

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.7186 OF 2018

Laxmibai Dipak Kale and others .Vs. Additional Commissioner, Amravati and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Ms S.W. Deshpande, Advocate for the petitioners.

Shri D.P. Thakre, A.G.P. for the respondent Nos.1 and 2/State.

Shri B.N. Mohata, Advocate for the respondent No.3.

CORAM : ANIL S. KILOR, J.

DATED : 31/01/2023

1. Heard.

2. The petitioners who are the bonafide purchaser of the land in dispute, raised a grievance as regards the partition effected by the Tahsildar, on the ground that though the land is dry land, it has been considered as irrigated land and because of it is a dry land will affect by the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

3. In this case, the Tahsildar on 19.03.2009 effected the partition which was held by the Sub-Divisional Officer, Achalpur vide order dated 07.10.2015. Thereupon, the appeal was preferred by the petitioners before the Sub-Divisional Officer, who upheld the order of Tahsildar, against the same the appeal was preferred before the

Additional Collector who further upheld the order of Sub-Divisional Officer. Thereafter, a Revision application was filed before the Additional Commissioner. The Additional Commissioner maintained the order of Sub-Divisional Officer and Collector.

4. At the outset, Shri Mohata, learned counsel for the respondent No.3 points out that the petitioners purchase the land from the son-in-law of the original owner. Tulshiram, who further transferred the title in favour of the husband of the petitioner No.1 Dipak Kale. Venkatrao executed the sale deed in favour of Tulshiram on 23.11.1987 which was the subject matter in a suit, in which the trial Court has held the sale deed is illegal. The said order of the trial Court was maintained up to the High Court and it is further submitted that as such, there is no title in favour of the petitioners in the land in dispute and therefore, this petition is not maintainable.

5. Ms Deshpande, learned counsel for the petitioners is not disputing the above referred facts, however, it is a submission that, the wife of the vendor of Dipak Kale is the daughter of Venkatrao and because after the death of Venkatrao, Renukabei got the share to the suit property and to the extent of daughter of original owner, the petitioners can claim title over the land in dispute. She, therefore, submits that the present petition is maintainable

at the instance of the petitioners being legal heirs of Dipak Kale the bonafide purchaser.

6. In view of the admitted facts that the land was original owned by the Venkatrao and he sold the same to the Tulshiram who subsequently sold it to the Deepak Kale the husband of the petitioner No.1 and the said sale deed was cancelled by the Civil Court and it was maintained up to the High Court.

7. As such, there is no dispute that there is no title of petitioners in the suit property in a capacity as legal heirs of Dipak Kale, after the cancellation of sale deed between Venkatrao and Tulshiram. There is no dispute about the fact that the Renukabai had a share in the property of Venkatrao. However, Renukabai and Tulshiram the vendor of Deepak Kale can not be considered one and the same therefore, the petitioners can not claim share of Renukabai only on the ground that the husband of Renukabai sold property to the Deepak Kale.

8. In the circumstances, I find substance in the preliminary objection raised by Shri Mohata, learned counsel for the respondent No.3 that the present petition is not maintainable at the instance of legal heirs of the Dipak Kale. As such, sale deed executed by the Tulshiram in

favour of the Dipak Kale goes with the cancellation of sale deed executed by Venkatrao in favour of the Tulshiram.

In the circumstances, the writ petition is **dismissed.**

JUDGE