

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 661 OF 2016

Shri. Balasaheb Bhanudas Rahatal
and Ors.

.....Petitioners

V/s.

Shri. Nandu Rajaram Rahatal
and Ors.

....Respondents

* * * *

Ms. Divya Pawar i/by. Mr. R.N. Gite, Advocate for the
petitioners.

Mr. Sachin S. Padaye i/by. Mr. Girish R. Agarwal, Advocate
for respondents no.6 and 7.

CORAM : SANDEEP K. SHINDE, J.

Friday, 5th July, 2019.

P.C. :

1. Heard learned Counsel for the parties.
2. The petitioners are the plaintiffs in Special Civil Suit No. 21 of 2011 and the respondents are the defendants therein. The plaintiffs sought a declaration that the sale deed dated 10th August, 2010 executed by defendants no.1 to 5 in favour of defendants no.6 and 7 is illegal and not

binding on them. Respondents no.1 to 5 and the petitioners are representing the branch of Rajaram and Bhanudas respectively, whose common ancestor was Damodar.

3. The petitioners (plaintiffs), requested the trial Court to frame an additional issue, "Whether defendants no.6 and 7 prove that, they are the agriculturists ?". The petitioners would assert that defendants no.6 and 7 not being agriculturists, they could not have purchased the suit land which is an agricultural land. The trial Court rejected the said application in August, 2015 and recorded a finding that the sale-deed produced by defendants no.6 and 7 alongwith the 7/12 Extract in respect of some other agricultural land at Village-Shenderjan, Taluka-Sindhakhed, District-Buldana, shows that respondent no.6 is a agriculturist. Soon thereafter, in September, 2015, another application was filed below Exhibit-105 by the plaintiffs and requested the trial Court to refer the issue, "Whether defendant no.6 is an agriculturist or not ?" to the Competent Authority. In the said application, he has relied on the Mutation Entry No.188 and the sale-deed dated 6th

September, 2007 and 7/12 Extract of Gat No.785 for the period 1998-99 to 2006-07. Relying on this document, it is his contention that, respondent no.6 misled the Revenue Authorities and got his name recorded in the revenue record as an agriculturist. The petitioners-plaintiffs therefore doubted the genuineness of the sale-deed and the revenue record on the basis of which respondent no.6 got himself declared as an agriculturist. It is on this premise, he requested the Court to refer the issue to the Competent Authority.

4. The trial Court rejected the subsequent application and held that, earlier application for framing additional issue, "Whether defendant no.6 is an agriculturist or not, was rejected on 10th August, 2015 and since it is not challenged, it has attained finality. The second ground for rejection is that, evidence of the plaintiff is already recorded. That even otherwise, the Revenue Authorities on the basis of some documents produced by the defendant no.6 held him as an Agriculturist. Therefore, it is always open to the plaintiff to challenge the order of the Revenue

Authorities before the proper forum. Thus, once the Competent Authority has held defendant no.6 as an Agriculturist in respect of some other lands, calling upon the Revenue Authorities to decide whether defendant no.6 is an Agriculturist or not in respect of a suit land is an futile exercise and obviously not warranted. The petition is therefore dismissed.

(SANDEEP K. SHINDE, J)