

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

WRIT PETITION NO. 14053 OF 2018

Gangadhar Namdeo Malu .. Petitioner

Versus

Shakuntala Gangadhar Malu and others .. Respondents

Mr. H. V. Tungar, Advocate for the Petitioner.

Mr. Chetan T. Jadhav, Advocate for Respondent No. 1.

Mr. S. B. Pulkundwar, AGP for Respondent Nos. 2 to 4.

**WITH
CIVIL APPLICATION NO. 5667 OF 2023
IN
WRIT PETITION NO. 14053 OF 2018**

Shakuntala Gangadhar Malu .. Applicant

Versus

Gangadhar Namdeo Malu and others .. Respondents

Mr. Chetan T. Jadhav , Advocate for the Applicant.

Mr. H. V. Tungar, Advocate for Respondent No. 1.

Mr. S. B. Pulkundwar, AGP for Respondent Nos. 2 to 4.

**WITH
CIVIL APPLICATION NO. 5674 OF 2023
IN
WRIT PETITION NO. 14053 OF 2018**

Gangadhar Namdeo Malu .. Applicant

Versus

Shakuntala Gangadhar Malu and others .. Respondents

Mr. H. V. Tungar, Advocate for the Applicant.
Mr. Chetan T. Jadhav, Advocate for Respondent No. 1.
Mr. S. B. Pulkundwar, AGP for Respondent Nos. 2 to 4.

CORAM : KISHORE C. SANT, J.

DATED : 27th JUNE, 2023.

P C. :-

. Heard learned advocates for the parties.

2. The limited grievance of the petitioner is in respect of mutation entry bearing No. 692 dated 15.07.2010 as certified by the revenue authorities showing name of respondent No. 1-wife in the ownership column in the land Gat No. 33/1 from village Borgaon (Bk.), Taluka Udgir, District Latur. The respondent-wife had filed an application on the basis of circular issued by the Deputy Secretary, Revenue and Forest Department dated 06.07.2010 which clearly speaks that, if the husband desires of recording the name of his wife in 7/12 extract, then such entry shall be taken subject to provisions of the Maharashtra Land Revenue Code. The petitioner therefore challenged this entry. It is admitted fact that, though the petitioner and respondent No. 1 were husband and wife still their relations were strained since beginning and they are not residing together. There was proceeding filed by the wife for maintenance and other reliefs. Even now some of the proceedings in the nature of execution are pending before the Civil Court and this

fact is not disputed. The grievance of the petitioner-husband is that the entry was taken by the authorities without his application as per the circular. He therefore has challenged the said entry by filing an appeal before the S.D.O., Udgir. The S.D.O., Udgir by order dated 21.10.2011 rejected application/appeal. The petitioner therefore approached the Additional Collector, Latur and he also rejected the appeal of the petitioner. The Collector however accepted the contention. It is observed by the Additional Collector, Latur that such entry can be taken only if the husband files application voluntarily. The petitioner thereafter challenged the order passed by the Additional Collector, Latur before the Additional Divisional Commissioner, Aurangabad. The Addition Divisional Commissioner by considering the fact that, the maintenance proceeding filed by the wife was allowed and the Civil Court in a decree has ordered to create charge on the property and therefore, the name of the respondent-wife is taken. It is seen that, there is a decree passed by the Additional Civil Judge Junior Division, Udgir dated 17.01.2011 in RCS No. 139/2009. Now there is also execution proceeding filed by the wife bearing R.D. No. 4/2022 for recovery of Rs. 1,62,360/- from the petitioner-husband.

3. Learned advocate for the petitioner vehemently opposes that, the entry taken in the name of wife as the same is totally illegal as no

procedure is followed. The circular on the basis of which entry is taken clearly provides that such entry needs to be taken only if the husband voluntarily files an application to that effect. He submits that the order passed by the Additional Collector was rightly passed. There was no need to set aside the order by the Additional Divisional Commissioner. The reasons assigned by the Additional Divisional Commissioner are perverse. If the entries are to be taken on the basis of decree passed by the Court, then it could have been taken only by following proper procedure and even taking the entry on the basis of order of Civil Court it could have been taken only in other rights column and not in ownership column.

4. Learned advocate for respondent No. 1 submits that, it is the conduct of the petitioner which needs to be seen. He performed second marriage from which there is one issue. He is not paying maintenance regularly to the respondent-wife. He further pointed out that the petitioner has changed his name in the Government Gazette and on that basis he has also further taken entries in the revenue record just to deprive the respondent-wife by taking care that from name she will not appear to be wife of the petitioner. He also invited attention to the execution proceeding wherein, she has prayed that charge be created on the land of the petitioner since there is avoidance in paying maintenance.

5. Learned A.G.P submits that, in fact, there is remedy available to the petitioner to approach the State Government challenging the order passed by the Additional Divisional Commissioner.

6. Having considered the arguments this Court finds that, if the entry is to be taken on the basis of circular dated 06.07.2010, then it could have been taken only on an application filed by the petitioner and in no other manner. If the argument of the respondent-wife is to be accepted, then it was necessary for the respondent-wife to apply for mutation on the basis of decree passed by the Civil Court. There is nothing on record to show that this entry was taken on the application of the respondent-wife on the basis of Courts' order/decreed. As such, this entry cannot be treated to be entry taken on the basis of decree of Civil Court. Assuming that, it was on the basis of decree then it ought to have been taken in other rights column and not in ownership rights column.

7. So far as availability of alternative remedy is concerned, this Court finds that, since the petition is pending since the year 2018 and since there is no serious objection by respondent No. 1 till now, it would not be proper now to dispose off the petition on the ground of alternative remedy. Even otherwise, the question to be considered is only as to whether the mutation entry is rightly taken in view of

circular issued by the State. Upon this, this Court finds that the petition deserves to be allowed.

8. It is always open for the respondent-wife to take recourse to proper remedies for enforcing her rights against the petitioner.

9. The writ petition stands allowed and is disposed off in the above terms.

10. In view of disposal of the writ petition, civil applications also stand disposed off.

(KISHORE C. SANT, J.)

PS.B.