

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

WRIT PETITION NO.3426 OF 2003

1. Hanumantrao S/o Yashwant Belurkar,
Since deceased through L.Rs.
- 1A] Udaykumar Hanumantrao Belurkar,
Age : 63 years, Occu. Agriculturist,
R/o. Madaj, Tq. Omerga,
District Osmanabad.
- 1B] Rajkumar Hanumantrao Belurkar,
Age : 61 years, Occu. Agriculturist,
R/o. Madaj, Tq. Omerga,
District Osmanabad.
- 1C] Mangal Vasantryao Kulkarni,
Since deceased through L.Rs.
 - 1C.A] Dnyaneshwar Vasantryao Kulkarni,
Age : 50 years, Occu. Service,
 - 1C.B] Bhawani Rajkumar Belurkar,
Age : 58 years, Occu. Household,
Applicant No.1C.A and 1C.B
R/o Balaji Nagar, Tq. Omerga,
District Osmanabad.
- 1D] Sudha Anantrao Kulkarni,
Age : 62 years, Occu. Household,
R/o. Near Baswa Medical, Tq. Omerga,
District Osmanabad.
- 1E] Vijaya Gunderao Kulkarni,
Age : 65 years, Occu. Household,
R/o. At Post Nadi Hattarga, Tq. AUSA,
District Latur.
- 1F] Meena Subhashrao Kulkarni,
Age : 59 years, Occu. Household,
R/o. a/p Dakshin Jevalli, Tq. Lohara,
District Osmanabad.

2. Vasantao S/o Gunderao Kulkarni,
Age : 44 years, Occu. Agriculturist,
R/o. At & Post Madaj, Tq. Omerga,
District Osmanabad.
3. Udaykumar S/o Hanmantrao Belurkar,
Age : 36 years, Occu. Agriculturist & Govt. Service,
R/o. At & Post Omerga,
District Osmanabad.
4. Rajkumar @ Rajendrakumar
S/o Hanmantrao Belurkar,
Age : 29 years, Occu. Agriculturist & Govt. Service,
R/o. At Post Osmanabad,
Talukar & District Osmanabad. ... **Petitioners**

Versus

1. Prabhavatibai Bhalchandra Kulkarni,
(dead L.Rs. of R.No.1 is already on record)
2. Nirmalabai D/o Bhalchandra Kulkarni,
Age : 27 years, Occu. Agriculturist &
Govt. Service,
3. Vaijanta D/o Bhalchandra Kulkarni,
Age : 25 years, Occu. Agriculturist &
Govt. Service.

All R/o At Post – Kawatha, Taluka Omerga,
District Osmanabad. ... **Respondents**

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Mr. P. V. Barde, Advocate for Petitioners.
Mr. C.R.Bharaswadkar, Advocate for Respondent No.1-Caveat.
Mr. Ajay shinde, Advocate for Respondent No.3.

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CORAM : V. K. JADHAV, J.

RESERVED ON : 21.01.2020

PRONOUNCED ON : 27.04.2020

JUDGMENT :-

1. By this writ petition, the petitioners seeking quashing and setting side the order passed by the Maharashtra Revenue Tribunal, Aurangabad, dated 30.07.2001 in Revision Petition No.28/B/97/O/TNC and the order of the Deputy Collector, Osmanabad, dated 04.07.1997 in file No.1993/TNC/A/94 and further praying to upheld the order passed by the Tahsildar dated 21.04.1993 in file No.80/TNC/0/5. In the alternative, it is prayed that the matter may be remanded back to the Tahsildar, Omerga for retrial in the interest of justice.

2. Brief facts giving rise to the present writ petition are as follows :

That the respondents-original plaintiff Nos.1 to 3 had instituted Regular Civil Suit No.49 of 1976 before the Civil Judge Junior Division, Omerga, District Osmanabad for declaration that the deceased defendant No.1 had no right to sell or in any other way alienate the suit property and if the alienation made by her, it is not binding on them and further for permanent injunction. The suit land admeasuring 14 acres 31 and 1/2 Gunthas forming western part of the land Survey

No.45 situated at village Bet-Javalga, Taluka Omerga and other property situated at village Kawatha originally belonged to one Bhalchandra Kulkarni. Respondent No.1-Prabhawatibai is the widow of the said Bhalchandra and respondent Nos.2 and 3 are her daughters. Original defendant No.1-deceased Padmavatibai was the adoptive mother of deceased Bhalchandra Kulkarni. Deceased Bhalchandra Kulkarni died intestate. According to the respondents-plaintiffs, after the death of Bhalchandra, a partition amongst these persons took place and in this partition, eastern half of the land Survey No.45 situated at Bet-Javalga went to the share of deceased defendant No.1-Padmavatibai (adoptive mother) and the western half portion of the land Survey No.45 and the other lands situated at village Kawatha came to the share of the respondents-plaintiffs. Thereafter, deceased defendant No.1-Padmavatibai (adoptive mother) started interfering into the peaceful possession of the western half portion of the land Survey No.45 and therefore respondent No.1-Prabhavatibai had instituted a Regular Civil Suit No.1 of 1960 against the deceased-defendant No.1. In that suit, a compromise was effected and in terms of the compromise effected between the

parties, the western half portion admeasuring 14 acres 31 and 1/2 gunthas from the land Survey No.45 was given to deceased-defendant No.1 Padmavatibai (adoptive mother) for her maintenance with a specific condition that she should enjoy its income till her death, but she shall have no right to sell or alienate it in any other manner or to create an encumbrance on it. In terms of the compromise decree passed in the said suit, deceased defendant No.1-Padmavatibai (adoptive mother) came in possession of the property. However, against the terms of the compromise decree deceased defendant No.1-Padmavatibai (adoptive mother) had taken steps to dispose off the property. Respondent Nos.1 to 3 therefore, constrained to institute the Regular Civil Suit No.49 of 1976.

According to deceased-defendant No.1 along with defendant Nos.2 and 3, the deceased-defendant No.1 Padmavati (adoptive mother) become absolute owner of the disputed land under Section 14 of the Hindu Succession Act, 1956 and therefore, she had every right to transfer the suit land belonging to her. It is further their case that original defendant Nos.2 and 3 are the tenants from defendant No.1 in

the suit land since 1965 and they are in possession. It is further case of the defendants that deceased defendant No.1 Padmavatibai (adoptive mother) agreed to sell their land admeasuring 10 acres out of the disputed land to defendant No.3 and the sons of defendant No.2 by executing an agreement dated 27.02.1976 and also accepted Rs.6,000/- as an earnest amount. Thus, possession of the suit land to the extent of 10 acres is with those persons as purchasers.

On the basis of rival pleadings of the parties to the suit, the Trial Court has framed the issues, however, issue No.6 which came to be framed in terms of the pleadings about creation of the tenancy in respect of the suit property since 1965, the Trial Court has referred the said issue for the decision of the tenancy court.

3. The Additional Tahsildar, Osmanabad in file No.30/TNC/0/5 has recorded the findings to the effect that the petitioners-original defendant Nos.2 to 5 are the tenants of the suit land. Being aggrieved by the same, the respondents-original plaintiffs have preferred an appeal before the Deputy Collector, Land Reform, Osmanabad. By judgment and order dated 07.04.1997, the Deputy Collector, Land Reform, Osmanabad

has allowed the appeal in file No.1993/TNC/A/94. Being aggrieved by the said order passed by the Deputy Collector, Land Reform, Osmanabad, the petitioners herein preferred a revision before the Maharashtra Revenue Tribunal, Aurangabad, bearing Revision Petition No.28/B/97/0/TNC. The learned Member of the Maharashtra Revenue Tribunal by judgment and order dated 30.07.2001 dismissed the Revision. Hence, this Writ Petition.

4. The learned counsel for the petitioners submits that there is a sufficient documentary evidence on record to indicate that the petitioners are the tenants over the suit land. The learned counsel submits that deceased defendant No.1-Padmavatibai (adoptive mother) became an absolute owner of the suit land. By virtue of provisions of the Section 14(1) of the Hindu Succession Act, 1956 and the petitioners' induction at her instance in the suit land as a tenant cannot be questioned. Deceased-defendant No.1-Padmavatibai (adoptive mother) being the owner of the suit land was entitled to induct the petitioners herein as tenants in the suit land. The learned counsel submits that the petitioners are admittedly in possession of the suit land since the life time of deceased

defendant No.1-Padmavatibai (adoptive mother). Deceased Padmavatibai was the mother-in-law of respondent No.1 and the grandmother of respondent Nos.2 and 3. Furthermore, the entries in the revenue record clearly indicates that the petitioners herein are in possession of the suit land as tenants. Furthermore, deceased defendant No.1-Padmavatibai during her life time had executed an agreement of sale in respect of the suit land in favour of original defendant Nos.4 and 5 (petitioner Nos.3 and 4 herein) and they are in possession to the extent of 10 acres out of the suit land. The learned counsel submits that in terms of the compromise effected between respondent Nos.1 to 3 herein and deceased defendant No.1-Padmavatibai (adoptive mother), the suit land was given in possession of the deceased defendant No.1 in lieu of right of maintenance and in view of the same by virtue of provisions of Section 14(1) of the Hindu Succession Act 1956, she became the absolute owner. Though the learned Presiding Officer of the Maharashtra Revenue Tribunal has considered this legal position, however, discarded the evidence in the form of entries in the revenue record pertaining to the possession of the petitioners over the suit land, erroneously held that they are

not the tenants over the suit land and their possession over the suit land is not lawful. The learned counsel submits that deceased defendant No.1-Padmavatibai (adoptive mother) had also accepted by filing her written statement in the aforesaid Regular Civil suit No.49 of 1976 that she had inducted petitioner Nos.1 and 2 herein as a tenant over the suit land in the year 1965 and her version is duly corroborated by the entries in the revenue record.

5. The learned counsel for the petitioners in order to substantiate his contention placed his reliance on the following cases :

- (a) Shaligram Bhupatrao Raut and others Vs. Narmadabai Ganeshrao Matikhaye and others reported in 2010 (7) Mh.L.J. 405.
- (b) Smt. Gulwant Kaur and another Vs. Mohinder Singh and others reported in AIR 1987 SC 2251.
- (c) Laxman Maruti Kolathe Vs. Baburao Mhasku Shendkar and others reported in 2012 (3) Bom.C.R. 855.
- (d) Parvatibai Maharudrappa Swami and others Vs. Hareshwar Balsingappa Swami and another reported in 2015 (3) Mh.L.J. 81.
- (e) Ramji Dhondji Dhumal and others Vs Mahadu Jalbaji Dhumal and others reported in 2009 (4) ALL M.R. 6.
- (f) Shubhalaxmi Durgaprasad Rasal Vs. Ramdas Ganeshrao Pathak and others reported in 2001(Supp.2) Bom.C.R. 484.

6. The learned counsel for the respondents submits that in terms of the compromise effected between the respondents and the deceased defendant No.1-Padmavatibai (adoptive mother) in Regular Civil Suit No.1 of 1960 before the Civil Judge Junior Division, Omerga, the deceased defendant No.1-Padmavatibai (adoptive mother) had recognized the ownership of respondent No.1, but in terms of the compromise between the parties and in order to avoid further dispute, the deceased defendant No.1-Padmavatibai (adoptive mother) was allowed to remain in possession of the property during her life time. She was allowed to take the income of the western portion of the land Survey No.45 for her maintenance. The learned counsel submits that out of the said land Survey No.45, the equal area of the land situated towards the eastern side was already allotted to the share of deceased defendant No.1-Padmavatibai (adoptive mother) and it is specifically recorded in the compromise that deceased defendant No.1-Padmavatibai had already sold that area. The learned counsel submits that thus right to possession conferred for the first time under the compromise decree in favour of deceased defendant No.1-

Padmavatibai (adoptive mother) and the same is not in lieu of any pre-existing right. Thus, this Padmavatibai does not become absolute owner of respondent No.1 Prabhawatibai's (daughter-in-law) share. The learned counsel submits that though there are entries about the possession in the cultivation column, the learned Deputy Collector and the learned Presiding Officer of Maharashtra Revenue Tribunal, Aurangabad rightly observed that it is not mentioned in the 7/12 extract that petitioner Nos.1 and 2 herein are in possession of the suit land as tenants. Their names are simply mentioned in the other rights column without specifying as to in what capacity their names have been entered in the 7/12 extract particularly in the cultivation column. Thus, both the authorities have therefore, rightly held that the possession of petitioner Nos.1 and 2 is not lawful. The learned counsel submits that it is also pertinent that deceased defendant No.1- Padmavatibai (adoptive mother) in order to preclude her daughter-in-law i.e. respondent No.1 herein to get back the suit land after its purpose over, had agreed to sell the suit property to petitioner Nos.3 and 4 (original defendant Nos.4 and 5). Respondent Nos.3 and 4-original defendant Nos.4 and

5 are none else, but the sons of petitioner No.1 herein. The learned counsel submits that there is no substance in the writ petition and the writ petition is liable to be dismissed.

7. The learned counsel for the respondents in order to substantiate his contention placed his reliance on the following cases :

- (a) Smt. Himi D/o Smt. Lachhmu and another Vs Smt. Hira Devi of Budhu Ram and others reported in AIR 1997 Supreme Court 83.
- (b) Gaddam Ramakrishnareddy and others Vs. Gaddam Rami Reddy reported in 2010 AIR SCW 6589.

8. Though both the parties to this writ petition have invited this Court to record the findings in terms of the provisions of Section 14 of the Hindu Succession Act, however, conscious of the fact that the said issues are required to be decided by the trial court on appreciation of the oral and documentary evidence in its proper perspective keeping in mind the provisions of Section 14(1) and 14(2) of the Hindu Succession Act, 1956. Section 14 with its Sub Sections reads as under :

"14. Property of a female Hindu to be her absolute property.—

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act,

shall be held by her as full owner thereof and not as a limited owner.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."

9. It is well settled that Sub Section (1) of Section 14 covers every kind of acquisition of property by a female Hindu including acquisition in lieu of maintenance and where such property was possessed by her at the date of commencement of the Act or was subsequently acquired and possessed, she would become the full owner of the property. Sub Section (2) is more in the nature of a proviso or exception to Sub Section (1). The exception is made to certain kinds of acquisition of property by a Hindu female. Sub Section (2) must, therefore be read in the context of the Sub Section (1) so as to leave as large a scope for operation as possible to Sub Section (1). It must be confined to a cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right, under a gift, will, instrument, decree, order or award. However, property is acquired by a Hindu female at a partition

or in lieu of right of maintenance, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of Sub Section (2), even if the instrument, decree, order or award allotting the property prescribes a restricted estate in the property. This particular aspect is explained as above by the Supreme Court in a case of *Vaddeboyina Tulasamma Vs. Vaddeboyina Sesha Reddi reported in AIR 1977 SC 1944*.

10. In the instant case, it is for the Trial Court to appreciate the oral and documentary evidence and to consider the various aspects in its proper perspective to find out as to whether deceased defendant No.1-Padmavatibai (adoptive mother) became the absolute owner by virtue of Section 14(1) of Hindu Succession Act, 1956 or she fallen into the excepted category as contemplated under Sub Section (2) of Section 14 of the Act of 1956. The following points may arise for consideration :

- (i) Though it is disputed that after the death of Bhalchandra Kulkarni the partition came to be effected between respondent Nos.1 to 3 and deceased defendant No.1-Padmavatibai (adoptive

mother), however, it is not disputed that the deceased defendant No.1-Padmavatibai (adoptive mother) was allotted the equal share from the eastern side of the suit land Survey No.45 and prior to the institution of the Regular Civil Suit No.1 of 1960 she had sold it. It thus appears that the equal shares came to be carved out and allotted to respondents-original plaintiffs and original defendant No.1-Padmavatibai (adoptive mother).

- (ii) In terms of the compromise decree effected between respondent Nos.1 to 3 and deceased Padmavatibai (adoptive mother) in Regular Civil Suit No.1 of 1960, deceased Padmavatibai (adoptive mother) had recognized the ownership of respondent No.1 (daughter-in-law) but she was allowed to remain in possession of the property during her life time to avoid the further dispute between the family members. The deceased defendant No.1-Padmavatibai (adoptive mother) was allowed to take the income of the

land allotted to the share of respondent No.1 Prabhavatibai (daughter-in-law) as a maintenance during her life time and she would not get any right of alienation or create third party interest, in any manner.

- (iii) It is for the Trial Court to find out on appreciation of the oral and the documentary evidence whether the said right or possession conferred on deceased Padmavatibai (adoptive mother) for the first time under compromise decree, and not in lieu of any pre-existing right or otherwise.
- (iv) It is the part of the pleadings and record that during the life time of deceased Padmavatibai (adoptive mother) had executed an agreement of sale in favour of the original defendant Nos.4 and 5 (petitioner Nos.3 and 4 herein) in respect of the suit land and the said purchaser are none else but the sons of petitioner No.1 herein. I refrained myself from recording any findings on merits in terms of the provisions of Section 14 of the Hindu

Succession Act, 1956 and it is open for the parties to lead the oral and documentary evidence in support of their rival contentions and it is for the Trial Court to consider the same on its own merits in accordance with law.

11. So far as the present petition is concerned, this pertains to the tenancy issue referred by the Civil Court. I have carefully gone through the 7/12 extract. Perused the entire revenue record, which is part of Record and Proceeding received from the Tahsildar. Though I do not find that sale deed pertaining to the eastern half portion of the suit land Survey No.45 executed by deceased defendant No.1-Padmavatibai (adoptive mother), however, it appears from the copy of agreement of sale which is the part and parcel of Regular Civil Suit No.49 of 1976 that deceased defendant No.1-Padmavatibai (adoptive mother) had sold her eastern half portion of the suit land Survey No.45 to Hanmant Yashwant and one Ramrao Bhimrao Patil to the extent of 7 acres and 16 Gunthas each. So far as the suit land admeasuring 14 acres 31 and 1/2 Gunthas from the western side of the land Survey No.45, which is herein referred as a suit land is concerned, the

name of Padmavatibai (adoptive mother) is also appearing in the ownership column. However, the names of Ramrao Bhimrao Patil and Hanmant Yashwantrao appearing in the cultivation column are to the extent of the land admeasuring 7 acres 16 gunthas purchased by them from deceased defendant No.1-Padmavatibai (adoptive mother). So far as the possession in respect of the western side portion admeasuring 14 acres 31 and 1/2 gunthas which is the suit property herein, the name of deceased Padmavatibai appearing in the cultivation column right from 1965-1966 till her death. It is thus clear that the name of deceased defendant No.1-Padmavatibai appearing in 7/12 extract, particularly in the cultivation column as *Khud*. After going through the entire revenue record which is placed before the Tahsildar, I do not find any entry in respect of the name of the petitioners herein as a tenants in respect of the suit land. The names of prospective purchaser-original defendant Nos.4 and 5 are mentioned in the other rights column and their names are not appearing in the cultivation column. Though this particular aspect is not correctly considered by the courts below, however, the result would be the same. Both the courts below have

therefore, rightly recorded the findings in the negative to the tenancy reference. There is no substance in this Writ Petition.

Hence, I proceed to pass the following order:

ORDER

1. The Writ Petition is hereby dismissed.
2. Record and Proceedings received from Maharashtra Revenue Tribunal, Aurangabad in Revision Petition No.28/B/97/O/TNC, Record and Proceedings received from Deputy Collector, Land Reform, Osmanabad in File No.93/TNC/A/94 and Record and Proceedings received from Tahsildar, Omerga in File No.80/TNC/C/5, shall be returned forthwith.
3. Rule discharged.

(V. K. JADHAV, J.)

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vmk/-