

AGK

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

WRIT PETITION NO.5353 OF 2022

Digitally
signed by
ATUL
GANESH
KULKARNI
Date:
2024.01.15
16:26:57
+0530

Subabai Alias Subhadrabai

Tukaram Kate & Anr.

... Petitioners

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr. Kishor Patil with Mr. Amol Mhatre and Mr. Sameer
P. Mhatre for the petitioners.

Mr. P.G. Sawant, AGP for respondent/State.

Mr. Sandeep Phatak for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 15, 2024

P.C.:

- 1. Rule.** Rule is made returnable forthwith.
- 2.** The writ petition arises out of proceedings under Section 149 of the Maharashtra Land Revenue Code, 1860. Mutation Entry No.3024 effected on 12 June 1985 was challenged by way of Appeal No.172 of 2015 before Sub-Divisional Officer, Mawal. The application for condonation of delay of more than 30 years is rejected by the appellate authority.
- 3.** According to the petitioners, mutation entry was based on no document. According to him, the sale deed based on which mutation entry was effected was not in existence on the date of

effecting mutation entry nor is in existence as of today.

4. Record indicates that the petitioners have already approached Civil Court for establishing the right over the property in dispute. Therefore, it will be open for the petitioners to raise the contention that the sale deed based on which mutation entry was effected was not in existence before the Civil Court. If such contention is raised, the Civil Court shall decide such contention in accordance with law. Since the right, title and interest in the property are not affected by the mutation entry, the rights of the parties need to be decided by the Civil Court. Hence, no interference in the impugned is called for.

5. All contentions raised by both the parties are kept open to be adjudicated by the Civil Court.

6. Rule stands disposed of in above terms. No costs.

7. Since the suit is of the year 1995, the Civil Court shall decide the suit within one year from today.

(AMIT BORKAR, J.)