

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

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WRIT PETITION NO. 5237 OF 1995

1. Kamlakar s/o Patloji Muley,
Age. Major, Occ. Service,
R/o. Patloji Wada, Behind Post
Office Jalna, Tq. & Dist. Jalna.
2. Prabhakar S/o Patloji Muley,
Age. Major, Occ. Service,
R/o. As above.
3. Madhukar S/o Patloji Muley,
Age. Major, Occ. Service,
R/o. As above.

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Versus

1. The State of Maharashtra,
(Copy to be served on Govt.
Pleader High Court of Judicature of
Bombay, Bench at Aurangabad).
2. Suryakant S/o Vidyadhar Muley,
Age. Major, Occ. Service,
R/o. Pitrachhaya Building, Behind
Post Office, Jalna.
(abated)
3. Chadrakalabai W/o Namdeo Gaikwad,
Age. Major, Occ. Service,
R/o. Cantonment, Aurangabad,
Tq. & Dist. Aurangabad.
4. Taramatibai W/o Vinayakrao Sabale,
Age. Major, Occ. Household,
R/o. Near SCR Running Room Quarters,
Vinayakrao Sabale,
Diesel Engine Driver, Railway Station
Khandva, (Madhya Pradesh)

5. Sindhubai W/o Francis Johan,
Age. 35 years, Occ. Household,
R/o. Limaye Bunglow, Chinda,
Mala, Opp. Choda Nasik Road,
Nasik, Dist. Nasik.
(abated)
6. Kum. Shobha Vidyadhar Muley,
Age. Major, Occ. Teacher,
R/o. Limaye Bunglow Chind-Mala,
Nashik Road, Nasik.
7. Smt. Pushpabai W/o Ashok Natekar,
Age. 28 years, Occ. Household,
R/o. Railways quarter Nasik road,
Nasik, Railway Station, Nasik. ...Resp..

Advocate for Petitioner : Shri V C Patil h/f S M Godasay.
AGP for Respondents: Mr S P Tiwari
Advocate for Respondents : Shri S R Deshpande.
Petition abated as against R/2, 5.

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CORAM : V.K. JADHAV, J.

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**Reserved on January 12, 2018.
Pronounced on January 25, 2018.**

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JUDGMENT :-

1. Being aggrieved by the order passed by the Deputy Director of Land Records dated 31.1.1976 the petitioner has preferred this writ petition.
2. Brief facts, giving rise to the present writ petition are as follows :-

a] The property in dispute bearing CTS No.3924 was originally owned and possessed by Patloji Mule, the father of the petitioners and grand father of respondent No.2. Said Patloji Muley was having four sons and eight daughters and all these daughters got married. The eldest son of the Patloji Muley is no more and died long back. Said Patloji also died on 27.6.1957.

b] The disputed property was having municipal house nos.1-34-64, 1-34-65, 1-34-66 recorded in the name of Patloji Muley in the Municipal Record of Municipal Council, Jalna. According to the petitioners, after death of Patloji all the sons and daughters of the deceased Patloji became the owner of the disputed property.

c] The Special District Inspector of Land Records and inquiry officer has conducted the survey of the properties within the municipal limits of the Jalna in the year 1975. In the said survey, by order dated 20.11.1975 said Special Inspector of the Land Record declared that disputed property is owned and possessed

by the petitioners, the deceased Vidyadhar and eight daughters of Patloji. Consequently, names of all four brothers and eight sisters have been recorded in the municipal record and 'Sanad' to that effect was also prepared in their names.

d] After this decision of the Special District Inspector of Land Record, deceased Vidyadhar in collusion with the officers of D.I.L.R. office, Jalna and with a malafide intention to grab the suit property has filed one deed of declaration stating therein that he himself is the only owner of the property and there are no shares in the property. On receipt of this deed, the Special District Inspector of Land Records, Jalna, has revived his own order dated 20.11.1975 as referred above without giving any notice to the petitioners and other concerned persons and by his decision dated 31.1.1976 deleted the names of the petitioners and the sisters and recorded name of deceased Vidyadhar only with regard to the disputed property. Being aggrieved by the said order, the petitioners have preferred an appeal before the Special Superintendent of Land Records, Jalna bearing

appeal no.65/1988. During the pendency of the said appeal, deceased Vidyadhar Mule died on 11.6.1988 and as such his legal heirs brought on record, who are the respondents herein. The Superintendent of Land Records allowed said appeal and set aside the order dated 31.1.1976 and confirmed the earlier order dated 20.11.1975. Thereafter, respondent No.2 has also instituted suit bearing suit No.63/1991 against the petitioners and respondent nos. 3 to 7 herein before the Civil Judge S.D. Jalna.

e] Being aggrieved by the said order, respondent nos. 2 to 7 herein preferred Appeal bearing No.317/1991 before the Deputy Director of Land Records, Aurangabad and upon hearing the parties on 27.3.1995, the Deputy Director was pleased to allow the appeal of the respondents by his order dated 23.6.1995 and set aside the order under appeal and confirmed the order dated 31.1.1976. Thus, names of the petitioners and their sisters have been ordered to be deleted and names of the respondent nos. 2 to 7 have been allowed to be recorded being heirs of deceased Vidyadhar. Being

aggrieved by the decision given by the Deputy Director of Land Records, the petitioner filed Revision before the State Revenue Minister, Government of Maharashtra, Mantralaya and even though the petitioners have attended certain dates, later on it was revealed that file of the petitioners is missing and same was not traced out. Thus, the petitioners have approached this court by filing present writ petition.

3. Learned counsel for the petitioner submits that the special District Inspector of the Land Records has not followed the procedure as laid down in section 258 of the Maharashtra Land Revenue Code and also not followed the principles of natural justice. Said authority has not called upon the petitioners while reviving his own order. The Deputy Director of Land Records has also lost sight over this important aspect of law as well as facts. Learned counsel submits that the alleged deed submitted by deceased Vidyadhar has no evidentiary value and it cannot be relied upon. Learned counsel submits that, admittedly property in dispute was owned and possessed by deceased Patloji Muley and after his

death it should devolve on the legal heirs of deceased Patloji. The Deputy Director of Land record has also erred in concluding that the partition between the parties was effected during the life time of deceased Patloji in the year 1958 and the disputed property was given to the share of deceased Vidyadhar. Learned counsel submits that, this conclusion was based on wrong assumption, misconception.

4. Learned counsel for respondents submits that, the Deputy Director of Land Record has rightly allowed the appeal of the respondents and set aside the order passed in the appeal by the Special District Inspector of Land Records, Jalna and the order dated 31.1.1976 passed by the Special District Inspector of Land Records, Jalna in review was confirmed. There is no substance in this writ petition and writ petition is thus liable to be dismissed.

5. On careful perusal of the judgment and order passed by the authorities below, it appears that, deceased Patloji expired in or about 1957. Before his

death he had made arrangement of his property by dividing the same amongst himself for his own benefit and that of his daughters and his two sons namely Vidyadhar father of respondent nos. 2 to 7 and petitioner no.1 Kamlakar. Said Vidyadhar and petitioner No.1 Kamlakar are the sons of Patloji's first wife who died long back. Deceased Patloji allotted CTS No.3924 situated at Jalna to deceased Vidyadhar exclusively. Petitioner no.1 Kamlakar sold his lands allotted to him by the father in the year 1957 itself. He returned to Jalna in the year 1984 and deceased Vidyadhar had given him two rooms for residence out of love and affection. Petitioner nos. 2 and 3 on the other hand have been given movables consisting of cash and ornaments through their mother Savitribai. Since there was no marriage between Patloji and Savitribai, Patloji did not give them any share in his immovable property. Petitioner nos. 2 and 3 on the other hand secured a portion of the disputed house and land for residence from the real owner deceased Vidyadhar by executing a rent note dated 1.5.1982. Even, petitioner no.2 also made an application to Municipal Council, Jalna while

securing water Tap connection on 19.10.1983 stating therein that the disputed house no.1-34-62 wherein petitioner nos. 2 and 3 are residing as tenants belonging to deceased Vidyadhar Muley. Thus, the disputed property was accordingly mutated in the name of deceased Vidyadhar alone and after his death in the name of respondent nos. 2 to 7 by the competent authority. It is thus clear from the documents placed on record that the suit property bearing Municipal house no.1-3464, 1-34-65, and 1-34-66 now allotted with CTS No.3924 originally belonging to Patloji and even his life time, the same was allotted to his son Vidyadhar Patloji Muley in whose favour entries in Municipal Record and City Survey Record have been made since the year 1358 Fasli (1949-1950 A.D.), property tax, water tax and other taxes have been paid by deceased Vidyadhar alone as exclusive owner thereof.

6. In view of the above I do not find any substance in the writ petition. The Deputy Director of Land record has rightly considered the documents on record. I do not find any reason to interfere in the same. Hence,

following order.

O R D E R

1. Writ Petitions is hereby dismissed.
2. In the circumstances, there shall be no order as to costs.

sd/-

(V.K. JADHAV, J.)

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AAA/-