

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

LETTERS PATENT APPEAL NO. 132 OF 2013 in W.P.No.1260/2013(D)

Gopalsingh s/o Shivnarayansingh Tomar,
Age 51 years,
R/o Flat No.102, Saffire Complex,
Puranik Layout, P-17, Bharat Nagar,
Nagpur.

..... **APPELLANT**

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

1. Vithal Gulab Gudadhe, (since dead through LRs)

1(i) Smt.Suman wd/o Vithal Gulab Gudadhe,
Aged about 65 years, Occ-Housewife
R/o. Shitla Mata Mandir Road, Bus Stand,
Saoner, District Nagpur.

1(ii) Arvind s/o Vithal Gulab Gudadhe,
Aged about 50 years, Occ. Service.
R/o. Shitla Mata Mandir Road,
Bus Stand, Saoner, District Nagpur.

1(iii) Vilas s/o Vithal Gulab Gudadhe,
Aged about 45 years, Occ. Agriculturist,
R/o. Shitla Mata Mandir Road,
Bus Stand, Saoner, District Nagpur.

1(iv) Mangala w/o Sudhakar Dhok,
Aged about 49 years, Occ. Household,
R/o. Shankar Nagar, Pandhuma,
Tah. Pandhura, District Chindwara (MP)

2. Gyani Raghobaji Gudadhe,
Age Major,
R/o. Behind Sawta Temple, Kalmeshwar,
District Nagpur.

3. Manik Raghobaji Gudadhe,
Age Major,

R/o Behind Chandu Faali School,
Kalmeshwar, District Nagpur.

4. Deorao Gulabrao Gudadhe,
Age Major,
R/o. Shikshak Colony, Near House of
Deorao Wankhede, Bhramani,
Kalmeshwar, District Nagpur.
5. Bhujang Gulabrao Gudadhe,
Age Major,
R/o. Near the House of Barapatre,
S.T.Depo, Saoner, District Nagpur.
6. Ramesh Gulabrao Gudadhe,
Age Major, R/o. Behind Saawta Temple,
Kalmeshwar, District Nagpur.
7. Smt. Kamlabai Govindrao Doifode,
Age Major,
R/o. Seloo, Kalmeshwar, District Nagpur.
8. Prabhakar Marotrao Raut,
Age Major, r/o. Zhunki, Post Saawli,
Kalmeshwar, District Nagpur.
9. Sub-Divisional Officer, Saoner.
10. Additional Commissioner, Nagpur.

..... **RESPONDENTS**

Shri S.P.Bhandarkar, Advocate with Ms Malayka Yeduka, Advocate for
appellant.

Shri N. B. Kalwaghe, Advocate for legal heirs of respondent no.1.

Shri N.R.Patil, Assistant Government Pleader for respondent nos. 9 & 10.

CORAM : A.S.CHANDURKAR and SMT. M.S.JAWALKAR, JJ.

DATE : 13th April, 2022.

JUDGMENT (Per A.S.CHANDURKAR, J.)

The challenge raised in this Letters Patent Appeal is to the order dated 08.03.2013 passed by learned Single Judge thereby dismissing Writ Petition No.1260/2013 and upholding the order dated 23.01.2013 passed by the Additional Commissioner, Nagpur. By that order the Additional Commissioner set aside the order dated 15.12.2008 passed by the Sub-Divisional Officer, Saoner and declared that the sale transaction dated 14.03.2007 by which the appellant had purchased 1 H 04 R land from the respondent nos. 2 to 8 was contrary to the provisions of Section 9 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short, 'the Act of 1947')

2. The relevant facts are that it is the case of the respondent no.1 herein that field bearing Survey No.33/1 admeasuring 1 H 33 R situated at Mouza Sahajpur, Taluka Kalmeshwar, District Nagpur was an ancestral property owned by the respondent nos. 1 to 8. The names of mother of the respondent nos. 1 to 8 as well as the names of respondent nos. 1 to 8 were mutated in the revenue records. The property being joint and not partitioned by meets and bounds it was stated that the respondent nos. 1 to 8 had common interest therein. On 14.03.2007 the respondent nos. 2 to 8 sold 1 H 04 R from the aforesaid land to the appellant after leaving aside the share of

the respondent no.1. According to the respondent no.1 by executing such sale deed a fragment admeasuring 0.29 R was created. Hence such transfer was in violation of Section 9 of the Act of 1947 as it resulted in creating a fragment. On that count, the respondent no.1 filed an application before the Sub-Divisional Officer, Saoner under the Act of 1947 seeking a declaration that the sale deed dated 14.03.2007 was void.

3. The Sub-Divisional Officer by his order dated 15.12.2008 held that there was no notice issued under Section 6 of the Act of 1947 to either of the parties to indicate that the agricultural field was having area lessor than the standard area. He further observed that since the agricultural land was not allotted to the respondent nos. 1 to 8 under the Act of 1947, its provisions were not attracted. Thus on the ground that Survey No.33/1 was not shown as fragment in the revenue records, the application filed by the respondent no.1 came to be rejected.

The respondent no.1 filed a revision application under Section 35 of the Act of 1947. The Additional Commissioner found that the entire land of Khasra No.33/1 had not been partitioned and the names of all owners were recorded therein. As a result of the sale transaction dated 14.03.2007 a fragment was created as 0.29 R of land remained in Survey No.33/1. Since the sale transaction resulted in creation of a fragment, the Additional

Commissioner by his order dated 23.01.2013 set aside the order passed by the Sub-Divisional Officer and declared the sale transaction dated 14.03.2007 to be void.

Being aggrieved the appellant filed Writ Petition No.1260/2013 and on 08.03.2013 the learned Single Judge dismissed the said writ petition by holding that the order passed by the Additional Commissioner was in accordance with the provisions of the Act of 1947. The impugned order was not interfered with and the writ petition was dismissed. Hence this Letters Patent Appeal.

4. The learned counsel for the appellant submitted that the Additional Commissioner as well as the learned Single Judge committed an error in setting aside the order passed by the Sub-Divisional Officer. The appellant had purchased the undivided share of the respondent nos. 2 to 8 from Khasra No.33/1 and the share of the respondent no.1 to the extent of 0.29 R was kept separate. The appellant did not purchase any fragment from the respondent nos. 2 to 8. Moreover the appellant was the owner of various adjoining lands bearing Khasra Nos. 9, 31 and 33/2. Since the appellant was a contiguous land owner, there was no question of any fragment being created by virtue of sale transaction dated 14.03.2007. The entire holding of the appellant was required to be taken into consideration. The Sub-Divisional Officer had rightly

noticed that there was no notice issued under Section 6 of the Act of 1947 and therefore there was no basis for declaring the sale deed in question to be void. The learned counsel placed reliance on the decision in ***Tukaram Motiram Shinde (dead through LRs) Dattarao Tukaram Shinde and ors vs. Vishwanath Bhimrao Khandele 2003 (3) Mh. L. J. 182*** and ***Balwantrao Bhagwantrao Deshmukh vs. Mankarnabai Chaitujigosai and others (2011) 6 Mah. L. J. 342*** and submitted that the order passed by the Sub-Divisional Officer was liable to be restored. Reference was also made to the various documents placed on record in that regard.

5. The learned counsel for the respondent no.1(Legal heirs of the respondent no.1) as well as the learned Assistant Government Pleader for the respondent nos. 9 and 10 opposed the aforesaid submissions. It was submitted that what was barred under the Act of 1947 was a transfer which could result in creation of a fragment. Under Section 8 of the Act of 1947 such transfer has been prohibited. Since Khasra No.33/1 was admeasuring 1 H 33 R and after sale of 1 H 04 R land the remaining land was 0.29 R which was smaller than the standard area prescribed, it was clear that the sale transaction dated 14.03.2007 resulted in creation of a fragment. The learned counsel for the respondent no.1 relied upon the decision in ***Tejrao Bajirao Mhaske vs. Damodhar Narayan Sawale and others 2015 SCC Online Bom 6644*** and

submitted that there was no case made out to grant relief to the appellant. It was also submitted that the contention that the appellant was the owner of various lands that were in the vicinity of the land which was purchased was not raised before the Sub-Divisional Officer or the Additional Commissioner in the revision application. It was not permissible to raise those grounds for the first time in the Letters Patent Appeal. In that context reference was made to the decisions in *Ramabai Govind Gadre vs. Raghunath Vasudeo Joshi 1952 ILR 226(Bombay series)*, and *Sanjay Kumar and others vs. Narinder Verma and others (2006) 6 SCC 467*. It was thus submitted that the Letters Patent Appeal was liable to be dismissed.

6. We have heard the learned counsel for the parties and we have perused the relevant documents on record. The fact that the respondent nos. 1 to 8 were joint owners of Khasra No.33/1 admeasuring 1 H 33 R is not disputed. Similarly execution of sale deed by the respondent nos. 2 to 8 in favour of the appellant on 14.03.2007 to the extent of 1 H 04 R is also not disputed. As a result of such sale deed, the land left was 0.29 R which was smaller than the standard area. Section 8 of the Act of 1947 prohibits transfer or partition of any land which could result in creation of a fragment. It is thus clear that after execution of the sale deed dated 14.03.2007 a fragment was created and therefore under Section 9(1) of the Act of 1947 transfer by virtue

of that sale deed was contrary to the provisions of the Act of 1947. The Sub-Divisional Officer gave importance to the provisions of Section 6(1) of the Act of 1947. As per that provision all fragments in a local area were required to be entered into record of rights. There is no question of Khasra No.33/1 being entered into the record of rights as a fragment for the reason that till the execution of the sale deed dated 14.03.2007, Khasra No.33/1 was not a fragment. It was admeasuring 1 H 33 R which is more than the standard area. Hence the Additional Commissioner has rightly observed that the provisions of Section 6(1) of the Act of 1947 were not at all attracted in the present case. Material provisions are Sections 8 and 9 of the Act of 1947. Under Section 8 no land in any local area can be transferred or partitioned so as to create a fragment. Under Section 9(1) the transfer or partition of any land contrary to the provisions of the Act of 1947 was void. The Additional Commissioner has after noting these provisions found that a fragment was created by virtue of sale of Khasra No.33/1 to the extent of 1 H 04 R. The learned Single Judge also found that the sale transaction resulted in creation of a fragment and hence proceeded to dismiss the writ petition. There is no scope to interfere with this finding which is in accordance with the provisions of the Act of 1947.

7. We find that the contention that the appellant was the owner of various contiguous lands to Survey No.33/1 cannot be raised for the first time

in the Letter Patent Appeal. This aspect requires factual adjudication and the appellant ought to have raised such defence before the Sub-Divisional Officer or at least before the Additional Commissioner. Having failed to raise such plea and there being no foundation for the same before the lower Authorities, it would not be permissible for the appellant to seek to rely upon this factual aspect. As noted in *Tukaram Motiram Shinde* (supra) the purpose and object of the Act of 1947 is to prevent creation of a fragment. The decision in *Tejrao Bajirao Mhaske* (supra) supports the stand of the respondent no.1. Moreover, as held in *Sanjay Kumar and others* (supra) as well as *Ramabai Govind Gadre* (supra) it would not be permissible to raise additional grounds based on factual aspects that were not raised before the lower Authorities. We are therefore not inclined to go into the fresh material that was sought to be placed on record by the learned counsel for the appellant at this stage.

8. We accordingly find that the Additional Commissioner has considered the provisions of the Act of 1947 in their proper perspective and has found that by virtue of the sale deed dated 14.03.2007 a fragment has been created. The learned Single Judge has affirmed the aforesaid order. We do not find any reason to take a different view of the matter in the light of the facts on record.

9. Hence for aforesaid reasons, there is no case made out to interfere with the impugned order. The Letters Patent Appeal stands dismissed with no order as to costs.

(SMT. M.S.JAWALKAR, J.)

(A.S.CHANDURKAR, J.)

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