

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 1194 OF 2013

1. Sagarsing Deva Jadhav
@ Sagarsing Habesing Jadhav,
Age 59 yrs. Occ. Agri.
2. Manohar Sagarsing Jadhav
Age years. Occ.
Both r/o Vasant Nagar, Tq. Parola
Dist. Jalgaon.

... PETITIONERS

VERSUS

1. The State of Maharashtra,
Through the Secretary Home
Department, Mantralaya Mumbai.
2. The Superintendent of Police,
Jalgaon.
3. Surasing Bhura Chavan
Age 72 yrs. Occ. Agri
r/o Vasant Nagar,
Tq. Parola, Dist. Jalgaon.

Amended made as per order dated 30/10/2018
passed by this Honble Court

Legal Heirs of Respondent No.3

3. Surasing Bhura Chavan
Dead Through LRs.
- 3-A) Laxmibai Sura Chavan,
Age: 70 years, Occu.: Household,
- 3-B) Raghunath Sura Chavan,
Age: 42 years, Occu.: Service,

R/o Bhimashankar Nagar,
Pimpri Chinchwad, Pune.

- 3-C) Vishwanath Sura Chavan
Age: 35 years, Occu.: Service,
No.2-A and 2-C R/o. Vasantnagar,
Tq. Parola, Dist. Jalgaon.
- 3-D) Kalibai Kashinath Rathod,
Age: 50 years, Occu.: Household,
R/o. Valtandtanda, Tq. Chalisgaon,
Dist. Jalgaon.
- 3-E) Sumanbai Madansing Chavan,
Age: 48 years, Occu.: Household,
R/o. Wagnagar, Jalgaon,
Tq. and Dist. Jalgaon.
- 3-F) Devkibai Bharat Rathod,
Age: 45 years, Occu.: Household,
R/o. Raneshwar Khedi, Tq. Amalner,
Dist. Jalgaon.
- 3-G) Namunabai Dhanraj Rathod,
Age: 40 years, Occu.: Household,
R/o. Mhasawad Tanda, Tq. Pachora,
Dist. Jalgaon.
- 3-H) Lalitabai Hemraj Rathod,
Age: 38 years, Occu.: Household,
R/o. Nalbanditanda, Tq. Bhadgaon,
Dist. Jalgaon.
- 3-I) Kavitabai Vijay Pawar,
Age: 36 years, Occu.: Household,
R/o. Mahukheda Tanda, Tq. Jamner,
Dist. Jalgaon.

... RESPONDENTS

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Mr. Anand I. Deshmukh, Advocate for Petitioners.

Mr. S. J. Salgare, APP for Respondent Nos.1 & 2.

Mr. M. B. Sandanshiv, Advocate for Respondent No.3.

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CORAM : T. V. NALAWADE &
M. G. SEWLIKAR, JJ.

DATE : 19th January, 2021.

JUDGMENT: (Per T. V. Nalawade, J.)

. The petition is filed for relief of quashing of FIR No.154 of 2013, registered with Parola Police Station, District Jalgaon, for the offences punishable under Sections 193, 199, 200, 419, 420, 467, 468, 471, 474, 477 read with 34 of the Indian Penal Code. R.C.C. No.9 of 2014 is filed in that crime for similar offences. Copy of FIR is produced by the Petitioners.

2 Both the sides are heard.

3 Respondent No.3, informant has contended that he has been in possession of agriculture land bearing Gat No.100 admeasuring 7 Hectare 16 Ares situated at Vasant Nagar for more than seventy years and he has been cultivating this land. It is contended that his two brothers are also cultivating different portion of this land.

4 It is the contention of informant that present Petitioner No.1 Sagarsing and Petitioner No.2, son of Petitioner No.1, created some false record to show that Petitioner No.2 was adopted by Habesing Nirbal Jadhav. It is contended that application was given for mutation in respect of land of deceased Habesing on 27th February, 2005 by the present Petitioners and without producing any record like death certificate, mutation No.224 was obtained in the year 2005. It is contended that after making inquiry, the informant learnt that certificate of death in respect of Habesing was collected in the year 2006 by the present Petitioners, but prior to that the application for mutation was made. It is contended that as such documents, which are required for giving application for mutation were prepared subsequently, it can be said that all false record is created by the Petitioners to show that the Petitioners have become owners due to adoption and by succession. It is contended that false adoption deed is prepared by them. It is contended that mutation No.224 was made due to the false representation made by the Petitioners. It is contended that they have filed suit to get the land in their possession and some revenue proceeding was also started by them. It is contended that the revenue officers had helped the present Petitioners and they had obtained signatures of the informant and his family members on some papers for entering the name of Petitioners

on the revenue record as owners.

5 Copy of adoption document dated 28th July, 1995 is produced to show that Habesing had taken Sagarsing in adoption. Sagarsing is a nephew of Habesing and affidavits are produced to show that there was a ceremony of adoption. The 7/12 extract is produced to show that for Gat No.100, the name of Sagarsing was entered as owner. It appears that initially in crop cultivation column also the name of Sagarsing was entered, but subsequently his name was deleted and the revision filed by Sagarsing was also dismissed by the revenue authority. The submissions made and the record show that R.C.S. No.54 of 2013 was filed by the Petitioners for the relief of injunction, but in the year 2019 a pursis was filed for withdrawal and this suit came to be disposed of. Thus, it appears that when the revenue matter went against the Petitioners and there was no record with them to show the possession, they did not press the suit filed for injunction.

6 After considering the aforesaid circumstances, it can be said that the circumstance that the entry of the name of Petitioner No.1 in revenue record as owner remained there and the informant has grievance in respect of that entry. The submissions made and the

record do not show that anything is there with the informant to show that Sagarsing is not nephew of deceased Habesing. The submissions made show that the informant is not claiming any relation with Habesing. The informant is claiming that he has been in possession for more than seventy years and only on that basis it is his contention that false entry is made in the revenue record. When there is such record of adoption and the owner is dead, in ordinary course, the revenue authority makes entry of the name of successor of deceased in the revenue record. Such mutation can be challenged by aggrieved persons, who are claiming that they are successors of deceased Habesing. The submissions made show that till today, nobody has challenged that mutation. In view of these circumstances, in Criminal Court, it cannot be said that false representation was made by Petitioner, Sagarsing that he is nephew of the deceased and he is entitled to succeed to the property of deceased. The crime is registered mainly due to such allegations. It can be said that this is an attempt to pressurize the successors of Habesing. Even if Petitioner No.1 fails to show that he was adopted by Habesing, he can show that he was entitled to succeed to the property of Habesing as nephew of Habesing. Thus, the dispute is mainly of civil nature. Only due to withdrawal of injunction suit, it cannot be said that the Petitioners have created false record of adoption. Some police

statements are there of witnesses shown on adoption document and they are to the effect that there was no such adoption and they have not signed on the document. Execution of private document can be proved in many ways when the matter is taken to Civil Court. When there is dispute of aforesaid nature, it is always desirable that the dispute is decided by the Civil Court. As the informant has no locus to challenge the entry made in the revenue record on the basis of claim of succession, this Court holds that it will be abuse of process of law if the Petitioners are asked to face the trial for aforesaid offences. In the result, the following order is passed:

ORDER

- I. The petition is allowed.
- II. Relief is granted in terms of prayer clauses (B) and (BB).
- III. Rule made absolute in those terms.

[M. G. SEWLIKAR, J.]

[T. V. NALAWADE, J.]