IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4442 OF 2022

Mansoor Kutubuddin Shaikh .. Petitioner

Versus

Hassan Hussen Shaikh and others .. Respondents

Shri Babasaheb A. Dhengle, Advocate for the Petitioner.
Mrs. A. N. Ansari, Advocate for the Respondent No. 3.
Respondent Nos. 1, 2 and 4 are served.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : 05TH JANUARY, 2023.

FINAL ORDER :

. Heard the learned counsel appearing for parties.

2. The challenge in the petition is to the order of 20th September, 2021 passed by the President, Maharashtra Revenue Tribunal, Mumbai, bench at Aurangabad in Revision Petition No. 15/B/2017 filed U/Sec. 76 of the Bombay Tenancy and Agricultural Lands Act, 1948 by respondent Nos. 1 and 2 challenging order dated 13.02.2017 of the Sub Divisional Officer, Shirdi in Tenancy Case No. 141 of 2015 and order dated 29.06.2015 passed by the Tahsildar Kopergaon in Tenancy Case No. 01 of 2012.

3. The property which is involved in the dispute is agricultural land situated at village Dauch (Khurd), Tq. Kopergaon owned by one Lalbhai Mohammadbhai Shaikh. The respondent No. 3 is the son of Lalbhai Shaikh and the

respondent No. 4 is the daughter of Lalbhai and one Bannubai was widow of Lalbhai, who has expired on 10.05.2002. There appears to be dispute as regards date of death of Bannubai. However, in the present case, we are not concerned with the date of death as the issue in the present case is limited to the extent of intervention application filed by the petitioner in the revision proceedings.

4. Learned counsel for the petitioner submits that the petitioner has right in the properties i. e. land gut Nos. 39(1-C)/3 and 25(1) situated at village Dauch (Khurd), Tq. Kopergaon, as the said properties have been bequeathed to him by Bannubai, widow of Lalbhai Shaikh by executing Will dated 24th March, 2000.

5. As against this, the learned counsel for the respondent No. 3 submits that Bannubai could not have executed the Will bequeathing 50% share in the said properties i. e. land gut Nos. 39(1-C)/3 and 25(1) situated at village Dauch (Khurd) as according to the personal law governing the parties, being the son, the respondent No. 3 was entitled to 2/3rd share in the property and at the most Bannubai would be entitled to 1/8th share in the properties. She further submits that in the tenancy proceedings, the respondent No. 3 was seeking to assert his right of possession only in respect of 2/3 share of property which belongs to him and not over the balance property to which Bannubai or Rashidbee may be entitled. She further submits that rights over the properties have been crystallized in the civil suits, which have been filed and the same have attained finality and the proceedings in question pertain to recovery of share of

Respondent No 3 and as such the petitioner has no interest in the property and is therefore not a necessary party.

6. I have considered the rival submissions of the parties.

7. The application before the Maharashtra Revenue Tribunal was filed under the provisions of Order I Rule 10 of the Code of Civil Procedure and has to be decided taking into consideration as to whether the intervener seeking intervention in the proceedings has any semblance of right in the property and as to whether the outcome of the proceeding will affect rights of the intervener. If these conditions are satisfied the application ought to be allowed on the touch stone of Order I Rule 10 of the Code. The petitioner has been bequeathed the property under Will alleged to have been executed by Bannubai in respect of her ½ share in gut Nos. 39(1-C)/3 and 25(1) situated at village Dauch (Khurd), Tq. Kopergaon and pursuant thereto mutation entry No. 436 has also been effected in the revenue record. In the revision application the subject matter is the share of the respondent No. 1 in respect of the property which include gut number in which the Petitioner claims a share under the Will. The application for intervention has not been objected by any of the parties except the respondent No. 3 and the objection is on the ground that what the respondent No. 3 is seeking only possession of his share in the property. Admittedly, there is no probate which is obtained of the will. But it cannot be ignored that as on today the petitioner has been bequeathed a share in the property which is the subject matter of the proceedings. In the event the respondent No. 3 is permitted to take possession of the share which he claims as his right as against the rival claim

of the petitioner, when he claims half share under the will of Bannubai, the outcome of the proceeding will affect any further proceeding, which may be initiated by the petitioner for adjudicating his right in the property under the will

8. In my opinion, considering the said position, it cannot be said that the petitioner is a stranger to the property and has no right to claim share in Gat No 39(1-C)/3 and 25(1).

9. In view thereof the impugned order dated 20th September, 2021 passed by the President, Maharashtra Revenue Tribunal, Mumbai, bench at Aurangabad in Revision Petition No. 15/B/2017 is hereby quashed and set aside. Writ petition is accordingly disposed of. There shall be no order as to costs. Needless to state that the observations made herein are for the purpose of adjudicating the validity of the impugned order and the proceedings before the Maharashtra Revenue Tribunal has to be decided on its own merits uninfluenced by the observations made herein.

[SHARMILA U. DESHMUKH, J.]

bsb/Jan. 23