

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6380 OF 2022

- | | | |
|----|--|-------------|
| 1. | Prayagbai w/o Gangaram Sawant
Age – 54 years, Occ – Agri. | PETITIONERS |
| 2. | Pundlik s/o Gangaram Sawant
Age – 31 years, Occ – Agri | |
| 3. | Chandrabai Gangaram Sawant
Age – 29 years, Occ – Agri | |
| 4. | Shivaji s/o Gangaram Sawant
Age – 27 years, Occ – Education
All R/o Gortha, Taluka – Umri
District – Nanded | |

VERSUS

- | | | |
|----|---|-------------|
| 1. | The State of Maharashtra
Through Secretary of Revenue
Department Mantralaya, Mumbai | RESPONDENTS |
| 2. | The Additional Divisional Commissioner
Aurangabad Division, Aurangabad | |
| 3. | The Additional Collector,
Nanded, District – Nanded | |
| 4. | The Sub-Divisional Officer,
Nanded, District – Nanded | |
| 5. | The Tahsildar
The Tahsil Office, Umri,
Taluka-Umri, District – Nanded | |
| 6. | Sangabai w/o Pundlik Sawant
(Died) Through her legal representative
Namdeo s/o Gangaram Sawant
Age – 59 years, Occ – Agriculture
R/o Gortha, Taluka – Umri, District - Nanded | |

.....

Mr. Gopal D. Kale, Advocate for the petitioners
Mr. S. W. Munde, AGP for respondent - State
Mr. Amit A. Mukhedkar, Advocate for respondent No.6

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 26th SEPTEMBER, 2022
PRONOUNCED ON : 14th NOVEMBER, 2022

JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. This petition, filed under Article 227 of the Constitution of India, challenges order dated 23rd March, 2022 passed by respondent No.1 in Appeal-2019/Pra.Kra.03/J-7-A.

3. It is the case of the petitioners that, Gangaram Sawant, husband of petitioner No.1, was the adopted son of Pundlik Sawant and his two wives, namely Chandrabai and Sangabai. Registered adoption deed was executed in the year 1966. As per the adoption deed, Gangaram became owner and possessor of the lands in Guts No.170 and 171 admeasuring 1 Hector 9 *Are* and 2 Hectare 26 *Are*, situated at village Gortha, Taluka-Umri, District – Nanded (hereinafter for short, “the said lands”) and his name was entered in the ownership column, by Mutation Entry No. 1385 on 24th June, 1981.

4. Gangaram expired on 30th December, 1995. After his death, petitioner No.1 applied for entering her name to the said lands. Accordingly, her name was entered in the ownership column of the said lands as legal heir of deceased Gangaram Sawant, by ME No. 1924 and she is the owner and possessor of said land after death of her husband.

5. Respondent No.6 – Sangabai objected to ME No. 1924 contending that her husband, Pundlik Sawant had cancelled the registered adoption deed of Gangaram, on 15th December, 1980 and had executed a Will Deed in favour of his two wives. This objection was rejected by the Tahsildar, by order dated 16th May, 1999.

6. Order passed by respondent No.5 - Tahsildar was challenged by respondent No.6, by filing appeal before the respondent No. 4 - Sub Divisional Officer, which was allowed on 14th February, 2000. The petitioners unsuccessfully challenged the order of the Sub Divisional Officer, by filing appeal before respondent No. 3- Additional Collector.

7. The petitioners thereafter filed ROR Revision No. 16 of 2001 before respondent No.2 - Commissioner. During pendency of said Revision, respondent No.6 Sangabai died on 9th March,

2001. Accordingly, purshis was filed by the petitioners on 13th April, 2004. According to the petitioners, they are the only legal heirs of deceased Pundlik and his two wives.

During pendency of the revision, Namdeo Gangaram Sawant claiming himself to be legal representative of deceased Sangabai, filed intervention application contending that deceased Sangabai has executed a Will Deed in his favour on 7th April, 2001. The petitioners objected to the said intervention contending that the Will Deed was executed by Sangabai, when *status quo* order dated 9th March, 2001 passed by respondent No.2 - Commissioner was operating. Respondent No.2 - Commissioner allowed the intervention application. The petitioners had challenged the said decision of respondent No.2 dated 9th July, 2013, by filing writ petition No. 6372 of 2013 before this Court. This Court dismissed the writ petition. Thereafter, respondent No.2 rejected the revision, by judgment dated 4th July, 2018.

8. The petitioners, thereafter filed review petition bearing ROR/Review/321 of 2018 before respondent No.2. Respondent No.2 allowed the review by order dated 7th October, 2018 and set aside the orders passed by the Sub Divisional Officer and the Collector and confirmed ME No. 1924.

9. Being aggrieved by the order of respondent No.2 passed in the review, respondent No.6 filed Revision before respondent No.1. By the impugned order dated 23rd March, 2022 the revision is allowed and the order dated 7th October, 2018 passed by respondent No.2 in the review is set aside. It is observed in the impugned order that the said decision shall be subject to the decision of this Court and Civil Court. Hence, the present writ petition.

10. Heard learned advocate for the petitioners, learned Assistant Government Pleader for the respondents – State and learned advocate for respondent No.6.

11. Learned advocate for the petitioners assailed the impugned order submitting that ME No. 1385 was sanctioned on 24th June, 1981 and the same was effected on the basis of the registered adoption deed. After death of adopted son Gangaram, name of his wife – petitioner No.1 was entered to the said lands in the revenue record. The Tahsildar has rightly rejected the objection of respondent No.6 and confirmed the ME No.1924. He submits that respondent No. 4 erred in allowing the appeal filed by respondent No.6 and respondent No.3 committed an error in dismissing the appeal filed by the petitioners. He further submits

that during the pendency of the revision before respondent No.2, *status quo* was granted by order dated 9th March, 2001. Respondent No.6 expired during pendency of the revision before respondent No.2 and intervention application was filed by respondent No.6, which is allowed and this Court has confirmed the said order. He submits that unless respondent No.6 proves his right, he is not entitled to claim the said lands. According to him, as per section 15 of the Hindu Adoption and Maintenance Act, 1956 (hereinafter for short "the Act of 1956"), the adoption deed once executed cannot be cancelled. Further submission is that the alleged Will Deed is executed by Sangabai in the year 2001 and Namdeo, who claims that the said lands are bequeathed in his favour, by the Will Deed, for the first time appeared in the year 2011 and the alleged Will Deed is yet not proved. Therefore, Namdeo has no right to claim the said lands. At no point of time, the adoption deed of Gangaram was challenged. Therefore, he submits that these aspects have been ignored by respondent No.1 while passing the impugned order and, therefore, the impugned order is liable to be quashed and set aside. In support of his submissions, he relied on ***"Jitendra Singh V/s State of Madhya Pradesh and Others"*** 2021 SCC OnLine SC 802.

12. On the other hand, learned advocate for respondent No.6, by relying on section 13 of the Act of 1956, claims that adoptive father or mother can dispose of the property by Will. According to him, the review is wrongly entertained by respondent No.2. He submits that respondent No.2 has ignored the provisions of section 13 of the Act of 1956 while passing the order in the review.

13. Learned Assistant Government Pleader supports the impugned order. He submits that the Commissioner could not have reviewed his own order.

14. Adoption of Gangaram, in the year 1966, by Pundlik and his two wives - Chandrabai and Sangabai, by way of registered adoption deed, is not in dispute. On the basis of the adoption deed, by mutation entry No. 1385, name of Gangaram was entered to the said lands, in ownership column. After death of Gangaram, by ME No. 1924, name of petitioner No.1 is entered to the said lands, being legal heir of Gangaram.

15. It would be appropriate here to consider the relevant provisions;

“13. Right of adoptive parents to dispose of their properties – Subject to any agreement to the contrary, an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer

inter vivos or by Will.

15. Valid adoption not to be cancelled – No adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor the adopted child renounce his or her status as such and return to the family of his or her birth.”

16. Admittedly, the adoption deed is not cancelled by any competent civil court. Therefore, ME No. 1385, taken on the basis of registered adoption deed and ME No. 1924, taken after death of Gangaram, thereby entering name of petitioner No.1, being the legal heir of Ganraram, deserve to be upheld.

17. In view of registered adoption deed, which is not cancelled by any competent civil court, Sangabai has no authority to execute will deed of the said land, in favour of Namdeo, who has subsequently stepped into the shoes of Sangabai, claiming to be her legal heir, in whose favour Sangabai has bequeathed the said lands.

18. In view of section 13 of the Act of 1956, the adoptive father or mother can dispose of their property by transfer inter vivos or by will, however, this will have to be established by leading evidence. The Will deed will have to be proved in accordance with law. It will have to be ascertained as to whether the said lands were ancestral properties of deceased Pundlik or

they are his self acquired properties. All this will have to be looked into by the competent civil court.

19. Section 15 of the Act of 1956 stipulates that the valid adoption deed cannot be cancelled.

20. In the light of the above provisions, findings recorded by respondent No.1 cannot be sustained. It is a matter of record that Sangabai, during her lifetime, had not challenged ME No. 1385. In that view of the matter, no fault can be found with the order passed by respondent No.2 in review. ME No. 1924 appears to be rightly recorded in favour of petitioner No.1, being the legal heir of deceased Gangaram. In view of death of Sangabai, names of petitioners, being legal heirs of deceased Gangaram, are required to be entered to the said lands.

21. Respondent No.1, while allowing the revision, has ignored the above aspects. Therefore, the impugned decision is unsustainable. Respondent No.1 has committed an error in interfering with the order passed by the Commissioner in review.

22. This Court, while passing the order in Writ Petition No. 6372 of 2013, filed by the petitioners, has specifically observed; *“It is always open for the petitioners to challenge the said will deed on the grounds as are available to them.”* . There is nothing on record to show

that the petitioners have challenged said Will deed.

23. Be that as it may, since the impugned order passed by respondent No.1 is unsustainable in the facts of the present case, the same is hereby quashed and set aside. The writ petition is allowed in terms of prayer clause "C". Rule is made absolute accordingly.

24. The petitioners and respondent No.6 are at liberty to get their rights to the said lands adjudicated, by approaching competent civil court. Needless to mention that the Mutation Entry No. 1924 shall be subject to the decision of the civil court. Till the decision of the competent civil court, the parties shall maintain *status quo*.

[NITIN B. SURYAWANSHI]
JUDGE