be tried on its own merits and in accordance with law. With the aforesaid observations, the Writ Petition is disposed of.

[R.M.SAVANT, J]