

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

SECOND APPEAL NO. 272 OF 1995

Bhagwatrao S/o Narayanrao Randive,
Age : 58 years, Occu. Agriculture,
R/o Sarola, Taluka and District
Osmanabad.

... **Appellant**

Versus

Panditrao S/o Narayanrao Randive,
Age : 70 years, Occu. Agriculture,
R/o Sarola, Taluka and District Osmanabad,
(Died) through his L.Rs.

1. Ashok S/o Panditrao Randive,
Age : 50 years, Occu. Agri.,
R/o Sarola, Dist. Osmanabad.
2. Shashikant S/o Panditrao Randive,
Age : 45 years, Occu. Agri.,
R/o As above.
3. Sow. Mangal W/o Shivaji Bhosale,
D/o Panditrao Randive,
Age : 32 years, Occu. Household,
R/o As above.

... **Respondents.**

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Advocate for Appellant : Mr. Anand P. Bhandari.

Advocate for Respondent Nos.1 to 3 : Mr. P. R. Katneshwarkar.

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CORAM : S. G. MEHARE, J.

RESERVED ON : 01.09.2023

PRONOUNCED ON : 29.11.2023.

JUDGMENT :-

1. The plaintiff has impugned the judgments and decrees of dismissal of his suit passed by the learned 2nd Joint Civil Judge Junior Division, Osmanabad in Regular Civil Suit No.438 of 1983, dated 03.05.1985 and by the learned Additional District Judge, Osmanabad in Regular Civil Appeal No.208 of 1985, dated 13.03.1995.

2. For the sake of convenience, the appellant will be referred to as 'plaintiff' and respondent as the 'defendant'.

3. The brief facts giving rise to the suit between two real brothers were that the plaintiff and the defendant were four brothers, including two stepbrothers. After the death of their father, one stepbrother and the defendant were managing their huge landed properties.

4. The Plaintiff had a case that the defendant in 1969 had allotted him a separate share. The mutation was recorded in his name. The defendant himself had moved the application for mutation. He exclusively possessed Survey No.27, measuring 1 Acre and 4 gunthas and Survey No.28/A, measuring 1 Acre and 27 gunthas, along with other properties from 1967-68. In 1973, the Scheme under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act was

implemented in their village. In the said consolidation, his lands Survey Nos.27 and 28-A were consolidated and numbered as Gut No.79 (Ex.44). The fields that came to the share of the defendant were also consolidated, and Gut No.78 was given to his consolidated fields. Gut No.78 was towards the East of Gut No.79. Gradually, the defendant in 1979-80 started encroaching upon his Gut No.79. He requested the defendant not to do such illegal acts, but they continued to encroach upon his land. Lastly, he got his land measured through the Cadastral surveyor and found that the defendant had encroached over 40 Are of land from Gut No.79. Hence, he filed a suit for removal of encroachment, possession and mesne profits.

5. The defendant denied the encroachment. He had a case that in 1959 all brothers had an oral partition and it was effected vide Mutation Entry No.106. The plaintiff never got Survey No.27/B to his share. There was no partition in 1967-68. There was only one partition in 1959. He denied that Gut No.79 was consolidated with Survey No.27/B. He had impugned the Consolidation Proceedings, but the Additional Collector rejected his appeal. During the pendency of the suit, his revision was pending before the Divisional Commissioner.

He also pleaded that he had a partition with his sons and his son Ashok is possessing Survey No.27/B. He also assailed the legality and validity of the measurement done by the Cadastral surveyor, specifically on the ground that the notice of measurement was not served on him personally.

6. Appreciating the evidence, the learned Court of first instance decreed the suit. However, the First Appellate Court reversed the judgment and decree of the Court of the first instance.

7. On 03.08.1995, this Court admitted the appeal and passed the following order ;

“There involves substantial questions of law as set out in grounds No. 6 to 9.

Admit. Notice.”

8. The grounds Nos.6 to 9 from the appeal memo are reproduced thus;

6. That the substantial question of law in the present case is as to whether there is a presumption of ownership in favour of the Appellant when his name recorded as the owner right from 1968 in R.O.R.

7. The substantial question of law is as to who was overcome and disprove presumption of the correctness of the Revenue Record.

8. That admittedly the land in question is a part of Gat No.79 and it stands in the name of the Appellant as per the record of Consolidation. The Respondent further admitted that the lands owned by him were formed into Gat No.78. He did not lay any claim to any portion of Gat No.79. The substantial question of law, therefore, is as to whether the findings recorded by the trial court could be reversed on an erroneous assumption that the Appellant withheld the alleged deed of partition referred to in the mutation entry no. 334 made on the application of the Respondent himself.

9. That on the basis of the voluminous evidence produced before the trial court, the trial court held that the land in question was part and parcel of Gat No.79 and that it was supported and corroborated by the map as well as by the report regarding encroachment prepared by P.W. 2 a cadastral surveyor. The substantial question of law therefore, is as to whether the findings recorded by the trial court which was based on voluminous evidence comprising of Revenue Record and the record of the Consolidation and measurement could be reversed. The findings recorded by the Appellate Court are on the erroneous assumption and misreading of evidence. This is a substantial question of law.

9. Heard the respective learned counsels at length. After the hearing was over, it was brought to their notice that the above substantial questions of law would be reformulated to

give them the shape of substantial questions of law. Both of them happily agreed. Hence, the substantial questions of law on which the appeal was admitted have been reformulated thus;

1. Does a long-standing Mutation Entry presume the title in favour of the Plaintiff ?
2. How will the presumption of entries in the Revenue Record be rebutted ?
3. Does withholding a partition deed mentioned in the Mutation Entry falsify the Plaintiff's title derived from the partition ?
4. Did the first appellate Court misread the evidence and erroneously reversed the judgment and decree of the Court at the first instance ?

10. The learned Counsel for the plaintiff has vehemently argued that as per the Mutation Entry No.106, the defendant was allotted a share of the disputed land Survey No.27/B. Though Survey No.27 was mentioned in the suit, the defendant correctly mentioned its survey number. In 1969, the plaintiff and defendant had a partition and in that partition Survey No.27/B came to the Plaintiff's share. He started cultivating the said field. The Mutation entry No.334 was recorded in his name. In the Consolidation proceedings of the year 1973, Survey Nos.27/B and 28 were consolidated and a

new Gut No.79 was formed. The defendant never impugned the said proceedings, and mutation entry No.334 till the plaintiff had filed the suit. His appeal has also been dismissed. He never disputed the Mutation Entry No.334 in the name of plaintiff about Survey No.27/B. It has a presumptive value. However, the learned first appellate Court, admitting the presumption of the revenue entry, illegally disbelieved it only for not producing the partition deed. He lost sight that the partition between them was never denied. He referred to the document placed on record and pointed out that the first appellate Court had misread the evidence. He submits that the impugned judgment of the first appellate Court reversing the reasoned judgment of the Court of the first instance, is without any sound legal basis. He also submitted that the long-standing mutation in the name of the plaintiff affirmed his title. It was a title acquired under the admitted partition. Hence, the plaintiff cannot lose his title over the suit field. Withholding the document creating a right would not affect the validity of the mutation entry No.334, when it was taken as per the application of the defendant himself. He also vehemently argued that in the peculiar circumstances of the case and the relation between the parties, the plaintiff could not be deprived of his right to have his land come to his share. The learned first

appellate Court totally ignored the rule of appreciating the evidence. The evidence is to be read as a whole. The first appellate Court misread the evidence. Hence, he came to the wrong conclusion. He relied on the case of *Sarju Pershad Vs. Raja Jwaleshwari Pratap Narain Singh and Others, 1950, SCC 714*. This case is on the fresh measurement as there were two different Cadastral Surveyor's reports. In this case, measurement, though challenged on the ground of non-service of the notice, the title of the plaintiff has been disputed. Therefore, the said case would not assist the plaintiff. He prayed that the appeal may be allowed.

11. The learned Counsel for the defendant supported the impugned judgment and decree of the first appellate Court. He argued that the plaintiff had claimed the title under an encroachment. There were no findings as to whom the Survey No.27/B belonged. The learned Court of the first instance drew the adverse inference against the plaintiff for non-production of the partition deed and erroneously decreed the suit. All brothers had an oral partition and were effected vide Mutation Entry No.106, by which Survey No.27/B went to the defendant's share. The plaintiff's suit was based on the title. Unless the title is proved when specifically objected, the

burden to prove the title was on the plaintiff. If he had claimed the title on the basis of the partition deed, he was to produce it on record. But he had improved his case that the said partition deed was in possession of the defendant. However, he did not serve a notice on the defendant to produce the partition deed to prove his title. Without the title document, the first appellate Court correctly doubted the plaintiff's case. The partition deed was the backbone of the plaintiff's claim. In such a situation, the entries in the revenue record could not be presumed to be true and genuine. There was no evidence before the Court how much area from Survey No.27/B went to the Plaintiff's share. The presumption of revenue entries was rebutted from the evidence brought before the Court. The law is well settled that the revenue record does not confer the title; it is only for the fiscal purpose. The plaintiff was to prove the title independently. He also argued that in the absence of notice of the measurement of the land, the evidence of the Cadastral surveyor cannot be believed. The plaintiff failed to prove the encroachment. No legal procedure was followed to determine the encroachment. There are no substantial questions of law involved in the appeal. Hence, the appeal be dismissed.

12. The plaintiff claimed that he acquired the title by partition in 1968, and the defendant claimed that there was only one partition in 1959. The dispute was about Survey No.27/B only ("Suit land" for short). Both rely on the Mutation Entries ("M.E." for short). The plaintiff filed only a 7/12 extract for the year 1982-83 (Exh.5). The defendant produced certified copies of M.E. No. 106 (Exh.39) and M.E. No. 334 (Exh.42). He also produced the record of rights (form No.7) of the 1961-62 and 62-63 showing his possession over the suit land, the entry of Consolidation of field Survey No.27/2 and 28/2 (Exh.44), 7/12 extract in the name of plaintiff for the years 1974-75 and 1975/76 (Exh.43).

13. Admittedly, the defendant had impugned the M.E. No 334 before the Revenue Authority. However, it was rejected on the ground of limitation. The proceeding against consolidation was pending before the competent Authority. No one has argued on its current position.

14. Both brothers are relying on the Mutation entries. It was not disputed that the suit field was their joint family property. The plaintiff did not dispute that there was a partition in 1958. However, he would say that it was a partition between the

defendant and his stepbrother Vithhal. After the said partition, he and the defendant were living jointly. He did not dispute the M.E. No.106. His case rests upon M.E. No.334. His evidence is improved on many material facts, like the partition between the defendant and his stepbrother, his jointness with the defendant, the allotment of various lands in the partition, and entering his name in the record after the partition. However, he did not produce the mutation entries of other lands he got in partition with the defendant. He did not produce the application that was allegedly filed by the defendant. On the contrary, he admitted in his cross-examination that he had filed an application for M.E. No.334. In view of this admission, it could be safely inferred that the partition deed on the basis of which M.E. No.334 was recorded was in his custody and possession. He did not produce a single document showing he and the defendant were in joint possession and ownership. There are two M.Es. Therefore, it is to be weighed which one will prevail over and whose evidence should be believed on the preponderance of probabilities. The revenue record is maintained under the Maharashtra Land Revenue Record of Rights and Registers (Preparation and Maintenance) Rules, 1971. (Rules 1971 for short), Before advertng to the validity, authenticity and effect of the record maintained under the said

Rules, it would be appropriate to mention and examine the relevant provisions under the M.L.R. Code about the mutations and their procedure.

15. Section 148 of the M.L.R. Code provides that a record of rights shall be maintained in every village. It is a record that requires maintenance of the revenue record, which is obligatory for the authorities appointed therefor. Section 149 of the M. L.R. Code mandates that a person who acquires a right by any mode of acquiring the title or interest should report orally or in writing about the right acquired to the Talathi within three months of acquiring such right, interest or title. The Talathi is duty-bound to issue a written acknowledgment of the receipt of such information to a person making it. Section 150 of the said code contains a provision for the maintenance of a register of mutation recording every information received under Section 149. Such information is effected under Section 154. On receipt of information about the rights acquired, the Talathi is bound to display the complete copy of the entry in a conspicuous place in the Chawadi and give intimation in writing to all persons appearing from the record of rights or register of mutations to be interested in mutation, and to any other person whom he

has reason to believe to be interested therein. If any objection is raised in relation to the entry, it is recorded in the register and disposed of within one year by the Revenue Survey Officer and order disposing of objections are to be recorded in the register of mutations. Section 157 of the M.L.R. Code states that an entry in the record of rights and a certified entry in the register of mutations shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor. The record or rights means the rights of the person in or over land, and forms in which the records of various rights are to be maintained are specified by the Rules of 1971.

16. It is a settled position of law by various judicial pronouncements that the entries in the revenue records do not create or extinguish any title in whose favour it is recorded. Such entries are only for the fiscal purpose of recovering the land revenue and cannot be taken as a transfer of title by the property holder. The entries by themselves thus do not determine the title by the holder of the person, though they are presumed to be a true statement of their contents unless the contrary is proved. Such entry does not have a presumptive value of title. In the case of ***Sita Ram Bhau Patil V. Ramchandra Nago Patil (Dead) by L.Rs. and others ; (1977) 2 S.C.C. 49***, the

Hon'ble Supreme Court held that there exists no universal principle that whatever will appear in the record of rights will be presumed to be correct, when there exists evidence to the contrary.

17. It has been argued for the appellant that the mutation entry No.334 attained the finality as the appeal preferred against it was dismissed. It was an old entry; therefore, it is received as evidence and believed to be true and genuine. That entry, in the absence of a separate title document, proves the title of the plaintiff.

18. As discussed above, the revenue entry is presumed to be true, but the presumption is rebuttable. Since the defendant denied the M.E. No.334, the burden was on him to rebut the presumption of its truthfulness. The plaintiff did not plead how the partition took place between him and the defendant. He simply pleaded that in 1968, the defendant allotted him his share. The M.E. No.106 reveals that their family had huge properties. The said entry was never impugned. A look at M.E. No.106 (Exh.39) reveals that Vitthal partitioned the lands and allotted separate shares to all brothers, including the plaintiff. This entry corroborates the defendant's evidence that Survey

No.27/B was never allotted to the plaintiff. The plaintiff had got his shares in other survey numbers. The defendant produced a copy of M.E. No.334 (Exh.42). Its contents reveal that the plaintiff had applied for mutation. He intimated to Talathi that Survey No.27/1/B was in the name of his brother i.e. the defendant, and that land came to his share. However, the mode of partition was not mentioned. He simply claimed that he was in possession of the said land. He applied on 05.12.1968 for mutation. The endorsements of the certifying Officer reveal that on 01.07.1969, the directions were issued to produce the deed of partition. Another endorsement dated 15.02.1970 was that mutation could not be certified as the partition deed was not produced. The last endorsement dated 11.06.1970 was that the original partition deed was produced; the mutation is certified accordingly. The plaintiff neither pleaded nor produced the said partition deed in the Court, but, he tried to bring the material that it was in the custody and possession of the defendant. No attempts were made to get it produced from the defendant by giving him notice to produce the said partition deed. As against this, the defendant had a specific case that after 1959, there was no partition. In the circumstances, it was incumbent on the plaintiff to produce evidence that there was a partition in 1969. He also tried to

explain that in 1959, he was a minor, but his admission that in 1959, he was a major falsifies his explanation. He was relying on the 7/12 extract after the consolidation and the statement of consolidation. The defendant had impugned the said consolidation entry and it was pending. Till the present appeal was argued, none made a statement about its disposal.

19. In the given circumstances, it is to be tested whether M.E. No.334 was taken as per the Rules of 1971. Rule 17 is relevant. Rule 17(1) requires that before certifying the undisputed mutation entries, the certifying Officer shall inform the Talathi to the effect in Form No.XI. On receipt of such intimation, and at least fifteen days before the date fixed for certifying entries made in the register of mutations, the Talathi shall issue notices in Form XII to all persons likely to be interested in such entries and call upon them to be present at the place along with *Khate Pustika* on the date and time fixed for certifying entries. The rule is clear that before certifying the entries in the case of undisputed mutation, the notice shall be given in advance to the persons likely to be interested in the mutation proceeding. Rule 17(2) provides that on the date, time, and place fixed for deciding the disputes, the certifying Officer shall read out undisputed mutation entries in the

presence of the persons present. If the correctness of such entries is admitted by all the persons present, the certifying Officer shall record such admission in the register of mutations and add the endorsement under his signature that the entries have been duly certified. In case there is a dispute over the entries, he shall hold a summary enquiry and decide each dispute entered in the register of disputed cases on the basis of possession, that is to say, if a person actually holds possession under a claim of title, he shall be recorded as occupant class I, occupant class II or as the case may be, Government lessee in the register of disputed cases and accordingly endorsed that the mutation entry has been modified. The rule is to give an opportunity to be heard to the person interested before certifying the mutation entries, and the proceedings shall be endorsed in the Register of Mutation. The M.E. No.334 does not reflect that the defendant was heard before the certifying Officer or he did not dispute the mutation informed by the plaintiff. In the absence of such legal requirement, the entry No.334 could not be believed to be true when the defendant denied the claim of the plaintiff based on the title derived from partition. The said mutation entry itself is defective. Therefore, M.E. No.334 did not support the plaintiff's case that they had a partition in 1968 and the possession was handed over to him.

The plaintiff had a specific case of partition. Hence, the burden was on him to prove that there was a legal and valid acquisition of title in the suit land.

20. Part C of the Rules of 1971 provides for the preparation of new records of rights in place of existing records of rights in areas other than those surveyed under Section 126 of the M.L.R. Code. Sub-rule 4 of rule 6 provides that if a record of rights in Form-I is prepared by any Consolidation Officer in respect of any (holding) under Section 24 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act 1947, that record of rights shall be deemed to be a new record of rights prepared under these Rules for that holding. Under Rule 34 of The Maharashtra Prevention of Fragmentation and Consolidation of Holdings Rules 1959, in accordance with the scheme of consolidation, the Consolidation Officer has to prepare and correct a new record in the manner laid down in Section 148 to 159 of M.L. R. Code. Even after the consolidation, no such new record of rights was prepared, nor did the plaintiff produce any such entry. The Court is not oblivious of Section 36-A of the above Act, which expressly bars the Civil Court's jurisdiction. However, the above observations are recorded only in

reference to the claim of the plaintiff which was based on the mutation entries.

21. The plaintiff admitted that the suit land went to the defendant's share in the partition of 1959. He produced M.E. No.106, which the defendant never disputed and no evidence in rebuttal was brought. The 7/12 extract (Exh.41) stands in the name of the defendant from 1961-62 to 1972-73. That again strengthens the defendant's case. Hence, in the given circumstances, it would be considered for the purpose of the defendant's possession of the suit land.

22. The presumption under Section 157 of the M.L.R. Code can also be rebutted in a civil suit as there is no bar and the title was claimed on the basis of such entry. Impugning the mutation entry in appeal under Section 247 of the M.L.R. Code and rebutting the presumption are two distinct concepts. Hence, barely dismissing the appeal against M.E. No.334 would not deprive the defendant of rebutting the presumption of the mutation entry. The defendant's evidence and the legal defect in recording the M.E. No.334, as discussed above, were sufficient to rebut the presumption.

23. The Court has considered the questions of law raised by both learned counsels for the parties, discussed the law, examined the impugned judgment and answered the substantial questions of law so formulated as follows;

Question No.1 :- The age of mutation in the revenue record would not create or extinguish a title in favour of a person it is recorded.

Question No.2 :- The presumption about the accuracy of entries may be rebutted by 'proving contrary'. The burden of proving the contrary or showing the entry to be wrong is on the person who disputes the entry. Such presumption may be rebutted in a suit based on the title and the mutation is disputed.

Question No.3 :- In the given facts and circumstances of the case, withholding the partition deed, which was the best evidence to prove the title, goes against the plaintiff as an adverse inference could be drawn, but that would not take away the right to prove the partition, subject to the relevant provisions of law.

Question No.4 :- The First appellate Court did not misread the evidence and did not incorrectly reverse the judgment of the learned Court of the first instance.

24. Answering the substantial questions of law, the Court concludes that the appeal deserves to be dismissed. Hence, the following order.

ORDER

- (i) The appeal stands dismissed.
- (ii) No order as to costs.
- (iii) The record and proceeding should be returned to the Court of the first instance.

(S. G. MEHARE, J.)

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