

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.1101 OF 2019

Janardhan Vinayk Deshmukh/Dandge
Aged about 74 years,
Occ: Agriculturist, R/o Mandapgaon,
Present Garkhed, Tq. Deulgaon Raja,
Dist. Buldhana. **PETITIONER**

...V E R S U S...

1. State of Maharashtra, through
D.G.P, Buldhana.
2. Shivhari Limbaji Shinghe,
Aged Major, Occ: Agriculturist,
R/o Deulgaon Mahi, Tah. Deulgaon Raja,
District Buldhana.
3. Sou. Urmila Punjabrao Shelke,
Aged Major, Occ: Household,
R/o Raut Wadi, Near Gajanan Khedekar
House, Tq. Chikhli,
District Buldhana. **RESPONDENTS**

CRIMINAL WRIT PETITION NO.1102 OF 2019

Janardhan Vinayk Deshmukh/Dandge
Aged about 74 years,
Occ: Agriculturist, R/o Mandapgaon,
Present Garkhed, Tq. Deulgaon Raja,
Dist. Buldhana. **PETITIONER**

...V E R S U S...

1. State of Maharashtra, through
D.G.P, Buldhana.

2. Manoj Harihar Talnikar,
Junior Assistant, Panchayat Samiti,
Deulgaon Raja, Tah. Deulgaon Raja,
District Buldhana. **RESPONDENTS**

Ms. Trishala Dhait, Advocate h/f Mr. Abhay Sambre,
Advocate for Petitioner. (CWP 1101/2019 & 1102/2019).
Mr. S.S. Doifode, APP for Respondent 1/State. (CWP
1101/2019 & 1102/2019).
Mr. R.N. Ghuge, Advocate for Respondents 2 & 3 (CWP
1101/2019).
Mr. Rathod, Advocate h/f Mr. H.D. Futane, Advocate for
Respondent 2 (CWP 1102/2019).

CORAM: **ROHIT B. DEO, J.**
DATE: **15th DECEMBER, 2020.**

ORAL JUDGMENT:

Both the petitions arise from the same proceedings and are heard and disposed of at the admission stage, with consent of parties, by this common judgment.

2. The petitioner is assailing the order dated 21.11.2019 rendered by the Additional Sessions Judge, Buldhana in Criminal Revision 29/2016 whereby the order of issuance of process for offence punishable under sections 418, 468 of Indian Penal Code is set aside and the order dated 21.11.2019 rendered by the Additional Sessions Judge in Criminal Revision 12/2016 confirming the dismissal of the complaint qua Manoj Talnikar –

accused 3.

3. The petitioner instituted Criminal Case 2/2015 alleging commission of offence punishable under sections 418, 468, 471 read with section 34 of Indian Penal Code. Respondents 2 and 3 in Criminal Writ Petition 1101/2019 are arraigned as accused 1 and 2 and respondent 2 in Criminal Writ Petition 1102/2019 is arraigned as accused 3.

4. It is alleged in the complaint that the grand-father of accused 1 and 2 transferred agricultural land bearing forming portion of gat 69 to the complainant and his brothers in the year 1980. According to the complainant, the transfer was effected by executing an earnest receipt and delivery of possession. The complainant contends that since 1980 and even prior to that, the complainant and/or his father are in possession and cultivation of the agricultural land. It is further contended that the grand-father Mr. Sheshrao Shingne died on 15.07.1984. Some explanation is given for the inability to execute the sale-deed.

5. The next allegation is that although there was a

partition in the family after the death of the grand-father, the agricultural property in question was not put to partition since the same was already transferred to the complainant and his brothers. It is alleged that while Sheshrao Shingne expired on 15.07.1984, accused 1 and 2, in connivance with accused 3, recorded the entry of death as 25.11.1981. False revenue entries were taken is the next allegation. On the strength of the revenue entries proceedings for mutation were instituted suppressing that the agricultural property was already sold.

6. The learned Magistrate recorded *prima facie* satisfaction that the case is made out against the accused 1 and 2 and issued process for offence punishable under sections 418 and 468 read with section 34 of Indian Penal Code. However, since accused 3 was a public servant and no sanction to prosecute was obtained, the complaint came to be dismissed as against accused.

7. Accused 1 and 2 preferred Criminal Revision 29/2016 questioning the order of issuance of process. The learned Sessions Judge allowed the revision noting that the dispute is purely civil and that even according to the complainant, there was no transfer in the eyes of law in as much as the sale-deed was admittedly not

executed. In this view of the matter, the learned Sessions Judge found that the proper course would be to approach the civil court since there is admittedly no transfer of title in favour of the complainant.

8. I entirely concur with the view taken by the learned Sessions Judge.

9. In so far as respondent 3 herein is concerned, the complainant was aggrieved by the dismissal of the complaint and preferred Criminal Revision Application 12/2016 which came to be dismissed vide order dated 21.11.2019. The learned Sessions Judge found that since the property was not sold by registered sale-deed, there is nothing wrong in the mutation entries taken by the respondent 3 herein Manoj Talnikar. The learned Sessions Judge rightly found that the question of forgery just does not arise.

10. In my considered view both the revisional judgments have taken the correct view on facts and in law and there is no reason to interfere in exercise of writ jurisdiction.

11. Both the petitions are dismissed, with no order as to costs.

JUDGE

NSN