

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 679 OF 2014

1. Shaikh Usmangani Mohammad Hanif Atar
Died, Through LRs:

1-A Shaikh Naginabi Usmangani,
Age : Major, Occ. Household,

1-B Shri. Shaikh Javed Usmangani Atar,
Age : Major, Occ. Agriculture

1-C Shri. Shaikh Abid Usmangani Atar
Age : Major, Occ. Agriculture

1-D Shri. Shaikh Arif Usmangani Atar
Age : Major, Occ. Agriculture

1-E Hina Quaisar Sahir
Age : Major, Occ. Household

1-F Sherbano Sadiq Atar
Age : Major, Occ. Household
All R/o. Rahuri, Dist.
Ahmednagar

..PETITIONERS

VERSUS

1. Khanijabi Munir Atar
(As per Court order dated 30.06.2014,
deceased Legal Heirs Respondent No.2
already on record.)

2. Shri. Najir Munir Atar,
Age : Major, Occ. Agriculture

3. Shri., Vilas Gajanana Udavant,
Age : Major, Occ. Agriculture

All Resident of Rahuri,
District Ahmednagar

4. Taluka Inspector,
Land Records, Rahuri,
Dist. Ahmednagar

..RESPONDENTS

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Advocate for the petitioners : Shri. R.R. Mantri
A.G.P For respondent No.1 : Mr. R. B. Bagul
Advocate for respondent No.3 : Mr. V.S. Bedre

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CORAM :T.V. NALAWADE J.
ORDER : 11.02.2019

ORDER(PER T.V. NALWADE, J] :-

The petition is filed to challenge the order made of mutation by T.I.L.R Rahuri, District Ahmednagar and also the decision given by the appellate authority and revisional authority in respect of the same mutation. The mutation is made in favour of respondent Vilas Gajanan Udvant on the basis of sale deed made in his favour by Khatijabee Munir Aatar, Nazeer Munir Attar and Sameer Skindar Aatar in the year 2002, in respect of the house property situated at Rahuri.

2. Both the sides are heard.

3. The learned counsel for the petitioners submits that civil suit was pending for partition in respect of the aforesaid property between the petitioners and the vendor of the aforesaid sale deed and during the pendency, the property was sold in favour of Vilas and so the mutation could not have been made. It is his contention that the property had come to the petitioners and the vendor from common ancestor and so

the transfer of the property was not possible by the aforesaid sale deed.

4. The attention of this Court was drawn to some order made by the T.I.L.R on 23.09.2003 showing that due to pendency of the suits like Regular Civil Suit No. 16/1998, Regular Civil Suit No. 220/1999 and R.C.S. No32/2000, initially T.I.L.R has refused to effect the mutation. It appears that subsequently, application was moved for the mutation and order came to be made on the basis of sale deed in September 2004. This order of T.I.L.R is confirmed by the appellate and revisional authority.

5. Submission was made that when the property was in possession of the petitioners and that was also admitted by the purchaser, the mutation could not have been made. The submission made also shows that the suit filed by the petitioners is dismissed and appeal filed against the said decision is pending, which is bearing Regular Civil Appeal No. 405 of 2012. It is case of the petitioners that they have share in the property. The submissions made and record shows that the name of the vendors were present on the record of city survey and on that basis they executed sale-deed. Due to this circumstance, the mutation is effected. In any case, it is Civil Court where the title can be decided and trial Court has decided the suit against the petitioners. Thus, the decision of the revenue authority, T.I.L.R, which is subject to decision of the Civil Court and as there are aforesaid circumstances, this Court holds that it

is not necessary to make interference in the order made of the mutation, on the basis of sale deed. In the result, petition stands dismissed.

[T.V. NALAWADE]
JUDGE

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