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

Writ Petition No. 7396 of 2014

[Mohan s/o Vithalsa Mamarde and ors. **..vs..** Shridhar s/o Raghosa Mamarde (dead) through L.R.s Smt. Shakuntala Wd/o Shridarsa Mamarde and ors.]

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Mr. I. A. Fidvi, Advocate h/f Mr. A. M. Sudame, Advocate for the petitioners
Mr. S. Y. Deopujari, Advocate for respondents 1 and 2
Mr. K. L. Dharmadhikari, AGP for respondent 5

CORAM : ROHIT B. DEO, J.
DATED : 4-1-2022

Heard.

2. The petitioners claim to be the surviving heirs of late Mr. Vithalsa Sudamsa Kshatriya (Mamarde) who expired on 5-3-2005.

3. Mr. Vithalsa and his brother Mr. Raghosa purchased Nazul Plot 64 forming part or portion of Sheet Number 80-A vide registered sale deed dated 4-7-1946.

4. It is common ground that while the plot was purchased in the joint names of Mr. Vithalsa and Mr. Raghosa, the mutation entry was in the name of Raghosa alone.

5. The petitioners preferred an application dated 2-5-2011 before the Taluka Inspector of Land Records

seeking inclusion of their names in the revenue record, which application came to be rejected by the said authority vide order dated 19-5-2011. The petitioners preferred an appeal under Section 247 of the Maharashtra Land Revenue Code (MLR Code) before the District Superintendent of Land Records. The appellate authority allowed the appeal preferred by the petitioners on the premise that the exclusion of the name of Mr. Vithalsa from the revenue record was a mistake.

6. The respondents preferred appeal before the Deputy Director of Land Records who agreed with the appellate authority and dismissed the appeal vide order dated 30-7-2013.

7. The respondents approached the State Government in appeal under Section 248 of the MLR Code and vide order dated 8-8-2014 rendered by the Secretary, Revenue and Forest Department, the appeal came to be allowed.

8. I do not, and consciously so, intend to evaluate the merits of the respective claims. While the learned counsel for the petitioners has a substantial submission to canvass which, is that, as co-owner of the plot, it is

debatable whether the right of Mr. Vithalsa could have been extinguished by the unregistered document which the respondents are claiming to be a family arrangement, the counter narrative is equally formidable. The respondents contend that the fact that the family arrangement was given effect to is evident since Mr. Vithalsa has sold the other property/properties which fell to his share in the family arrangement.

9. It would not be necessary to make any positive observation since the rights of the parties may be prejudiced in the process. Ultimately, mutation entry does not confer title. The only purpose is fiscal. If according to the petitioners, they have ownership right in the plot, the petitioners shall be at liberty to assert such right in appropriate proceedings and needless to say nothing done in the mutation proceeding nor any observation made by the revenue authority shall prejudice the case of the petitioners.

10. Leaving the petitioners to pursue their remedy before the competent Court, and keeping every contention open, of the petitioners, and the contentions in rebuttal, I decline to interfere in the order impugned

since the claim to title is not affected and the mutation entry serves only fiscal purpose.

11. The petition is disposed of.

JUDGE

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