

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9173 OF 2017
WITH
CIVIL APPLICATION (st) NO. 23755 OF 2018
IN
WRIT PETITION NO. 9173 OF 2017

Yogesh Chandrakant Balvadkar

..Petitioner

v/s.

Maruti Kondaji Phalke (since deceased
through Lrs. Gulab Maruti Phalke & Ors.)

..Respondents

Mr. P.B. Shah a/w. Mr. Kayval Shah for the Petitioner.

Mr.Pavan Patil I/b, Triyama Legal for the Respondent No.1A(1)
to 1A(6).

Mr. S.D.Rayrikar, AGP for the Respondent No.9.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 28th JANUARY, 2019.**

P.C.

1. The learned Counsel for the petitioner seeks leave to amend so as to delete the names of respondent nos.5(A), 5(A)1 to 5(A)(3), 7(A) 7(B)(3), 7(B)(4) and respondent no.8. Leave granted. Amendment to be carried out forthwith.

2. The petitioner, respondent nos.1A-1, 1A-2, 2(1), 2(1)A-6 and respondent nos.2 and 3 are present with their respective Counsel. They have filed consent terms which read thus:

“1. The subject Writ Petition has been filed by the Petitioner thereby challenging the Order / Letter dated 19.12.2015 and Notice dated 08.12.2016 issued by the Ld. District Superintendent of Land Record, Rajguru Nagar, Pune in Case No. 1067 of 2015.

2. The Respondent Nos. 1, 1A and 1A-2 are deceased and Respondent Nos. 1A-1 to 1A-6, 2 and 3 are the contesting Respondents. Respondent No. 4 is deceased. Respondent No. 5 and 5A are deceased and Writ Petition stands dismissed against un-served Respondents Nos. 5A-4, 5A-5. Inadvertently, there is no Respondent No. 6 in the Petition. Respondent No. 7 and 7B are deceased and Writ Petition stands dismissed against un-served Respondent Nos. 7B-1 and 7B-2. Hence, the Petitioner hereby deletes the remaining Respondents i.e. Respondent Nos. 5A-1, 5A-2, 5A-3, 7A, 7B-3, 7B-4 and 8. The contesting Respondent Nos. 1A-1 to 1A-6, 2 and 3 are agreeable to the terms agreed between the parties as under.

3. By consent of the parties, the Writ Petition may be disposed off in following terms and the Authorities may be allowed to take appropriate action by considering the following consent terms.

A). The subject property situated at Moi, Taluka Khed, District Pune bearing Survey No. 197 admeasuring 13 Acres and 37 Guthas was entered in the name of Maruti Kondaji Phalke 8 Aane, Bikabai Devram Phalke 8 Aane i.e. Maruti Kondaji Phalke 6 Acres, 38.5 Gunthas and Bikabai Devram Phalke 6 Acres 38.5 Gunthas by the virtue of mutation entry bearing No. 1165.

B) Both parties have agreed that, consolidation scheme took place at Moi, Tal. Khed, District Pune in year 1964-

1965 vide mutation entry bearing No. 1369. The said Mutation entry bearing No. 1369, which was prepared during the consolidation scheme due to its effect original survey No. 197 was divided into two parts i.e. 197/1 area 3 Acres 31 Ares i.e. Maruti Kondaji Phalke, which was given GAT No. 632, Survey No. 197/2 area 10 Acres 6 Ares Bhikabai Devram Phalke which was given GAT No. 633. Prior to implementation of consolidation scheme and before the mutation entry No. 1369 was implemented as per earlier record i.e. prior to consolidation with the consent and recording statement of both i.e. Maruti Kondaji Phalke and Bhikabai Devram Phalke original survey No. 197 admeasuring total area 13 Acres and 37 Gunthas was divided into two parts And its effect was taken vide mutation entry No. 1165 by which S. No. 197/1 area 6 Acres 38.5 Gunthas was given to Maruti Kondaji Phalke and S. No. 197/2 area 6 Acres 38.5 Gunthas was given to Bhikabai Devram Phalke. But due to mutation entry No. 1369, S. No. 197/1 (GAT No. 632 Maruti Kondaji Phalke) area 3 Acres 31 Ares instead of 6 Acres 38.5 Gunthas and S. No. 197/2 (GAT No. 633 Bhikabai Devram Phalke) area 10 Acres 6 Ares instead of 6 Acres 38.5 Gunthas. Hence, Maruti Kondaji Phalke's 3 Acres 7.5 Ares area is entered in the name of Bhikabai Devram Phalke in Gat No. 633 but still as of today Maruti Kondaji Phalke and his heirs are in possession of 6 Acres 38.5 Gunthas.

C) Both the parties have agreed that as per mutation entry No. 1165 Bhikabai Devram Phalke had only right, title and interest in S. No. 197/2 upto extent of area 6 Acres 38.5 Gunthas. But during consolidation scheme merely vide mutation entry No. 1369 and in absence of any registered instrument an excess land 3 Acres 7.5 Ares was entered in the name of Bhikabai Devram Phalke in GAT No. 633.

D) It is admitted by both the parties i.e. the Petitioner and Respondents that the Petitioner have purchased area 2 Hector 50 Ares i.e. 6 Acres and 10 Ares from heirs of

Bhikbai Devram Phalke. But it is also admitted by Petitioner and the Respondents that Bhikbai Devram Phalke had Survey No. 197/2 area 6 Acres 38.5 Gunthas as per mutation entry No. 1165 and hence out of 6 Acres 38.5 Gunthas area 6 Acres 10 Ares have been purchased by the Petitioner from heirs of Bhikabai Devram Phalke. So the excess land which was entered merely by the virtue of mutation entry no. 1369, which was prepared back and behind of Respondents in the name of Bhikabai Devram Phalke in Gat No. 633 is not in accordance to the law. Hence, both parties admit that there is a error in mutation entry No. 1369 which was prepared at the time of consolidation scheme and it requires to be corrected.

E) Both parties hereby agree to co-operate each other and appear before Deputy Superintendent of Land Records for getting the subject land measured, correction of Mutation Entry No. 1369, correcting in the consolidation scheme and for finalizing the map.

F) The Respondent Nos. 1A-1 to 1A-6, 2 and 3 agree with the title of the Petitioner and that the Petitioner is in peaceful possession of the land admeasuring 2 Hector 50 Ares in Gat No. 633 situated at Moi, Taluka, khed, District Pune. But the exact location of 2 Hector 50 Ares will be corrected at the time of measurement which will be carried out in correction of consolidation scheme at Dy. SLR Khed office. The map will be finalized with the consent of both Petitioner and Respondents. None of the Petitioner or Respondents will object the correction proceeding at Dy. SLR Khed office on the abovementioned condition. The Petitioner has no objection for correcting the consolidation scheme as per mutation entry No. 1369.

4. In view of the above terms, the Writ Petition stands disposed off. The parties hereby undertake to abide by the terms and conditions of the present consent terms. No order as to costs.

5. The consent terms are signed by the Petitioner, the respondents nos.1, 1A, 1A-1, 1A-2, 1A-2(i), 1A-3, 1A-4, 1A-5, 1A-6, 2 and 3, and by the learned Counsel for the respective parties. The terms are agreeable to the parties. Hence, the consent terms are taken on record and marked “X” for identification. The statements made by the parties in the consent terms are accepted as undertaking to the Court.

6. The writ petition is disposed of in terms of the consent terms.

. Civil Application (st) No. 23775 of 2018 is disposed of in view of disposal of the writ petition. Civil

(ANUJA PRABHUDESSAI, J.)