IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10972 OF 2023

Chandrabhaga Ladkya Choudhary,
(since deceased) through LRs. and Ors. ... Petitioners.

Versus

Gajanan Arjun Gondhale and Ors. ... Respondents.

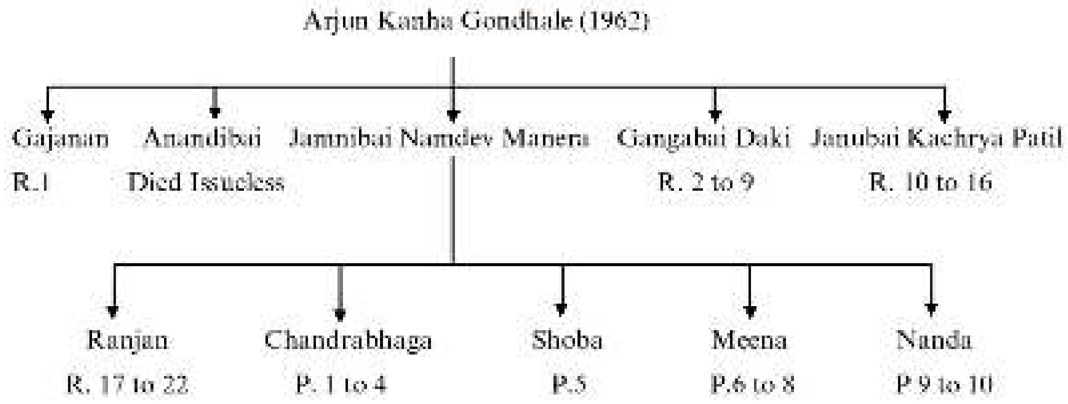
Mr. Ashwin Kapadnis a/w Mr. Vivek Rane, for the Petitioners.
Mr. S.G. Karandikar i/b Mr. Jayesh Joshi, for Respondent No.1.
Mr. Jayesh D. Patil, for Respondent Nos.17 to 22,
Ms. M.J.Kajle, AGP, for Respondent Nos.23 to 26.
Mr. G.S.Godbole, Senior Advocate a/w Mr.Rohit Joshi, for Respondent No.27.
Ms. Prerna Gandhi, for Respondent No.28.

CORAM : SHARMILA U. DESHMUKH, J.
Reserved on : February 07, 2024
Pronounced on : February 27, 2024

ORDER :

1. By this Petition filed under Article 227 of the Constitution of India, the challenge is to the order dated 31st May, 2023 passed by the Hon'ble Minister of Revenue in RTS 2723/Pra.Ka.48/J-4. By the impugned order, the Hon'ble Minister has quashed and set aside the order of the Additional Commissioner dated 16th December, 2023 by which the Additional Commissioner had upset the orders of the Sub-Divisional Officer and Additional Collector refusing to condone the delay.

2. The Petitioners are the legal heirs of one Smt.Jamnibai Namdeo Manera, who was the daughter of Arjun Kanha Gondhale. For appreciation of the relationship of the parties, the genealogy is reproduced as under:



3. RTS Appeal 00216/2016 under Section 247 of the Maharashtra Land Revenue Code, 1966 (for short, "MLRC") was filed before the Sub-Divisional Officer by the legal heirs of Jamnibai Namdev Manera i.e. Ranjan Chandrabhaga, Shobhabai, Meenabai, heirs of Nandabai against Gajanan, Gangabai, heirs of Janubai, Anandibai and one M/s. Heer Realtors (Respondent No.27 herein), who was the subsequent purchaser of some of the subject properties from Gajanan. By the said Appeal filed on 18th

July, 1976, the Appellants challenged the Mutation Entry No.912 dated 14th June, 1963 and Mutation Entry No.998 dated 22nd February, 1965 effected in respect of the following properties:

"गावाचे नाव	स.नं./हि.नं.	क्षेत्र (हे.आर)	आकार (रू.पै.)	फेरफार क्रं.
मौजे कावेसर, ता.जि.ठाणे	35/8	0–24–0	3.41	फेरफार क्र.912 दिनांक 14/06/1963 फेरफार क्र.998 दिनांक 22/02/1965"
	36/7	0–48–8	7.93	
	60/5	0–10–1	0.84	
	60/6	0–11–1	0.91	
	77/5	0–01–3	0.16	
	77/6	0–03–8	0.50	
	105/4	0–16–0	0.69	
	227/1	0–02–8	0.20	
	105/3ब	0–70–5	2.97	

4. The case of the Appellants was that the subject properties were owned and in possession of the common ancestor-Arjun, who expired in the year 1962 leaving behind him surviving as his legal heirs, his son Respondent No.1-Gajanan Arjun Gondhali and daughters i.e. Smt.Anandibai Atmarao Patil, Smt.Jamnibai Namdev Manera, Smt.Gangabai Atmaram Daki and Smt.Janubai Kachrya Patil. It was contended that out of the subject properties, Survey No.105/3B was being cultivated by Arjun and during his life-time, the Respondent No.1 as well as the daughters were cultivating rice on the said property and that even after the death of Arjun, the legal heirs of Arjun are cultivating the said property and taking the crop produce. It was contended that as the purchase price was paid by Gajanan, his name came to be mutated in 7/12 extracts in respect of Survey No.105/3B.

5. It was contended that the subject properties were the ancestral properties and there was no partition, however, the Respondent No.1-Gajanan taking advantage of the fact that Jamnibai, Gangabai, Janubai and Anandibai were married and staying in their matrimonial house, with the intention to extinguish the rights of the sisters in the subject properties, got effected the Mutation Entry No.912 on 15th May, 1964 and Mutation Entry No 998 on 2nd April, 1965. It was contended that at the time of effecting the mutation entries, as the Appellants were not given any notice and no consent was given by the Appellants, the said mutation entries are illegal.

6. It was contended that as the Respondent No.1-Gajanan was a close relative of the Appellants, the Appellants had no reason to doubt the intention of Gajanan and 7/12 extracts were never obtained by the Appellants. It was pleaded that on 2nd June, 2016, when the Appellants had gone to the Talathi office, they became aware of the Mutation Entry No.912 and 998. It was further pleaded that the Appellants apprised the Respondent No.2 about the incorrect mutation entries and were assured by the Respondent No.1 that the entries would be corrected. It was contended that from the date of knowledge of the mutation entries i.e. from 2nd June, 2016, the Appeal is within time. However, the delay from the date of the mutation entries is about 52 years, 2 months and 2 days and the Appellants being unaware of the mutation entries there is delay for which the prayer for condonation of delay was made.

7. The Respondent No.1 resisted the application and contended that there is a delay of 52 years in filing the Appeal. It was contended that the Ranjan Namdev Manera, the daughter of Jamnibai had on 7th May, 2008 executed registered release-deed in favour of the Respondent No.1 which mentions the mutation entries and that it was necessary that the Appeal be filed immediately upon being aware of the mutation entry, which is not done. It was contended that in the release deed it has been specifically mentioned that by Mutation Entry No.912 dated 14th June, 1963, Anandibai, Jamnibai, Gangabai and Janubai have voluntarily relinquished their share in favour of Gajanan.

8. The Respondent No.2 resisted the Appeal and contended that Jamnibai as well as Gangabai, Janubai and Anandibai had voluntarily relinquished their share in favour of the Respondent No.1-Gajanan and accordingly mutation entries were effected in respect of which the Appellants were aware and there is delay of 52 years.

9. The Respondent No.3.4.1 supported the case of the Appellants and contended that the Mutation entries were recorded illegally and the delay should be condoned.

10. The Respondent No.5 opposed the Application and contended that the Appeal being filed after a delay of 52 years 2 months and 3 days is liable to be dismissed.

11. Upon hearing the parties and perusal of the record, the Sub Divisional Officer by order dated 21st June, 2017 rejected the Appeal with the findings as under:

- That the Mutation Entry No.912 was effected on 14th June, 1963, in which the names of the daughters of Arjun as well as the Respondent No.1 was mutated and the Mutation Entry No.998 dated 2nd June, 1965 mentions the relinquishment by the four sisters of their share in favour of Respondent No.1.
- That, Gangabai through her Advocate has stated that she had accepted the Mutation Entry No.912 and 998 and that she had voluntarily relinquished her share in favour of the Respondent No.1.
- That the Appellant No.1 has executed registered release deed dated 7th May, 2008 in favour of the Respondent No.1.
- That, under the 32G proceedings initiated under the provisions of Bombay Tenancy and Agricultural Act, 1948, the purchase certificate has been issued in favour of the Respondent No.1-Gajanan and that the sisters have voluntarily released their shares in favour of the Respondent No.1, which was accepted by the sisters during their life-time, as there was no objection by the sisters to the mutation entries.
- That after a period of almost 52 years, the objection has been raised to the mutation entry without sufficient cause being shown.

12. As against the dismissal of the Appeal by Sub Divisional Officer, RTS Appeal No.204/2017 was initiated before the Additional Collector. In these proceedings, the Respondent No.5 M/s.Heer Realtors was also made a party. The Additional Collector upheld the findings of the Sub Divisional Officer vide order dated 8th March, 2019. The Additional Collector further held that by virtue of Section 257(1) of MLRC, the challenge to the mutation entry is beyond the period of 5 years for which without taking the permission of the State Government, there can be no challenge.

13. As against the rejection of the Appeal by the Additional Collector, Revision Application came to be filed under Section 257 of the MLRC before the Additional Commissioner, Konkan Division. Pertinently, in this proceedings M/s.Heer Realtors i.e. the subsequent purchaser, who was a party to the proceedings before the Sub Divisional Officer and the Additional Collector was not made a party. The Additional Commissioner observed that the subject properties were ancestral properties and the names of all the legal heirs were required to be mutated and by the mutation entry under challenge only the name of the Respondent No.1-

Gajanan has been mutated causing injustice to the Appellants which has not been considered by the Additional Collector. It was further observed that according to the Appellants, at the time of effecting the mutation entries, no notice was given to the Appellants. The Additional Commissioner relied upon the decision of this Court in the case of ***Ashok Balaji Ratan vs. Nagpur Improvement Trust***, reported in ***2004 (6) Bom.C.R. 861***, that if the case is meritorious, by not condoning the delay, injustice would be caused to the party. The Additional Commissioner held it would in interest of justice if the delay is condoned and matter is heard on merits. It held that even if there is no explanation given, considering the seriousness of the issue, the same is required to be decided on merits. The Additional Commissioner by order dated 16th December, 2022, set aside the order of the Additional Collector, condoned the delay and remanded the matter to the Sub-Divisional Officer to be decided on merits.

14. As against the order of the Additional Commissioner, the Respondent No.1-Gajanan preferred Revision Application under Section 257 of the MLRC before the Hon'ble Minister for Revenue.

The Hon'ble Minister vide the impugned judgment observed that the Additional Commissioner had not adjudicated the application for condonation of delay in filing the revision application and the order was therefore without jurisdiction and without the delay being condoned in filing Revision Application, the Additional Commissioner has condoned the delay of about more than 56 years in challenging the mutation entries which was legally unsustainable.

15. The Hon'ble Minister further held that for condoning the delay of about 56 years, there is no sufficient and reasonable cause set forth by the Petitioners. The Hon'ble Minister relied upon the decision by this Court in the case of ***Balkrishna Sadashiv Thakur and Ors. vs. Prabhakar Sadashiv Thakur and Ors.*** dated 10th February, 2021, passed in Writ Petition No.2658 of 2018, to hold that the order of Additional Commissioner is legally unsustainable. It further held that the Mutation Entry Nos.912 and 998 have been properly effected after following the procedure prescribed and for the purpose of establishing the right, title and interest of the Applicants in the suit property, it is necessary for the Applicants to seek necessary reliefs in the Civil Court. The Hon'ble Minister further held that after the year 1965, there are subsequent entries which have been effected in respect of the subject property based on registered documents, which cannot be cancelled. The Hon'ble Minister held that the Additional Commissioner has acted in excess of jurisdiction and quashed and set aside the order of the Additional Commissioner and allowed the Revision Application.

16. Heard Mr. Ashwin Kapadnis, learned counsel for the Petitioners, Mr. S.G. Karandikar, learned counsel for Respondent No.1, Mr. Jayesh D. Patil, learned counsel for Respondent Nos.17 to 22, Ms.M.J.Kajle, learned AGP, for Respondent Nos.23 to 26, Mr.G.S.Godbole, learned Senior Advocate for Respondent No.27 and Ms. Prerna Gandhi, learned counsel for Respondent No.28.

17. Mr. Kapadnis, learned counsel for the Petitioners would submit that the admitted position is that the property was the ancestral property of Arjun in which the daughters as well as the Respondent No.1-Gajanan had a share. Pointing out to the Mutation Entry No.912, which is annexed at page No.77 of the Petition, he would submit that the mutation entry has been effected in favour of the Respondent No.1-Gajanan by noting that there is a release-deed filed by the sisters and without registered release deeds being executed the sisters could not have released their shares and fraud has been committed. According to him, the execution of registered release deed in the year 2008 by Ranjan by showing Ranjan as the only legal heir of Jamnibai cements the issue of fraud. He would submit that no notice in respect of certification of mutation entries was issued to the sisters of Gajanan. He submits that the order of the Sub Divisional Officer and the Additional Collector being legally unsustainable was interfered with rightly by the Additional Commissioner and the delay was condoned and matter was remitted to be examined on the merits. He submits that the Hon'ble Minister has set aside the order of the Additional Commissioner without taking into consideration that fraud vitiates every act.

18. Pointing out to the order dated 6th December, 2023 passed in present Writ Petition, he would submit that this Court had *prima facie* held that the transaction of the year 2015 in favour of Respondent Nos.27 and 28 was executed by playing fraud on the basis of release-deed executed only by Gangabai and Ranjan, by showing Ranjan as the only legal heir of Jamnibai. He draws the attention of this Court to the registered release-deed dated 7th May, 2008 executed by Ranjan in favour of the Respondent No.1-Gajanan and would point out to the genealogy, which is annexed to the release-deed which shows Ranjan as the only legal heir of Jamnibai, whereas the other daughters of Jamnibai have not been shown as the legal heirs. He submits that there was no partition and no registered release-deed executed. Learned counsel for the Petitioners relies on the following decisions:

(a) ***Commissioner of Customs v. Candid Enterprises [(2002) 9 SCC 764];***

(b) ***Eureka Builders and Ors. v. Gulabchand s/o. Veljee Dand and Ors. [(2018) 8 SCC 67];***

(c) ***State of Orissa and Ors. v. Brundaban Sharma and Anr. [1995 Supp (3) SCC 249];***

(d) ***S.P.Chengalvaraya Naidu v. Jagannath and Ors. [(1994) 1 SCC 1];***

(e) ***Decision of this dated 17th July, 2023 passed in Writ Petition No.2699 of 2022 (Principal Seat) in Smita Balasaheb Madhawai v. Bhausaheb Rupchand Madhawai and Ors.***

19. *Per contra*, Mr.S.G. Karandikar, learned counsel appearing for the Respondent No.1 would submit that the order of Additional Commissioner is unsustainable as the subsequent purchasers were not impleaded before the Additional Commissioner, although they were parties before the Sub Divisional Officer and Additional Collector. He submits that the challenge is made after a period of 56 years on an assumption of fraud. He submits that during the life-time of sisters of Respondent No.1, there was no challenge. He submits that the Hon'ble Minister has on the merits of the case declined to condone the delay as there is no sufficient cause shown.

20. Mr. Godbole, learned Senior Advocate appearing for the subsequent purchaser-Respondent No.27-M/s.Heer Realtors, would submit the appeal filed by the Appellants set out only 9 lands whereas the mutation entries were effected in respect of several other properties also. He would further submit that admittedly, 32M certificate has been issued in favour of the Respondent No.1 and unless there is a challenge to the 32M certificate, revenue entries cannot be challenged. He submits that under Section 40 of the Tenancy Act, as the Respondent no.1 was cultivating the lands the tenancy devolved upon him. He submits that the sisters of Gajanan were married and residing in their matrimonial house and as such, their contention that they were cultivating the land cannot be believed. Drawing attention of this Court to the Mutation Entry No.912 at Page 77, he would submit that the entry records that the sisters have voluntarily given statement about the release of their shares in favour of Gajanan and would urge that the entry is not on the basis of any release deed but on the basis of the voluntary statement given and as such no case of fraud can be argued. He would further contend that the order of the Additional Commissioner is legally unsustainable as the order is passed without the Respondent No.27 being impleaded as a party and if the impugned order is set aside, the effect would revive an illegal order of the Additional Commissioner, which is impermissible. He submits that the revenue entries have a presumptive value under Section 157 of MLRC. He submits that in the challenge to the revenue entries, no case of fraud can be pleaded which is required to be established in the Civil Court. He relies on the following decisions to support his submissions, as under:

(a) ***Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar and Ors. [(1999) 8 SCC 16];***

(b) ***Bhika Narayan Gangurde and Ors. v. State of Maharashtra and Ors. [2001 SCC OnLine Bom 541];***

(c) ***Bhartiya Seva Samaj Trust and Anr. v. Yogeshbhai Ambalal Patel and Anr. [(2012) 9 SCC 310];***

21. Ms. Prerna Gandhi, learned counsel for the Respondent No.28 would adopt the submissions of Mr.Godbole. She would submit that out of the subject properties Survey Nos.60/5, 60/6, 77/5 and 77/6 was sold to the Respondent No.28. She submits that the dispute if any is between the Respondent No.1 and the other legal heirs and not the subsequent purchasers. She submits that the subsequent release-deed was executed by Ranjan in the year 2008 and it is doubtful that the said fact was not informed to the other legal heirs.

22. Considered the submissions and perused the record.

23. This Court has been informed that subsequently civil suit has been filed by the Petitioners seeking necessary reliefs as to right of the Petitioners in respect of the subject properties and the same is pending. The only issue to be considered is validity of the impugned order and whether the 2nd Revisional Authority was right in interfering with the discretion exercised by the Additional Commissioner condoning the delay of about 52 years in raising objection to the certification of Mutation Entry.

24. Before proceeding further, it will be appropriate to refer to decision of Apex Court in case of ***Sheo Raj Singh v. Union of India [(2023) 10 SCC 531]***, the Apex Court has held thus :

> *"**30.** Considering the aforementioned decisions, there cannot be any quarrel that this Court has stepped in to ensure that substantive rights of private parties and the State are not defeated at the threshold simply due to technical considerations of delay. However, these decisions notwithstanding, we reiterate that condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial.*
>
> ***33.** Be that as it may, it is important to bear in mind that we are not hearing an application for condonation of delay but sitting in appeal over a discretionary order of the High Court granting the prayer for condonation of delay. In the case of the former, whether to condone or not would be the only question whereas in the latter, whether there has been proper exercise of discretion in favour of grant of the prayer for condonation would be the question. Law is fairly well-*

> *settled that "a court of appeal should not ordinarily interfere with the discretion exercised by the courts below". If any authority is required, we can profitably refer to the decision in Manjunath Anandappa v. Tammanasa which in turn relied on the decision in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabhal where it has been held that: "an appellate power interferes not when the order appealed is not right but only when it is clearly wrong". (emphasis in original)".*

25. The Apex Court in the above noted decision has succinctly drawn the distinction between the cases where the authority is hearing the application for condonation of delay where the issue is whether to condone or not and the cases where the appellate/revisional authority is exercising its powers of review is limited to whether there has been proper exercise of discretion.

26. In the instant case, the Additional Commissioner has quashed and set aside the findings of the Sub Divisional Officer and the Additional Collector refusing to condone delay. As observed by learned Single Judge of this Court in judgment dated 17th July, 2023 passed in case of ***Smita Balasaheb Madhawai vs Bhausaheb Rupchand Madhawai*** in Writ Petition No.2699 of 2022, normally superior Court will not interfere where the delay has been condoned by the lower Court or authority by accepting the explanation, however, when the delay is not condoned the superior Court would be within its rights in examining the cause assigned for the delay and draw its own conclusions.

27. In the instant case, the Additional Commissioner has condoned the delay and as such the impugned order will have to be examined against the background of facts to ascertain whether the 2^{nd} Revisional Authority was right in interfering with the discretion exercised by the 1^{st} Revisional Authority.

28. Coming to the facts of the case, the certification of Mutation Entry of the years 1963 and 1965 in favour of Respondent No.1 has been challenged. The application preferred by the Appellants before the Sub Divisional Officer was filed after a delay of about 52 years 2 months and 2 days from the date of certification of mutation entries. The Appellants are not the sisters of Gajanan but the legal heirs of daughters of Jamnibai i.e. one of the sisters of Gajanan. The pleading as regards the delay is that the Appellants were unaware of the Mutation Entry Nos.912 and 998 due to the close relationship between the parties and it is only on

2nd June, 2016 that they became aware of the same.

29. It needs to be noted that in the year 2008, registered release deed had been executed by the Appellant No.1-Ranjan in favour of Gajanan. There is no mention of the release deed executed by Ranjan in the Appeal filed by the Appellants. In the said release deed of the year 2008 executed by Ranjan, there is specific mention of the Mutation Entries No.912 and 998. Even if it is accepted that the Appellants were unaware of the mutation entries but they had definitely acquired knowledge in the year 2008 when the release deed in favour of Respondent No.1 was executed by Ranjan. There is no reason why the said fact would not be brought to the notice of the other Appellants by Ranjan at the time of filing of the Appeal. Further as regards the date of knowledge, the same is shown on 2nd June, 2016. There is no explanation as to why on that particular day i.e. on 2nd June, 2016, the Appellants had the occasion to visit the office of the Talathi office. In absence of any reason forthcoming for the visit to the Talathi's office on 2nd June, 2016, it appears that only for the purpose of setting out a date of acquiring knowledge, the date of

2nd June, 2016 is mentioned.

30. The Sub-Divisional Officer not being satisfied with the sufficiency of reason had rejected the Application for condonation of delay, which order was upheld by the Additional Collector. The Additional Commissioner in exercise of the powers of revision under Section 257 of the MLRC has set aside the order of the Sub Divisional Officer and the Additional Collector. The Additional Commissioner was therefore enjoined to examine the cause for delay and render a finding on the sufficiency of cause while overturning the decisions of Sub Divisional Officer and Additional Collector. Examining the order of Additional Commissioner, there is no discussion on the explanation for delay tendered by the Appellants. The Additional Commissioner has held that injustice will be caused if a meritorious matter is thrown out at the threshold on the ground of delay. The order of Additional Commissioner does not reflect that the Additional Commissioner has delved into the aspect of sufficiency of explanation tendered for condoning the delay of about 52 years. Pertinently, the Respondent No.27 herein was not made party to the proceedings before the Additional Commissioner although the Respondent No.27 was party to the proceedings before the Sub Divisional Officer and Additional Collector. By condoning the delay in the absence of the Respondent No.27, the rights of the Respondent No.27 who is the subsequent purchaser of some of the subject properties have been vitally affected. There is considerable force in the submissions of learned Senior Advocate Mr.Godbole that by reason of the Respondent No.27 not being made a party to the proceedings, the order of the Additional Commissioner is legally unsustainable.

31. The 2nd Revisional Authority by the impugned order has observed that the Additional Commissioner without condoning the delay in filing the Revision Application has entertained the Application on merits and has rightly held that the Additional Commissioner has thereby exceeded the jurisdiction vested in it. Upon examining the cause tendered for the delay, the 2nd Revisional Authority was not satisfied with the cause and has held that there is no sufficient and reasonable cause set forth by the Applicants for condonation of delay of about 56 years.

32. What is required to be considered in the present case is whether the 2nd Revisional Authority was right in interfering with the discretion exercise by the Additional Commissioner. As noted above there are no findings of the Additional Commissioner on the aspect of sufficiency of explanation. The Hon'ble Minister has not accepted the explanation tendered for the delay of 56 years. The sufficiency of cause is to appreciated in light of the attendant circumstances. Viewed from this angle, the pleading in the application is that due to close relations 7/12 extract was not obtained by the Appellants and that knowledge was acquired in the year 2016. The pleading is belied by the material on record i.e. the release-deed executed by Ranjan in the year 2008, in which there is a specific mention of the mutation entries of the year 1963 and 1965. This is the only material on record placed by the Appellant to explain the collosal delay of about 56 years which pleading is severely deficient. There is no cause much less sufficient cause shown for condonation of delay. The impression that is created from reading of the explanation tendered is that most casual approach has been adopted by the Appellants secure in the knowledge that delay would be condoned as matter of course. Rigours of limitation law though harsh are required to be implemented as law of limitation is premised on public policy to ensure finality of proceedings.

33. Considering the pleading, in my view, the 2nd Revisional Authority was right in interfering with the discretion exercised by the Additional Commissioner as the same suffered from vice of arbitrariness and perversity. Learned Senior Advocate Mr.Godbole is right in his submission that allowing the present petition would result in reviving an illegal order of the Additional Commissioner.

34. The submission of the learned counsel for the Applicants is that fraud vitiates everything. It has been contended that no release deeds were executed by the sisters of Respondent No.1 relinquishing their shares which is corroborated by the fact of execution of subsequent release deed by Ranjan in the year 2008. It is also contended that the genealogy annexed to the release deed executed in the year 2008 shows only Ranjan as the legal heir of Jamnibai. *Prima facie* upon perusal of the Mutation Entry No.912 it appears that the sisters of Gajanan had given a voluntary statement of relinquishment of their shares in favour of the Respondent No.1. Mutation Entry No.912 does not mention execution of release deeds by the sisters but mentions that the sisters have given statement of having voluntarily relinquished their shares in favour of Respondent No.1. Admittedly the sisters have not raised any objection to the Mutation Entries during their life time. Whether statements were given by the sisters of Gajanan and whether the mere mention of Ranjan in the genealogy annexed to the release deed executed in the year 2008 amounts to fraud raises disputed questions of fact which are required to be resolved in appropriate proceedings.

35. In the decision in the case of ***Commissioner of Customs v. Candid Enterprises*** (supra), the Apex Court has held that fraud nullifies everything. There is no quarrel with the proposition. However, the disputed questions of fact will have to be resolved in appropriate proceedings. *Prima facie* there is no material on record to infer fraud. As to whether the execution of release deed in the year 2008 containing the genealogy showing only Ranjan as legal heir is sufficient to infer fraud will have to be tested in appropriate proceedings.

36. The decision in the case of ***Eureka Builders and Ors. v. Gulabchand Veljee Dand and Ors.*** (supra) has been pressed into service to support the proposition that as Gajanan did not have any right in the property, no higher right could have been transferred in favour of the subsequent purchasers. It needs to be noted that in the year 1963-1965 itself the name of Gajanan was mutated in the revenue records on the basis of the release-deed which was executed by the sisters. Subsequently, the properties have been sold to the subsequent purchasers and unless and until the right of the Appellants in the subject property is established, it cannot be said that the Respondent No.1 was not entitled to alienate the property.

37. The decision in the case of ***State of Orissa and Ors. v. Brundaban Sharma and Anr.*** (supra), the Apex Court has held that the revisional power is to be exercised in a reasonable manner and in the length of time depends on factual scenario in a given case. In that case tenancy rights were claimed in respect of government land on basis of Patta obtained fraudulently in-collusion with the officers which comes to the notice of the authorities after the long lapse of time. The factual scenario in that case was clearly distinguishable where the government property was involved and the Board of Revenue had exercised power of revision after a lapse of time of 27 years. In that case the Board of Revenue had exercised the revisional power with diligence after the Board had acquired knowledge. The facts being clearly distinguishable are inapplicable to the present case.

38. There is no quarrel with the proposition of law laid down in ***S.P.Chengalvaraya Naidu v. Jagannath and Ors.*** (supra). However, the issue of fraud is required to be resolved in appropriate proceedings.

39. In the decision in the case of ***Smita Balasaheb Madhawai v. Bhausaheb Rupchand Madhawai and Ors.*** (supra), learned Single Judge of this Court after considering the decision of the Apex Court has held that substantial justice is a paramount consideration and the procedural technicalities should not be permitted to secure over substantial justice. In the facts of that case, learned Single Judge held that *prima facie* case was made out about the illegality of the procedure adopted by the Tahsildar in certification of the mutation entries. In the present case, the mutation entry records that the sisters have relinquished their rights in favour of Gajanan and during life-time of the sisters, no challenge was raised to the mutation entries. It is the second generation, who is raising challenge to the mutation entries on the basis of fraud. The facts of the case being distinguishable are clearly inapplicable.

40. It is not as if the rights of the Petitioners in the property in question has been shut out by reason of challenge to the mutation entries having failed. The Petitioners are not left remedy less as the civil suit instituted in respect of their claim to the subject property is pending. It needs to be considered that in the interregnum period of about 52 years, third party rights have been created and the inaction on the part of the Petitioners cannot be detriment of bonafide purchasers.

41. In light of the above, the Petition fails and stands dismissed. It is however clarified that the observations made herein was for the purpose of testing the validity of the impugned order and the Civil proceedings are required to be conducted on its own merits uninfluenced by the observations made herein.

(Sharmila U. Deshmukh, J.)

42. At this stage, request is made for extending the order of *status quo* which has been operating in favour of the Petitioners for a period of four weeks. The said request is opposed by the learned Senior Advocate appearing for Respondent No.27 as well as the other Respondents. Considering that the *status quo* was operating in favour of the Petitioners since 6th December, 2023, I am inclined to extend the order of *status quo* for further period of four weeks.

43. It is clarified that the order of *status quo* is extended as this Court is informed that the petitioners intend to challenge the order before the higher forum and the same is not to be used for the purpose of obtaining any interim orders in the Civil Suit which has been independently filed.

(Sharmila U. Deshmukh, J.)