

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

WRIT PETITION NO. 6924 OF 2015

**SUMAN GANPAT SALUNKE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for the Petitioner : Shri R. A. Tambe
AGP for Respondent Nos. 1 to 7 : Shri S. R. Yadav
Advocate for Respondent No.8 : Shri V. R. Mundada

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 03rd DECEMBER, 2018.

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PER COURT :

1. I have heard this matter for some time. Following are the factors which are to be considered :-

(a) The petitioner contends that Mhasu Mane had leased out the land to the Farming Corporation in 1936.

(b) Mhasu passed away in 1954.

(c) Suman, the petitioner herein is the daughter of Mhasu.

(d) Kusum, the respondent herein, is the daughter of Govind and Govind is the son of Mhasu.

(e) Govind passed away in 1966.

(f) Respondent Kusum contends that Govind had leased out the land for the first time to the Farming Corporation.

(g) Out of the total land of 28 acres and 21 Gunthas, 13A 18 G. is to be re-allocated to the legal heirs of the litigating sides.

2. Based on the above stated factors, the issue is as to whether Mhasu has leased out the land or whether Govind has leased out the land ? Consequentially whether Suman would have a right to the allotment of the land or whether Kusum who is the daughter of Govind Mhasu, would alone be entitled ?

3 The learned Advocate for the petitioner submits that by the impugned order dated 06/06/2015, the SDO Pathardi has declined to consider the claim of the petitioner. It is conceded that the learned Civil Judge S.D., while deciding the heirship certificate, delivered an order on 07/04/2015 granting heirship certificate to Suman and Kusum. However, it was clarified that this Certificate shall not be used for seeking succession to any movable or immovable property of the deceased Mhasu.

4. The learned Advocate for the petitioner submits that the

impugned order could be set aside and the matter can be remanded to the SDO for considering the rival claims of these litigating sides.

5. Ex-facie, I am not convinced as the SDO will not have the jurisdiction to decide the right, title or interest of the litigating sides in the movable and immovable properties, inasmuch as, he cannot adjudicate upon the quantum of the shares of Suman and Kusum. The learned Advocate for the petitioner submits that he would cite judicial pronouncement on this count to show that the SDO would be invested with the power to decide such claims of the litigating sides.

6. The learned Advocate for the petitioner submits that he also seeks time to cite the policies of the Government for deciding such type of issues. The re-allotment of the land as per the policies of the Government would be 13 Acre and 18 Gunthas out of the total lease land of 28 Acre and 21 Gunthas.

7. At this juncture, Shri Mundada learned Advocate appearing on behalf of Kusum submits that both Suman and

Kusum had entered into a settlement of their dispute on Rs. 100/- non judicial bond paper on 12/10/2015. The same is placed on record alongwith the affidavit in reply of Kusum from page Nos. 59 to 76. Each of these pages were presented before the Notary and the affidavit was sworn by both Suman and Kusum in the presence of the Notary and two witnesses. He submits, on instructions, that Kusum is agreeable to abide by the said compromise/settlement, by which, she would get a share of 7 Acres and 18 Gunthas and Suman agrees to accept 6 Acres as her share, in re-allotment of the said land.

8. Shri Tambe, learned Advocate submits, on instructions, for the petitioner that she is also agreeable and would abide by the said settlement. Both the learned Advocates jointly submit, on instructions, that the impugned order can be set aside and the SDO could be directed to consider the shares of the respective sides while re-allotting the total land of 13 Acres and 18 Gunthas.

9. In view of the above, this petition is partly allowed. The impugned order dated 06/06/2015 is set aside by consent and

this matter is remitted to the SDO, Pathardi Division, Pathardi for Respondent No. 6 to consider the case afresh and while making allotment of the total land of 13 Acres 18 Gunthas, he would allot 6 Acres to the petitioner Suman and 7 Acres 18 Gunthas to the respondent Kusum, by consent of the parties which is reflected by the agreement from page Nos. 65 to 76. Respondent No.6, while making the allotment of the said portions of the land, would consider the terms of the settlement in which the boundaries of the lands to be allotted are also described.

(RAVINDRA V. GHUGE, J.)

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