

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6426 OF 2017**

Maqbul Nabi Powale	.. Petitioner
vs	
1. Shabbir Samsher Powale	}
2. Farid Babalal Naikwadi	
3. The Tahsildar, Hathkanangale Kolhapur	}
4. The Talathi, Hatkanangale Kolhapur	
5. The Collector, Kolhapur	
6. State of Maharashtra	}.. Respondents

Mr.Sachin Chavan for Petitioner
Mr.Abhijit M.Adagule for Respondent no.2
Mr.S.D.Rayrikar Asst.Govt.Pleader for Respondent nos.
3 to 6.

**CORAM: SMT.ANUJA PRABHUDESSAI, J
DATED: 4TH JANUARY, 2019**

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1. The petitioner has challenged the legality of the order dated 26.10.2016 passed by the Minister of State (Revenue) Maharashtra State, Mantralaya, Mumbai. By the impugned judgement, the learned Minister has dismissed the revision application filed by the petitioner and has thereby, confirmed the judgement and order dated 31.12.2012 passed by the Additional Commissioner, Pune. Hathkanangale.

2. The property bearing Gat No.308 admeasuring 83 ares

situated at Wadgaon, Taluka Hathkanangale, District Kolhapur was originally owned by one Mohiddin Babaji Powale. On 27.11.1945 said Mohiddin mortgaged half share of the said property to one Babalal Mohammed Naikwadi, father of respondent no.2. On 23.9.1953 Mohiddin sold the said half share along with other properties to the petitioner and his brother Samsheer Powale. The petitioner had claimed that the mortgaged property was redeemed as on the date of execution of the sale deed and that since that date, they are in possession of the property.

3. The said property was the subject matter of Regular Civil Suit filed by the petitioner before the Court of the Civil Judge, Junior Division, Peth Wadgaon. The petitioner had sought a declaration that he had acquired title by adverse possession and sought to restrain the respondents from alienating the property. The suit was partly decreed. The learned Judge had observed that the petitioner had not claimed to be the owner by virtue of the sale deed but had claimed title by way of adverse possession. The learned Judge held that the petitioner had failed to prove his title by adverse possession and therefore, declined to grant the declaratory reliefs but granted the reliefs of perpetual injunction. He

restrained the respondent nos.1 & 2 from alienating the suit property, and obstructing and interfering with possession of the petitioner over the suit property.

4. Based on the said judgement. the petitioner filed an application dated 23.11.2002 for deleting the names of heirs of Babalal Naikwadi from the survey records. Accordingly, the names of the heirs of Babalal Naikwadi in whose favour the property was mortgaged, were deleted and by a Mutation Entry no.7096 names of the heirs of the petitioner were entered in the revenue records. The respondent no.1 had objected to the said Mutation Entry. By judgement and order dated 30.10.2003 the Tahsildar, Hathkanangale certified Mutation Entry No.7096. In an appeal filed by respondent no.1, the learned Sub-Divisional Officer, Ichalkaranji, Kolhapur set aside Mutation Entry No.7096. The Additional Collector dismissed RTS Appeal No.80 of 2005 filed by the petitioner by a judgement and order dated 28.8.2008. Being aggrieved by the said order, the petitioner filed Revision Application before the State Government. The learned Minister of State (Revenue) dismissed the Revision Application by the impugned judgement dated 26.10.2016. Hence, present writ petition.

5. I have heard learned counsel for the petitioner, learned counsel for the respondent no.2 as also learned Assistant Government Pleader. At the outset, it may be mentioned that the petitioner had filed an application to enter his name in the Occupant/Owners' column solely on the basis of the judgement of the trial Court. A perusal of the said judgement clearly indicates that the trial Court had clearly held that the petitioner failed to prove that he had acquired title to the suit property by adverse possession and had therefore, declined to grant declaratory reliefs. Hence, the petitioner could not have sought to enter his name in the ownership column on the basis of the said judgement. The authorities below have considered this aspect while setting aside the Mutation Entry No.7096. No illegality or perversity can be found in the order of the learned Minister of State (Revenue) or the Appellate Authority.

Writ Petition has no merit and is accordingly dismissed.

(SMT.ANUJA PRABHUDESSAI, J)