

BDP-SPS

Bharat
D. Pandit

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8429 OF 2017**

Narayan Zuraji Patil
since deceased through legal heirs
1.1 Anusayabai Narayan Patil
and Others

..... Petitioners.

V/s

Shri Moru Barku Patil @ Moru Barku
Divade and Others

....Respondents.

Mr. Atul Damle, Senior Counsel I/b Mr. Jaydeep Deo for the
Petitioner.

Mr. P.S. Dani, Senior Counsel I/b Mr. Mahesh Rawool for Respondent
Nos. 1 and 2.

Mr. A.B. Kadam, AGP for Respondent Nos. 4 to 6.

CORAM: NITIN W. SAMBRE, J.

DATE: 24th July, 2019

P.C.:-

1] Shambu, the common ancestor of the contesting parties, was
blessed with four sons viz. Zuraji, Barku, Shakar and Krishna out of
which Shakar and Krishna died issueless. The agricultural property

in the name of Shambhu came to be mutated in the name of Zuraji being Manager of HUF vide Mutation Entry No. 26 dated 09.05.1923. This Mutation Entry continued in favour of successors of Zuraji, as it was never questioned by other legal heirs of Shambhu viz Barku and his sons till 2002. The contesting Respondents questioned this Mutation Entry in 2002 before the Sub-Divisional Officer, who rejected the claim being barred by limitation on 25/03/2008. Appeal to the Additional Collector came to be allowed on 01/07/2009, which order was upset by the Additional Commissioner on 17/09/2011, thereby directing remand and re-inquiry. The Additional Collector on 12/03/2012 directed recording of names of all the parties to the Petition in Survey No.81/30, which was set aside by the Additional Commissioner, Konkan Division, Konkan by order dated 26/08/2013. Respondents, feeling aggrieved, preferred Revision before the State Government, which came to be allowed by the impugned order. As such, this Petition.

2] The submission of the learned Senior Counsel appearing on behalf of the Petitioners is, consistently since 1923, Mutation Entry in

regard to the property stood in the name of ancestors of the Petitioners and that being so, State Government has committed an error by exceeding its revisional jurisdiction, thereby directing recording of the names of all the parties in the record of rights of the property in question. According to him, issue was only to the extent of right qua survey No.81/30 whereas, the State Government has passed an order as regards entire properties of Shambhu. He would then urge that since, consistently, Mutation Entry stood in the name of the Petitioners or their predecessors, if at all same is to be disturbed, has to be in civil suit to be initiated by the Respondents who have stale claim in the proceedings in question. He submits that the order impugned passed by the State Government is not sustainable.

3] The learned Senior Counsel appearing on behalf of the contesting Respondents would urge that once relation between the parties is not in dispute and Shambhu, being common ancestor of both the branches i.e. Petitioners and Respondents, the order passed by the State Government is very much justifiable. He submits that the

order impugned does not warrant any interference, as names of the Petitioners are also continued in the record of rights of the property in question and that being so, Petition is liable to be dismissed.

4] Considered the rival submissions.

5] Upon perusal of the impugned order passed by the State Government, what is to be noticed is, State Government i.e. competent authority was sensitive to the fact that both the parties to the Revision before it were having common ancestor viz Shambhu and it is not the case of the Petitioners or Respondents that the property is a self acquired property by either of them. That being so, State Government, in my opinion, was right in view of admitted relationship of the parties in issuing directions of recording names of Respondents with the Petitioners as against the property.

6] Needless to clarify that Mutation, as is ordered in favour of the Petitioners and Respondents, is only for the purpose of collecting revenue and ownership/entitlement of either of the parties to the

property in question is always subject to outcome of the civil proceedings. That being so, in my opinion, order impugned is just and proper which does not call for any interference. Petition, as such, stands dismissed. Interim order passed by this Court shall continue for a period of four weeks from today.

(NITIN W. SAMBRE, J.)