

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.9457 OF 2018

Balaso Mhadgonda Patil

(Since deceased through Legal Heirs)

1. Shantabai Balasaheb Patil

2. Annaso Balaso Patil

(Since deceased through Legal Heirs)

2A. Annapurna Annaso Patil

2B. Shivaji Annaso Patil

2C. Vaibhavi Annaso Patil

2D. Abhiraj Annaso Patil

3. Santosh Balaso Patil

4. Rajashree Anand Adke

5. Rajashree Nanasaheb Khot-Desai

6. Vijayashree Sanjay Desai

7. Bhagyashree Sadashiv Patil

...Petitioners

verses

1. Hirabai Malgoanda Patil

2. Ratnabai Malgonda Patil

3. Shobha Rajendra Walwekar

4. Shantinath Kallappa Magdum

5. Malutai Annaso Chougule

6. Ashok Appaso Badbade

7. Sarojini Jakkanna Badbade

(Since deceased through Legal Heirs)

7A. Jakkanna Dhulappa Badabade

7B. Jayashree Jakkanna Badabade

7C. Jayveer Dhullappa Badabade

8. Nanda (Kunda) Mahaveer Badabade

9. Kalgonda Malgonda Patil

(Since deceased through Legal Heirs)

9A. Sunanda Kalgonda Patil

9B. Shruti Kalgonda Patil

...Respondents

Mr. Pramod Arjunwadkar, for the Petitioners.

Mr. Manoj Patil, for the Respondent Nos. 2 to 8.

CORAM : N. J. JAMADAR, J.
RESERVED ON : APRIL 10, 2023
PRONOUNCED ON : JUNE 5, 2023

JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, heard finally at the stage of admission.

2. The legality, propriety and correctness of the order dated 7th June, 2016 passed by the Principal Secretary and Officer on Special Duty (Appeals) Revenue and Forest Department condoning the delay in filing Review Application and the subsequent order dated 8th August, 2016 allowing the said review by setting aside his own order dated 26th August, 2014 passed in Second Revision Application No. R.T.A.3813/PK55/ J-5A/PK634/(02)/2014.AVP and affirming the order 30th June, 2005 passed by the Additional

Divisional Commissioner, Pune in RTS First Revision Application No. RTS/KOP/395/2003, are assailed in this petition.

3. The litigation has a checkered history yet the background facts necessary for the determination of this petition can be summarized as under:

a} Anna Appa Patil, was the father of Mhadgonda Patil, the predecessor in title of the petitioners and Malgonda, the predecessor in title of respondent Nos. 1 to 3. After the demise of Anna, the joint Hindu Family comprising Mhadgonda and Malgonda was holding a number of joint family properties including the agricultural lands bearing Survey No.93, Gut No. 380 (New Gut No. 700) and Gut No. 474 situated at Mouje Abdul Lat, Tal. Shirol, Dist. Kolhapur (the subject lands), on tenancy.

b} The subject lands were owned by Jahagirdar of Ichalkarnji and Keshav Gadre, respectively. After the demise of Anna, proceedings were initiated and purchase price came to be fixed under section 32G of the the Maharashtra Tenancy and Agricultural Act, 1948 (the Act, 1948). Since Malgonda, according to the petitioners, was the manager of the joint family, the subject lands were purchased in the name of Malgonda out of the joint family income. However, the subject lands continued to be joint

family properties.

c} The petitioners claimed on 30th August, 1972 Malgonda surreptitiously gave an intimation (vardi) to the revenue authorities and the name of his son Kalgonda came to be mutated to the record of right of the subject land, without notice to Mahadgonda. The mutation entry No. 5504 came to be certified on 12th November, 1972.

d} A spate of proceedings ensued:

(i) Mahadgonda preferred an appeal before the Sub Divisional Officer, Kolhapur. By judgment and order dated 20th February, 1979 in RTS First Appeal No. 98 of 1977, the SDO was persuaded to allow the appeal and cancel M.E.No.5504. It was, inter alia, held that the mutation was effected and certified on one and the same day while an appeal preferred against the order issuing certificate under section 32G was still subjudice.

(ii) Second RTS Appeal No. 12 of 1979 preferred by the respondent Nos. 2 and 3, who claimed to be the wife and daughter of Malgonda, and Kalgonda Patil, against the aforesaid order came to be dismissed by the Additional Collector, Kolhapur by an order dated 30th August, 2001.

(iii) Being aggrieved, respondent Nos. 1 to 3 preferred First Revision through their Power of Attorney holder Shantilal Badbade

before the Divisional Commissioner, Pune. By judgment and order dated 30th June, 2005 the Divisional Commissioner was persuaded to allow the Revision Application and set aside the order passed by the Additional Collector in RTS Appeal No. 39 of 1979 dated 30th August, 2001. The Additional Divisional Commissioner was of the view that in the intervening period a suit instituted by Mahadgonda and successors in interest, being Partition Suit No. 24 of 1976, came to be decided against Mahadgonda. The rights of the parties were adjudicated by the Civil Court and, thus, there was no reason to cancel the M.E.No.5504.

(iv) Being aggrieved, the petitioners preferred Second Revision Application before the State Government. Initially by a judgment and order dated 26th August, 2014 in Second Revision Application No. R.T.A.3813/PK55/J-5A/PK634/(02)/2014.AVP, the Secretary and Officer on Special Duty (Appeals) was persuaded to allow the Revision Application and set aside the aforesaid order passed by the Additional Divisional Commissioner in First Revision Application No. RTS/KOP/395/2003. It was, inter alia, held that the name of Kalgonda was mutated to the subject land vide ME. No.5504 in the absence of any instrument and the subject land being governed by the provisions of the Act, 1948 was transferred of in violation of the provisions contained in section 43 thereof and thus the said

mutation was invalid.

(v) The respondent Nos. 1 to 8 herein preferred a Review Application before the State Government seeking review of the aforesaid order dated 26th August, 2014, inter alia, on the ground that the respondent Nos. 1 to 3 were not provided an effective opportunity of hearing as they were not impleaded through the POA Shantilal Badbade through whom the respondent Nos. 1 to 3 had prosecuted the First Revision Application before the Divisional Commissioner, Pune and, therefore, they could not appear before the State Government. It was further contended that the relevant documents which were germane to the determination of the controversy between the parties were also not brought to the notice of the revisional authority.

e) Initially, by an order dated 7th June, 2016 the Principal Secretary and OSD allowed the application for condonation of delay in taking out the Review Application opining that the order was passed in Second Revision Application No. R.T.A.3813/PK55/ J-5A/ PK634/(02)/2014.AVP dated 26th August, 2014 without providing an opportunity of hearing to respondent Nos. 1 to 3.

f) Subsequently, by the impugned order the Principal Secretary was persuaded to allow the review itself holding that the

respondent Nos. 1 to 3 were not provided an effective opportunity of hearing as the petitioners had not impleaded the POA through whom the respondent Nos. 1 to 3 were prosecuting the proceedings and therefore they could not appear before the Court when the Second Revision Application was initially decided by order dated 26th August, 2014.

4. Being thus aggrieved, the petitioners have invoked the writ jurisdiction of this Court.

5. I have heard Mr. Pramod Arjunwadkar, learned counsel for the petitioners, and Mr. Manoj Patil, learned counsel for the Respondent Nos. 2 to 8 at some length. With the assistance of the learned counsel for the parties, I have also perused the material on record including the orders passed by the authorities below and the Civil Courts which were tendered on behalf of the parties.

6. Mr. Arjunwadkar, learned counsel for the petitioners would submit that the Principal Secretary and OSD committed a grave error in exercising the writ jurisdiction when no case for review was made out even remotely. Firstly, the Review Application was preferred by few of the persons who were not the parties to the

proceedings before the Divisional Commissioner, Pune. Secondly, the second Revisional Authority was not at all justified in setting aside its earlier order straightaway. If the second Revisional Authority considered it appropriate to review its order dated 26th April, 2014 it ought to have proceeded to hear the matter afresh after recording a finding that it was persuaded to consider the prayer for review. Instead, the second Revisional Authority proceeded to set aside its earlier order and restore the order passed by the Divisional Commissioner by one and the same order. Thirdly, during the course of hearing of the Review Petition, the respondent Nos. 1 to 8, the applicants in Review Application for the first time tendered certain documents. Those documents were within the full knowledge of the applicants therein. At the stage of review, the Principal Secretary could not have looked into those documents and the proper course would have been to remit the matter to the Additional Commissioner for a fresh determination.

7. Mr. Arjunwadkar, strenuously submitted that, in effect, the revisional authority under the garb of review has exercised appellate jurisdiction. Such a course of action is legally impermissible. Mr. Arjunwadkar further submitted that, at any rate, the decision to review the earlier judgment in Revision

Application dated 26th April, 2014 and pass an order in review by setting aside the earlier order, passed by the very same authority, could not have been made by one and the same order.

8. Mr. Manoj Patil, the learned counsel for the respondent Nos. 2 to 8 submitted that there is no error in the impugned order which warrants exercise of extraordinary writ jurisdiction. Mr. Patil strenuously submitted that the order condoning the delay dated 7th June, 2016 cannot be assailed in this petition as it was never challenged and thus attained finality. Laying emphasis on the fact that the Second Revision Application came to be decided on 26th August, 2014 without providing an opportunity of hearing in as much as the respondent Nos. 1 to 3 were not impleaded through the POA, though the First Revision was preferred by respondent Nos. 1 to 3 through the POA, it was submitted that the first order was non est in the eyes of law as no effective opportunity was provided. Thus the Principal Secretary and OSD was within his rights in reviewing the order once it was found that the first order was passed without adequate notice to respondent Nos. 1 to 3 and consideration of the relevant material. In any event, according to Mr. Patil, the claim of the petitioners that their predecessor had interest in the subject land has been negatived by the Civil Court. In

the face of such record, according to Mr. Patil, the petitioners cannot be permitted to re-agitate the issue of the alleged incorrect mutation.

9. Section 258 of the Maharashtra Land Revenue Code, 1966 reads as under:-

258. Review of orders:-

(1) The State Government and every revenue or survey officer may, either on its or his own motion or on the application of any party interested, review any order passed by itself or himself or any of its or his predecessors in office and pass such orders in reference thereto as it or he thinks fit :

Provided that -

(i) if the Collector or Settlement Officer thinks it necessary to review any order which he has not himself passed, on the ground other than that of clerical mistake, he shall first obtain the sanction of the Commissioner or the Settlement Commissioner, as the case may be, and if an officer subordinate to a Collector or Settlement Officer proposes to review any order on the ground other than that of clerical mistake, whether such order is passed by himself or his predecessor, he shall first obtain the sanction of the authority to whom he is immediately subordinate;

(ii) no order shall be varied or reversed unless notice has been given to the parties interested to appear and be heard in support of such order.

... ..

(iv) no order affecting any question of right between private persons shall be reviewed except on an application of a party to the proceedings, and no such application of review of such order shall be entertained unless it is made within ninety days from the passing of the order.

(2) No order shall be reviewed except on the following grounds, namely :—

- (i) discovery of new and important matter or evidence
- (ii) some mistake or error apparent on the face of the record ;
- (iii) any other sufficient reason.

....

(4) An order which has been dealt with in appeal or on revision shall not be reviewed by any revenue or survey officer subordinate to the appellate or revisional authority.

10. The text of aforesaid section regulates the power of review by enumerating the authorities under the Code who are empowered to review their orders, the limits on the power of review, period of limitation for review, where the order affects the right of private parties and, more importantly, the grounds on which the review can be had. The grounds enumerated under sub section (2) of section 258 of the Code are by and large identical to the grounds on which a judgment can be reviewed under Order XXXXVII of the Code of Civil Procedure, 1908.

11. A review of a judgment or order can be sought in the following situations :

- (a) Upon the discovery of new or important matter or evidence which, after exercise of due diligence was not within the knowledge of the applicant;
- (b) Such important matter or evidence could not be produced by the applicant at the time when the order was passed;

- (c) on account of some mistake or error apparent on the face of the record;
- (d) any other sufficient cause.

12. Clauses (a) and (b) above, are self-explanatory. An error apparent on the face of the record, as the term signifies, is an error which is self evident from the record and does not require an elaborate examination and scrutiny of the matter. If the error is not self evident and its detection requires a long process of reasoning, it cannot be treated as an error apparent on the face of the record. It is also well recognized that 'any other sufficient reason', means a reason sufficient on grounds at least analogous to those specified in the preceding clauses.

13. An application for review is more restricted than that of an appeal and the Court of review has its jurisdiction circumscribed by the defined limits under the statutory provision. The powers of review cannot be exercised as an inherent power nor can an appellate power be exercised in the guise of power of review.

14. In the case at hand, Mr. Arjunwadkar, learned counsel for the petitioners made an earnest endeavour to impress upon the Court that the Principal Secretary and OSD ought to have deferred the

matter for hearing on merits once he came to the conclusion that the order dated 26th August, 2014 passed in second revision by him warranted review. Mr. Arjunwadkar would urge, where the authority is called upon to exercise review jurisdiction, a two-stage inquiry is warranted. First, whether a case to review the order is made out. Second, if yes, whether the order sought to be reviewed deserves to be reviewed ?

15. I have extracted relevant part of the provisions of section 258 of the Code, on purpose. From the phraseology of section 258, it appears difficult to deduce the process of two-stage inquiry propounded by Mr. Arjunwadkar. As noted above, sub section (2) of section 258 incorporates the grounds on which an authority can review its own order. It implies that the authority reviewing its own order must satisfy itself that one of the three grounds enumerated in sub section (2) of section 258 of the Act, 1966 is made out. Once such satisfaction is arrived at, I am afraid it is incumbent upon the authority to take a pause and defer the hearing of the review application on merits by recording a tentative finding that review is warranted.

16. There are two conceivable impediments in the course

suggested by Mr. Arjunwadkar. One, the very satisfaction that the order sought to be reviewed warrants review either on account of discovery of new fact or evidence or an error apparent on the face of record in itself provides *Raison d'être* for the review. Two, it is not always practicable to appraise the necessity of review and justifiability of review of the original order in watertight compartments. Often finding of necessity of review subsumes the finding on justifiability of review of the original order.

17. In any event, in the absence of any prescription in the Code, in my view, such a two-stage determination of review application cannot be put forth as a matter of inviolable procedure. In a given case, the reviewing authority may consider it appropriate to take a pause and defer matter for hearing on merits. However, not following such course of action, without anything more, would not render the ultimate order passed on review suspect for violation of fundamental principles of judicial process.

18. In the facts of the case at hand, I do not find that a grievance of not providing an effective opportunity of hearing while the review application was heard by the Revisional Authority can be legitimately made. Thus, the impugned order does not suffer from

procedural defect of such nature as to warrant interference in exercise of writ jurisdiction.

19. On the merits of the matter, Mr. Arjunwadkar would submit that the Additional Commissioner had passed order in 1st Revisional Application setting aside the orders passed by appellate authorities only on the premise of the outcome of the suits instituted between the parties before the Civil Court. By an order dated 26th August, 2014 the IInd Revisional Authority had rightly interfered with the said order. In review, according to Mr. Arjunwadkar, the IInd Revisional Authority re-appreciated nay misread the evidence and reviewed its first order. This is impermissible in exercise of review jurisdiction, urged Mr. Arjunwadkar.

20. To lend support to this submission, Mr. Arjunwadkar placed reliance on a Division Bench judgment in the case of **Balkrishna Tukaram Shikhare vs. Madhukar Ramchandra Pawar**¹ wherein the limited discretionary nature of review jurisdiction was enunciated. The Division Bench held that if a Tribunal exceeds the legitimate limits of its jurisdiction and/or wrongly interferes with its own orders in the supposed exercise of its review powers, such an order must be interfered in exercise of writ jurisdiction.

1 1979 Bom. C.R. 653.

21. Reliance was placed on the observations in paragraph 8 which read as under:-

8] Review jurisdiction is invoked and exercised to correct mistakes or errors apparent on the face of the record and even in the case of such mistakes or errors, to review or not to review is yet discretionary. Having gone a little deeper into the matter and having also gone through the record of the case, we are of the further view that even assuming a case for review had at all been made out, even so discretion, in the facts and circumstances of the present case, pre-eminently required rejection of the review application. The conduct of the respondent is replete with various elements and features which even in a revision application would prevent a Tribunal from exercising its revisional jurisdiction in his favour. Stricter still would be the position against him in a review application. With not a title of title in his favour; with a clear admission of not even knowing who is his landlord; with a further clear admission of not having been paid any rent to any one at any time; with the undisputed position that his name does not find any place even in the record of rights at any time (except the disputed entry duly cancelled) with all these fatal infirmities the respondent still claimed, and indeed succeeded in persuading the Tribunal to hold, that though he failed on merits in appeal and though he failed on merits in his revision therefrom, he should some how or the other be granted relief on appreciation and re-appreciation once again of the entire evidence and that too in a review application. Grant of such claim and relief in a review application is, in the facts and circumstances of the cases, nothing but a travesty of justice. If there have been cases which require interference under Article 227 of the Constitution, the present is pre-eminently one of that nature. If a Tribunal exceeds the legitimate limits of its jurisdiction and/or wrongly interferes with its own orders in the supposed exercise of its review powers, justice will be a casualty and at half mast. A judicial Tribunal is not expected to be at the mercy even of its own whims and caprices.

22. Mr. Arjunwadkar also placed reliance on the decisions of this

Court in the cases of **Anoopchand Nathmal Baid vs. Maharashtra Revenue Tribunal at Nagpur and Others**² and **Genu Laxman Shinde vs. Chandrakant Dagadu Kotulkar**³, to bolster up the case that in the case at hand, there was no error apparent on the face of the record.

23. Lastly, reliance was placed on the judgment of this Court in the case of **Nalini Onkar Patil vs. Girdhar Kashinath Patil and Others**⁴ wherein import of the provisions contained in section 149 of the Code 1966 was expounded. It was inter alia observed that none of those statutory provisions would entitle any person to claim right to any immovable property by any of the modes specified in the said section otherwise than by following the procedure prescribed under the respective statutes. Those provisions of law invariably provide for necessary documentation either by way of deeds inter vivos or by way of order of the court or the authority.

24. Mr. Arjunwadkar strenuously urged that in the absence of any document, which was duly registered and stamped, according to governing provisions of law, Malgonda could not have given intimation to mutate the name of Kalgonda, his son, to the subject

2 1986 Mh.L.J. 520.

3 1999(1) Mh.L.J. 235.

4 2002(4) Mh.L.J. 728.

lands and the authorities could not have mutated the name of Kalgonda especially when the subject lands were, the joint family properties. Mr. Arjunwadkar invited the attention of the Court to an entry in the register of tenants which indicates that the name of Malgonda was mutated to Survey No. 93 as the Manager of the Joint Family.

25. It would be imperative to note that the Principal Secretary and OSD was persuaded to review the order passed on 26th August, 2014 primarily on three counts. One, no effective opportunity of hearing was provided to respondent Nos. 1 to 3 and therefore they could not appear before the State Government when the first order was passed. Two, important material and evidence could not be brought before the State Government. Three, the statements of land owners and tenants indicated that only Malgonda was the tenant of the subject land and Mahadgonda was not. The material also indicated that ME. NO.5504 was certified after following due process. The outcome of the proceedings before the Civil Court indicated that respondents 4 to 8, the transferee of the successors in interest of Malgonda had acquired interest in the subject land in conformity with law. The aforesaid material was, however, not available when the first order was passed on 26th August, 2014.

26. Undoubtedly, the review jurisdiction is of limited nature. Court or Tribunal is not empowered to exercise the appellate jurisdiction disguised as an exercise in review. However, if the conditions to exercise the review are made out, then it cannot be faulted at for the only reason that the original order is reviewed.

27. In the case at hand, the fact that the respondents 1 to 3 had not appeared when the first order was passed on 26th August, 2014 is evident from the narration of the facts therein. It was noted that despite due service, the respondents did not appear. It would be contextually relevant to note that the respondents 1 to 3 were prosecuting the proceedings before the Divisional Commissioner through the POA Shantilal Badbade. This becomes evident from the judgment passed by the Divisional Commissioner on 3rd June, 2005 which was impugned by the petitioners before the second Revisional Authority. Yet, Shantilal Badbade was not impleaded in the capacity of POA of respondent Nos. 1 to 3. The petitioners could not have feigned ignorance of respondents 1 to 3 having been represented through Mr. Badbade.

28. In the circumstances, non appearance of respondents 1 to 3 before the Revisional Authority when the second revision was

decided by an order dated 26th August, 2014 can be said to have been satisfactorily accounted for. The Principal Secretary and OSD was thus justified in recording a finding that the respondents 1 to 3 had no effective opportunity of hearing and resultantly their case could not be placed before the Revisional Authority.

29. Evidently, the reasons which weighed with the Additional Divisional Commissioner in allowing the first Revision were not fully dealt with by the IInd Revisional Authority while passing the order dated 26th August, 2014. Probably the non representation of the respondents 1 to 3 before the IInd Revisional Authority deprived it of the benefits of the contentions on behalf of respondents 1 to 3.

30. The principal reason which weighed with the Additional Divisional Commissioner was the outcome of the proceedings before the Civil Court. It could hardly be disputed that the said matter was germane. I have perused the plaint in Partition Suit No. 24 of 1976 instituted by Mhadgonda, the predecessor in title of the petitioners, seeking partition of the joint family properties. It would be suffice to note that in the said plaint it was categorically asserted that subject lands stood purchased under the provisions of the Act, 1948 for and

on behalf of the joint family in the name of Malgonda and the later was not the sole tenant thereof and on 30th August, 1972 Malgonda had surreptitiously got mutated the name of Kalgonda to the subject land. Mhadgonda thus sought declaration that the subject lands were the joint family properties and he had one half undivided interest therein and also prayed for partition and separate possession thereof. Indisputably, the said suit came to be dismissed in default on 18th November, 1988.

31. It cannot be controverted that the averments in the plaint in the said suit constitute the core of the resistance to M.E.No. 5504. Secondly, in the suits instituted by respondents 4 to 8, the transferee of the subject lands, being the suit No. 22 of 2006, 23 of 2006 and 24 of 2006, against the petitioners and their predecessor in title, categorical findings were recorded that the subject lands were the self-acquired properties of Malgonda, no evidence was adduced on behalf of the predecessor in title of the petitioners that the subject lands were joint family properties and Mhadgonda was never cultivating the subject lands as a member of the joint family. In contrast, the subject lands were purchased by Malgonda as a tenant thereof.

32. In the face of the aforesaid material, in my view, the Revisional Authority was justified in reviewing its order on the ground that the aforesaid material and the orders passed by the authorities under the Act, 1948 could not be considered by the Revisional Authority when the first order was passed on 26th August, 2014. Thus, no fault can be found with the impugned order.

33. The matter can be looked at from another perspective. The suit instituted by the predecessor in title of the petitioners to assert that the subject lands constituted joint family property, came to be dismissed. In other proceedings, the Civil Court as well as the authorities under the Bombay Tenancy and Agricultural Lands Act, 1948 have recorded the findings that Malgonda was the tenant of the subject land and Mhadgonda did not cultivate the subject land in the capacity of tenant as a member of a joint family. Thus the challenge to Mutation Entry 5504, even otherwise, does not merit countenance. Resultantly, the petition deserves to be dismissed.

Hence, the following order.

ORDER

- 1] The petition stands dismissed.
- 2] Rule discharged.
- 3] No costs.

(N. J. JAMADAR, J.)