

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2744 OF 2021

Mahendra Chandrakant Mhatre & Ors.

..Petitioner/s

v/s.

Addl. Commissioner,
Konkan Division & Ors.

..Respondents

Mr. Anthony J.P.Braganza i/b. Mr. Ganesh Lambade for the Petitioner/s.
Mr. Manish Upadhye AGP for the Respondent Nos. 1 to 4.
Mr. Ketan Chotani for the Respondent Nos.5, 6 and 7.
Ms. Mayuri parasnis for the Respondent Nos.13 to 18.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 10th OCTOBER, 2022.**

P.C.

1. The Petitioner herein has challenged the order dated 20.12.2018 whereby the Addl. Commissioner, Konkan Division, allowed the revision and set aside the order of the Deputy Collector dated 2.11.2017 in Appeal No.C/RTS/A-41/2017.

2. The Petitioners herein, who claim right to the property through one Jagannath, the late brother to Pandurang, filed a revision application before the SDO, Mumbai Western Suburbs challenging the Mutation Entry No.1110 dated 15.06.2019. The same came to be dismissed on 19.06.2017. Aggrieved by the said order, the Petitioner filed an appeal under Section 247 before the Deputy Collector (Appeals), Mumbai

Suburban District. By order dated 2.11.2017 the learned Deputy

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Collector allowed the appeal and set aside the order of the Sub Divisional Officer. The said order came to be challenged in Revision Application filed before the Addl. Commissioner, Konkan Division, Mumbai. The learned Addl. Commissioner allowed the revision and set aside the order of Deputy Collector and as a consequence thereof confirmed the Mutation Entry No.1110 dated 15.06.1983. Being aggrieved by this order, the Petitioner invoked the writ jurisdiction of this Court.

3. Mr. Braganza learned Counsel for the Petitioner submits that the name of Pandurang was deleted from the survey records without following the procedure under the Maharashtra Land Revenue Code, 1966. Learned Counsel for the Petitioner further submits that Annaji had filed an application for deleting the name of Pandurang solely on the ground that he was in possession of the entire land, including the share of Pandurang. He has relied upon the decision of the Supreme Court in *Narayan Laxman Patil vs. Gala Cons. Com. (P) Ltd. & Ors. (ILC-2015-SC-Civil-Oct-17)*, wherein the Honourable Supreme Court has referred to the decision of this Court in *Bansrajidevi wd/o. Bhuval Singh Ramniranjan Singh & Ors. vs. M/s. Byramjee Jeejeebhoy Pvt. Ltd. & Ors. 2006(6) MH.L.J.95*, and held that to exercise the right under Section 148 read with Section 149 and 150 of the Code for entering one's name in the records of right, the Applicant has to be a holder, occupant, owner, mortgagee or tenant. Such a right is also available to a

person acquiring interest in the property by succession, survivorship, inheritance, partition, purchase mortgage, gift, lease or otherwise. He submits that Annaji had not acquired right to the property of Pandurang and had sought deletion of the name solely on the ground that he was in possession of the property.

4. Per contra, learned Counsel for the Respondent Nos.5 to 7 submits that upon the application filed by Annaji, notice was duly served on Govind, son of Pandurang. He submits that the heirs of Govind-Respondent Nos.13 to 18 have not objected to the deletion of the name of Pandurang from the survey records. Learned Counsel for the Respondent submits that the Petitioner had challenged the same order in Writ Petition No.2890 of 2019 which was allowed to be withdrawn on 9.12.2019. He submits that the Petitioner has absolutely no right to the property and no locus to challenge the mutation entry No.1110.

5. The dispute in the present case is in respect of mutation entry No.1110 in respect of Survey No.32 Hissa No.31 corresponding to CTS No.218 and 224 of Village Erangal, Taluka Borivali, Mumbai Suburban District. The said property was initially recorded in the name of Chimnaya Mukund and Pandurang Walji Mhatre under Mutation Entry No.121 dated 25.01.1932. Said Chimnaya Mukund died in the year 1940 and the name of his son Motiram was recorded in the 7x 12 extract under Mutation Entry No. 1236.

6. After the death of Motiram, names of his heirs viz. Annaji and others were recorded in the survey records under Mutation Entry No.1103. On 16.4.1983 Annaji made an application to delete the name of Pandurang Walji Mhatre from the survey records. Notice was issued to the heirs of Pandurang Walji. Govind, son of Pandurang did not contest the proceedings and accordingly on 15.06.1983, the name of Pandurang came to be deleted under Mutation Entry No.1110. It is pertinent to note that Respondent Nos.14 to 18, who are the successors of Govind have also supported the case of the Respondent No.5 to 7. In this fact situation, the Petitioners who are claiming right to the property through Pandurang, have no locus to challenge the mutation entry. Hence, Writ Petition is dismissed.

(ANUJA PRABHUDESSAI, J.)