

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

WRIT PETITION NO.7317 OF 2019

Kamlakar Eknathrao Kakde Through
GPA Girish Kamlakar kakde ... Petitioner

Versus

The Secretary Ministry of Road Transport
and Highways & Ors. ... Respondent

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Mr. B. R. Waramma, Advocate for the Petitioner
Mr. B. B. Kulkarni, Advocate for Respondent Nos.1 & 2
Mr. B. N. Patil, Advocate for Respondent Nos.4 to 8
Mr. A. S. Bajaj, Advocate for Respondent Nos. 3 & 9

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 4th August, 2022

PER COURT :

1. This petition filed under Article 226 & 227 of the Constitution of India challenges the order dated 29-03-2019 passed by the Sub-Divisional, Ausa/respondent no.2 under Section 3-H (3) of the National Highways Act, 1956 (for short 'the said Act').

2. The petitioner filed a Regular Civil Suit No.220/2010 in the Court of Civil Judge, Junior Division, Ausa seeking declaration of his ownership in respect of following lands; (1) Survey No.261 admeasuring 17 Acres, 24 Gunthas, (2) Survey No.263 Admeasuring 17 Acres 24 Gunthas and (3) Survey No.264

admeasuring 19 Acres 36 Gunthas out of its 11 Acres 30 Gunthas (for short 'the suit lands'). The petitioner claimed that he is adopted son of late Harnabai, to whom the said lands were given by way of gift deed by her mother to be used for generations. Harnabai adopted petitioner in the year 1974. Harnabai sold the suit lands to Baburao Arjunrao Patil, Ramgopal Sukhdeo Sarda and Govindlal Bankatlal Malu i.e. defendant nos.1 to 12 in the suit. Thereafter, defendant nos.1 to 12 further sold the suit lands to Vishnudas Ramkishan Agrawal, Narendrakumar Vishnudas Agrawal, Ujwala Chandrashekar Utge, Ramesh Ramdas Shelke, Laxmibai Bhimashakar Auti and Anita Goroba Auti i.e. defendant nos.13, 14, 15, 18, 19 and 20 in the suit. The petitioner, therefore, claimed in the suit that since gift deed contained clause that Harnabi was to enjoy the suit lands for generations, she was not entitled to sell the suit lands, petitioner therefore sought declaration of ownership of the suit lands and also prayed for possession of the suit lands from the defendants/respondents. In the said suit, respondents/defendants have filed an application (Exhibit-59) under Order-VII, Rule 11 (a) (d) of the Code of Civil Procedure (for short 'CPC') seeking rejection of the plaint.

3. After hearing the parties, the Trial Court allowed the application (Exhibit-59) holding that the suit is barred by limitation and the suit property was stridhan property of Harnabai and

therefore, she had absolute right to alienate the suit property in terms of Section 14(1) of the Hindu Succession Act, 1956 (for short 'the Act of 1956'). The petitioner has challenged sale transaction entered into by Harnabai in the year 1982 beyond the period of limitation. Accordingly, the Trial Court allowed the said application and by order dated 05-07-2013 passed below Exhibit-1 dismissed the suit.

4. The petitioner challenged the order passed by Trial Court by filing Regular Civil Appeal No.156/2013, which is sub judice. In the said appeal, the petitioner moved an application (Exhibit-37) seeking temporary injunction under Order 39 Rules 1, 2 read with Section 151 of CPC, claiming that Government has proposed to acquire portions of suit lands for National Highway and the portions, which are proposed to be acquired are standing in the name of defendant nos.13, 17 and 19 and one chandpasha. The petitioner, therefore, claimed that the amount of compensation of acquisition of the suit lands should not be disbursed to the defendants. The said application is rejected by the Appellate Court vide order dated 20-09-2017.

5. The petitioner also raised an objection before respondent no.2 under Sections 3-H (3) and 3-H (4) of the said Act, claiming that since he has objected to the disbursement of compensation amount, the

matter may be referred to the Civil Court and the compensation amount be transferred to the said Court. By the impugned order dated 29-03-2019, respondent no.2 has rejected the objection of the petitioner and directed disbursal of the compensation amount to respondents nos. 3 to 9. The petitioner is aggrieved by this order.

6. Heard the learned Advocate for the petitioner, the learned Assistant Government Pleader for respondent nos.1 & 2, the learned Advocate for respondent nos.3 & 9 and the learned Advocate for respondents nos.4 to 8.

7. The learned Advocate for the petitioner strenuously submitted that once the objection was raised and dispute occurred before respondent no.2 in respect of entitlement and apportionment of the compensation amount, he was duty bound to refer it to the Civil Court. According to him, in view of the Division Bench decision of this Court in **Arun s/o Trimbakrao Lokare Vs. State of Maharashtra & Others** reported in **2017 (6) Mh.L.J**, jurisdiction of the competent authority to decide the point of apportionment of compensation amongst several persons is excluded by necessary implication, therefore, he submits that the impugned order passed by respondent no.2 be set aside and the matter be relegated to the Civil Court.

8. Per contra, the learned Advocate for respondent nos.3 & 9 supported the impugned order. He submits that the suit filed by the petitioner is rejected and the Appellate Court has rightly rejected the temporary injunction application filed by the petitioner. By relying on the observations of the Trial Court as well as Appellate Court, he submits that there is no merit in the contentions raised by the petitioner in the present petition. Further, by relying on the decisions of the Hon'ble Apex Court in **Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra) dead through legal representative & Others** reported in **(2020) 7 SCC 366** and **T. Arivandandam Vs. T. V. Stayapal & Another** reported in **(1977) 4 SCC 467**, he submits that since it was found that the plaint filed by the petitioner did not disclose real cause of action, the Court has rightly rejected the plaint and in that view, respondent no.2 was justified in allowing compensation to the respondent nos.3 to 9. He, therefore, submits that there is no merit in the petition and the petition may be dismissed.

9. The learned Advocate for respondent nos.1 & 2 has adopted the above arguments and has further pointed out that the amounts are disbursed to respondent nos.3 to 9 by obtaining undertaking from them. Even if the petitioner succeeds ultimately in his appeal, the respondents will be liable to refund the compensation amount.

He, therefore, submits that respondent no.2 has not committed any error in allowing compensation to the respondent nos.3 to 9.

10. It is a matter of record that the plaint filed by the petitioner is rejected on merits. The Trial Court has recorded a finding that the petitioner has no right to claim that Harnabai had no authority to sell the lands which were gifted to her by her mother. The petitioner has challenged the sale instances of the year 1982 by filing suit in the year 2000, therefore, point of limitation is also held against the petitioner. Though the petitioner has filed appeal, the facts pleaded in the suit and as are reflected in the order of the Trial Court speak for themselves.

11. Admittedly, the petitioner though sought injunction from the Appellate Court to the disbursal of compensation amount, the same is rejected on merit by the First Appellate Court.

12. The record further reveals that respondent no.2 has passed order by taking into consideration the decision of Trial Court, First Appellate Court as well as this Court. The impugned order is passed after taking into consideration the fact that name of the petitioner is not reflected in ownership column of the said lands. The ownership and possession of the petitioner are not reflected in the joint measurement. The revenue record contains the name of respondent nos.3 to 9 and therefore, he has rightly come to a conclusion that

as per Section 3-H (4) of the said Act, it is not necessary to transfer the matter to the Civil Court.

13. The Division Bench of this Court in Arun s/o Trimbakrao Lokare (Supra) has held that by harmonious construction of Sections 3-H (3) and 3-H (4) of the said Act, whenever there is dispute raised by any person as to the right to receive either the whole or portion of the compensation, the competent authority is obliged to refer the matter to the Principal Civil Court of original jurisdiction and in view of the said legal position, when sub-section (4) of Section 3-H of the said Act specifically requires the dispute as to the entitlement to receive compensation determined under Section 3-G of the Act, to be referred to and decided by the Principal Civil Court of original jurisdiction, it by implication necessarily excludes jurisdiction of the competent authority, which is entitled to merely decide the point of apportionment of the compensation amongst several persons under sub-section (3) of Section 3-H of the said Act.

14. There cannot be any dispute about the above principle laid down by the Division Bench. However, in the peculiar facts of the present case, since it is clear from the record that, the petitioner has lost in the Trial Court and interim injunction is rejected by the First Appellate Court and since the record reveals that respondents/

defendants are the owners and possessors of the said lands, in that view of the matter, this authority would not assist the petitioner.

15. Taking into consideration the facts and the undertaking given by the respondents/defendants, while withdrawing the compensation amount, this Court is not inclined to interfere in the impugned order in exercise of extra ordinary writ jurisdiction. The writ petition is, therefore, dismissed. No costs.

[NITIN B. SURYAWANSHI, J.]

Sameer