

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

WRIT PETITION NO.12793 OF 2019

JASPALSINGH GULABSINGH GADIWALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the Petitioner : Shri Gandhi Amol S.
AGP for Respondents 1 to 5 : Shri N.T. Bhagat
Advocate for Respondent 6 : Shri Dawalkar Parikshit P.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th December, 2019

Per Court:

1 This Writ Petition arises out of the dispute between two cousin brothers, whose deceased fathers were real biological brothers, with regard to the mutation entry in survey no.5.

2 The petitioner is aggrieved by the order of the Honourable Minister (Revenue) dated 19.08.2019 by which, his revision application was dismissed and the order of the Deputy Director of Land Records, Aurangabad dated 24.11.2014 was confirmed.

3 The learned advocates for the petitioner and respondent no.6 submit, on instructions and on the basis of the record, that the properties, which were shared by the fathers of these litigants, are evident from the Deed of Partition Reminder, which is reduced into writing on a Rs.100/-

non judicial bond paper bearing No.583180. The said document was signed on 03.07.2006 and registered at serial no.332/06 before the notary.

4 Insofar as survey no.9 is concerned, the parties are not at dispute. So also, to the extent of survey no.5, it is undisputed that the deceased father of the petitioner Gulabsingh received a share admeasuring 2 H 34 R. It is equally undisputed that the deceased father of respondent no.6 Gopalsingh received a share admeasuring 3 H 66 R. The parties are united on this count and there is no dispute whatsoever. It is also not disputed that both these shares are found in survey no.5.

5 This Court has laid down the law in the matter of *Shrikant R. Sankanwar and others vs. Krishna Balu Naukudkar, 2003 (3) BCR 45* that the best evidence is to be considered by the Revenue Authorities while carrying out mutation entries. If there is a verdict of the Civil Court, such verdict binds the Revenue Authorities and the mutation entries have to be in tune with such verdict of the Civil Court. In the absence of any litigation, the best piece of evidence is to be considered.

6 In the instant case, the peculiar fact is that the partition has occurred long ago and the deceased fathers of these litigants have already received their shares and some of the shares have been sold by either sides. Regular Civil Suit No.343/2011 is instituted by the petitioner. The real brother of respondent no.6 is the defendant in the said suit.

7 The learned advocate for the petitioner submits, on instructions, that he would be opposing addition of respondent no.6 herein as a defendant in the pending suit, which is filed by the petitioner only for seeking perpetual injunction against the defendant, who is disturbing his possession.

8 The issue before this Court today is, in the backdrop of the shares of the petitioner and respondent no.6 being undisputed as noted above, as to whether the petitioner has sold any portion of his share and whether, such sale has consumed land beyond the share of the petitioner. The petitioner contends that respondent no.6 has sold the land beyond his share and no land standing in his name can be found in survey no.5. Per contra, respondent no.6 has levelled the same allegations against the petitioner.

9 There are concurrent findings of the Deputy Director of Land Records, Aurangabad and the Honourable Minister against the petitioner. The disputed questions as to who sold how much share and whether, such sale was legal and whether, the excess share sold is to be recovered, can neither be a part of the proceeding under the Maharashtra Land Revenue Code, 1966, nor can it be a part of the writ petition in this Court.

10 In view of the above, this Writ Petition is dismissed being devoid of merit.

11 However, if the petitioner and respondent no.6 have any

grievance against each other with regard to how much share has been sold by either of them and whether, either of them sold the land beyond his share, they would be at liberty to initiate the civil proceeding as may be permissible in law, in view of *Shrikant R. Sankanwar* (supra).

kps

(RAVINDRA V. GHUGE, J.)