

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

CRIMINAL APPLICATION NO. 4106 OF 2008

Sheshrao s/o Bhimchand Pawar,
Age: 50 years, Occ : Service as Talathi,
of Sajja Borala, Tal. Basmathnagar, R/o –
Swanand Colony, Basmath, Tq. -
Basmath, Dist. Hingoli.

Applicant

VERSUS

1. State of Maharashtra,
(Through Police Station, Basmath, Copy
to be served on Public Prosecutor, High
Court Bench at Aurangabad.)

2. Nagorao @ Bapusaheb s/o Laxmanrao
Deshmukh

Age : 48 years, Occ : Agriculturist,

R/o Selu, Tq. Basmathnagar, Dist. ...

Hingoli.

Respondents

Mr. S. P. Katneshwarkar for the Applicant.

Mr. S. J. Salgare, APP for Respondent - State.

Mr. S. S. Rathi for Respondent No. 2.

CORAM : T. V. NALAWADE AND

K. L. WADANE, JJ.

DATE: : 17th July, 2018

JUDGMENT (Per K. L. Wadane,J.):

1. Rule. Rule made returnable forthwith. With the consent of the parties, the application is taken up for final hearing.
2. The applicant has challenged the proceeding of private complaint bearing RCC No. 244/2007 and the first information report No.165/2008 registered with Basmath Police Station, District Hingoli.
3. We have heard the arguments of Mr. S. P. Katneshwarkar for the Applicant, learned APP Mr. S. J. Salgare, for Respondent – State and Mr. S. S. Rathi for Respondent No. 2.
4. On perusal of the contents of the complaint, it appears that the allegations against the present applicant are that the complainant is sole legal heir of deceased Laxman Nagorao Deshmukh who expired on 02.11.2006. Another accused who is Sarpanch of a Grampanchayat Selu, Taluka Basmath issued a false and bogus heirship certificate in favour of one Mahananda @ Nandini Vithalrao Wadgaonkar showing therein that she is one of the legal heir of deceased Laxman Nagorao Deshmukh. It is further alleged that on the basis of the said false and bogus heirship certificate the present applicant mutated her name in 7/12 extract in respect of the land Gat No. 120, 121, 41

situated at Village Selu, Taluka Basmath vide mutation entry No. 379. Therefore, present applicant in collusion with the another accused i.e. Sarpanch committed the offence punishable under Section 166, 467, 468, 420 read with Section 34 of the Indian Penal Code. On scrutiny of the relevant record, it reveals that one Mahananda @ Nandini Vithalrao Wadgaonkar submitted an application, contended that her father Laxmanrao died on 02.11.2006 and legal heirs of deceased Laxmanrao are namely (1) Smt. Kamlabai Laxmanrao Deshmukh - wife (2) Nagorao s/o Laxmanrao Deshmukh - son (respondent no.2) (3) Sau. Mahananda @ Nandini Vithalrao Wadgaonkar – daughter. The heirship certificate issued by another accused was annexed with the application and on the basis of the application and the heirship certificate the present applicant has recorded the names of the aforesaid persons in register of mutation entries. The learned counsel appearing for the respondent No. 2 submits that on presentation of the application and the heir certificate, the applicant immediately recorded the names of so called legal heirs and therefore, the applicant has committed the offence as referred above.

5. From the same entries in the register, it appears that on the same day the applicant has issued a publication and called the objections, on 16.08.2007. He received the objection from the respondent No. 2, therefore, by making the specific endorsement in third column the matter is referred to

the Tahsildar. So from the record, it appears that when the respondent No. 2 took the objections, therefore, the applicant has rightly referred the matter to the concerned Tahsildar. Furthermore, even if no objections are received the concerned Talathi or the applicant, was not entitled to certify such mutation entries. In that event also, such entries are to be referred to the Tahsildar for its certification or sanction. The Talathi has no independent right to certify the mutation entries. The learned counsel for the applicant submits that the applicant has merely taken the entries of the so called legal heirs and after receipt of the objections those were referred to the Tahsildar. Accordingly, Tahsildar allowed the application of the respondent No. 2 and took the entries in the revenue record in the name of the respondent No.2 and directed Mahananda to get her right regarding heirship decided from the Court. The provisions of Section 150 of the Maharashtra Land Revenue Code reads as follows:

- (1) *The Talathi shall enter in a register of mutations every report made to him under section 149 or any intimation of acquisition or transfer under section 154 or from any Collector.*
- (2) *Whenever a Talathi makes an entry in the register of mutations, he shall at the same time post up a complete copy of the entry in a conspicuous place in the Chavdi, and shall give written intimation to all persons appearing from the record of rights or register of mutations to be interested in the mutation, and to any other person whom he has reason to believe to be interested therein.*

[Provided that, where the record of rights are maintained under section 148 A by using the storage device, as soon as the

Tahsildar in the Taluka receives as intimation under Section 154, the Talathi in the Tahsildar office shall send it to all persons appearing from the record of rights or register of mutations to be interested in the mutation and to any other person whom he has reason to believe to be interested therein and also to the concerned Talathi of the village, by short message service or electronic mail or any such device as may be prescribed; and upon receipt of such intimation, the Talathi of the village shall immediately make an entry in the register of mutations:]

[Provided further that, no such intimation as provided under the first proviso shall be required to be sent by the Talathi in the Tahsildar office to the person who have executed the document in person before the officer registering the document under the Indian Registration Act, 1908.]

6. So as per the aforesaid provisions, it is expected from the Talathi to enter in the register of mutations every report made to him under Section 149 or any intimation of accusation or transfer under Section 154 or from any Collector. After receipt of such application of the acquisition of any right or transfer, it was expected from Talathi to make the entry in the register of mutations and issue a public notice and after receipt of such objection the dispute enter in the register of disputed cases, as far as possible be disposed of within one year by the Revenue or Survey Officer, not bellow the rank of Aval Karkun. So the disputed cases are to be resolved by the officer not below the rank of Aval Karkun. Therefore, obviously the applicant has no authority to decide the disputed cases. In such circumstances, it appears that the applicant has only comply with the provisions of Section 150 of the Maharashtra Land Revenue Code. In view of the above, at any stretch of

imagination, it cannot be said that the act done by the applicant was contrary to the provision of Section 150 of the Maharashtra Land Revenue Code.

7 In view of the above, the application is allowed. Relief is granted in terms of prayer clause (B) only to the extent of the applicant.

8. Rule is made absolute in those terms.

(K. L. WADANE, J.)

(T. V. NALAWADE, J.)

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