

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 5137 OF 2013

- 1] Ambadas S/o Bapu Mahadik,
Age:- 50 years, Occu:- Agriculturist,
R/o village Fattevadgaon, Tq. Ashti,
Dist. Beed.
- 2] Mhatardev S/o Bapu Mahadik,
Age:- 42 years, Occu:- Agriculturist,
R/o village Fattevadgaon, Tq. Ashti,
Dist. Beed.

... APPLICANTS

(ORIG. ACCUSED NOS.3 AND 4)

VERSUS

- 1] The State of Maharashtra.
- 2] Rohidas s/o Baba Mahadik,
Age- 55 yrs, Occu- Agril,
R/o. Fattevadgaon, Tq. Ashti,
Dist. Beed.

... RESPONDENT

(ORIG. COMPLAINANT)

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Mr. Hrishikesh V. Tungar, Advocate for Applicants.

Mrs. V. S. Choudhari, APP for Respondent No.1 / State.

Mr. Tushar M. Tandale, Advocate for Respondent No.2.

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CORAM : **T. V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**

RESERVED ON : 23rd October, 2018

PRONOUNCED ON : 29th October, 2018.

JUDGMENT: (Per T. V. Nalawade, J.)

. The proceeding is filed under Section 482 of the Code of Criminal Procedure for relief of quashing of C.R. No.68 of 2012, registered with Ashti Police Station, District Beed, for the offences punishable under Sections 467, 468, 471 and 420 read with 34 of the Indian Penal Code and also for the relief of quashing of the proceeding bearing R.C.C. No.50 of 2013, pending in the Court of learned Judicial Magistrate First Class, Ashti.

2 Both the sides are heard.

3 The crime was registered on the basis of direction given by the learned Judicial Magistrate First Class in Criminal Application No.156 of 2012 filed by Respondent No.2, Rohidas Mahadik. It is his contention that he and his brothers owned land Survey No.43/3 from Fattevadgaon, Ashti admeasuring 1 Hectare, 58 Ares. It is his contention that it is their ancestral property and their names were entered as owners in the record of rights, 7/12 extract till the year 1993.

4 It is the contention of the Complainant that in the year 1993, consolidation of lands of village Fattevadgaon took place and Survey No.43/3 was included in Gat No.149 and other lands were also included of Survey No.43. It is contended that as per mutation No.2, his name and names of his three brothers were entered as owners of portion of 1 Hectare 58 Ares of land Gat No.149 in the year 1993.

5 It is the contention of Complainant that one Ashok Bapu is brother of Accused Nos.3 to 5 and name of only Ashok was entered under mutation No.9 as successor of Bapu in revenue record of land Gat No.149 and this mutation was challenged by Accused Nos.3 to 5 by filing proceeding before the Superintendent of Land Records. It is the contention of Complainant that no notice was issued to him and to his brothers and behind their back, their names from revenue record of Gat No.149 were deleted by the authority. Accused Nos.1 and 2 are the officers according to the Complainant, who joined hands with Accused Nos.3 to 5 in deleting the names of Complainant and his brothers from revenue record. It is contended that when there was no proceeding filed for setting aside mutation No.2, mutation No.2 was

cancelled by the authority and that circumstance itself shows that there was mischievousness. Subsequently, mutation No.334 was made in favour of Accused Nos.3 to 5 and their names came to be entered after deleting the names of Complainant and his brothers. It is contended that due to such entry in favour of Accused Nos.3 to 5, the Complainant and his brothers are required to approach the revenue authority and they have sustained loss due to mischievousness of all the Accused.

6 After making investigation into the allegations, charge-sheet is filed for the aforesaid offences. The State has supported the Complainant by contending that proper procedure was not followed by the officers and there was no reason to delete their names from the record of rights.

7 In this proceeding, this Court gave opportunity to both the sides to produce relevant revenue record. A copy of decision given by the Appellate Court in favour of Accused Nos.3 to 5 is also produced.

8 In view of the nature of dispute, this Court has carefully

gone through the revenue record, which was in existence prior to consolidation of lands. It can be said that the dispute is in respect of land Survey No.43/3, which was in existence prior to 1993, before consolidation. There is record of consolidation showing that Gat No.149 is formed from three survey numbers like Survey No.42/2 admeasuring 2 Hectare 73 Ares, Survey No.43/2 admeasuring 2 Hectare 17 Ares and Survey No.43/3 admeasuring 1 Hectare 58 Ares land. Due to the disputed order of authority, names of Complainant and his brothers are now deleted from the record of rights of Gat No.149.

9 It is not disputed that in the past, prior to consolidation of the lands, the predecessor of the Complainant was shown as owner of some portion of Survey No.43. It is also not disputed that till the year 2009 from 1993, the names of Complainant and his brothers were shown as owners of portion of 1 Hectare 58 Ares land of Gat No.149 and only due to the order made by the officers, their names came to be deleted. The record shows that no notice was given by the Superintendent of Land Records before making order against the Complainant and his brothers.

10 This Court has perused the application, which was filed before the Superintendent of Land Records by Accused Nos.3 to 5 and that application shows that they had grievance that when they were the successors of Bapu Manaji, their father, under mutation No.9, name of Ashok Mahadik was entered as successor of Bapu, when Ashok had no concern with the property of Bapu and he was not successor of Bapu Manaji. It needs to be kept in mind that Ashok was not made party to the proceeding, which was filed before the Superintendent of Land Records and till today, Ashok has not come forward. When the proceeding was filed to challenge mutation No.9, by the order, the authority has set aside mutation No.2 also, which was made after consolidation in favour of Complainant and his brothers and the order does not show any convincing reason for the same.

11 The record of rights, which include 7/12 extract and Namuna No.7 is available in respect of Survey No.43/3. Namuna No.7 record which was created prior to 1960 shows that Survey No.43/1 and Survey No.43/3 were owned by Yashwant Mahadik. Area of Survey No.43/1 was 4 Acre 1 Guntha and Survey No.43/3

was also having area of 4 Acre 1 Guntha. This record shows that Bapu Manaji, predecessor of Accused Nos.3 to 5 was owner of Survey No.43/2 and not of any portion of Survey No.43/3. It appears that in *Khasra Pahani Patrak*, name of Baba Yashwant, predecessor of Complainant was shown as owner of Survey No.43/3, but some portion was shown to be owned by Bapu Manaji, predecessor of Accused. He was also shown as owner of Survey No.43/2. Photostat copy shows that there is possibility of change by overwriting of No.2, which is shown as Hissa to make it 3 and that possibility is appearing to the naked eye. Thus, in *Khasra Pahani Patrak*, Bapu was then shown as owner of 5 Acre 14 Guntha from Survey No.43/AA (43/2) and he was also shown as owner of 43/2 having area of 5 Acre 14 Guntha. The same area of of Survey Nos.43/2 and 43/3 as owned by Bapu is a circumstance which corroborates the possibility of tempering with *Khasra Pahani* record. As the record of right like Namuna No.7 needs to be given due importance, *Khasra Pahani Patrak*, which is suspicious in nature, cannot be considered at this stage in the proceeding like present one. It can be said that the predecessor of Complainant was the owner of 8 Acre 2 Guntha land in Survey No.43 as per the record of rights. Some record of

acquisition proceeding is produced and it shows that prior to 1977, there was some acquisition for irrigation project, of portion of 1 Acre 17 Ares from Survey No.43/3 belonging to Dada Baba, predecessor of Complainant. There was acquisition of 34 Guntha land from Survey No.43/2 of Bapu Manaji. At the cost of repetition, it is necessary to mention here that Gat No.149 is formed by amalgamation of Survey No.42/2, 43/2 and 43/3. If some portion of Daba Baba from Survey No.43/3 was acquired for irrigation project, from portion of 4 Acres 1 Guntha, then the remaining portion was still there with the predecessor of Complainant and that became part of Gat No.149. It is not the job of this Court to ascertain the exact area, but it can be said that the revenue authority has also found that the area mentioned in the new record is not tallying with the old record. In any case, it can be said that the Complainant had some portion even after acquisition of aforesaid portion from land Survey No.43/3 at the time of amalgamation of lands though the portion cannot be 4 Acre 1 Guntha as per previous record. In view of this clear probability, it can be said that loss is definitely caused to the Complainant and his brothers due to the entry, which was made behind their back in favour of Accused Nos.3 to 5. There is clear possibility of changing the

number of Hissa in *Khasra Pahani Patrak*, but there is record of *Phalani* – portion of Survey No.43, which is old and which can be treated as the record of rights and so the Criminal Court can decide as to whether this mischievousness was done by the Accused persons in the matter. In view of the aforesaid discussion, this Court holds that it is not possible to grant relief claimed by the Applicants. In the result, the following order is passed:

ORDER

- I. Criminal application stands dismissed.
- II. Rule is discharged.

[SMT. VIBHA KANKANWADI, J.]

[T. V. NALAWADE, J.]

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