

Shabnoor

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

WRIT PETITION NO.802 OF 2022

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Rajendra Krushana Pawar	... Petitioner
V/s.	
Shivaji Baburao Pawar (Deceased)	
Through Legal Heirs & Ors	... Respondents

Mr. Yatin Malvankar, for Petitioner.

Mrs. V. R. Raje, AGP for State/Respondent No.5.

Mr. Suhir V. Sadavarte, for Respondent Nos.1, 2, 4 & 8.

Mr. Omkar Nagwekar, for respondent Nos.7 & 9.

CORAM : AMIT BORKAR, J.

DATED : MARCH 13, 2024

P.C.:

- 1. Rule.** Rule is made returnable forthwith.
- 2.** Challenge in this writ petition is to the order passed by the respondent No.5 dismissing petitioner's revision in a proceeding arising out of Section 149 of the Maharashtra Land Revenue Code, 1966. The land bearing Survey No.657, Gat No.2794, Kharabwadi (258/1) situated at Village Chakan, Taluka Khed, District Pune, is the subject matter of the present writ petition. Respondent Nos.1 to 4 challenged an order dated 4 April 1977 passed by the Sub-Divisional Officer by way of an appeal under Section 247 of the Maharashtra Land Revenue Code, 1966 in the year 2013. An

application for condonation of delay alongwith appeal were filed. The Additional Collector by an order dated 30 May 2016 allowed the appeal to enter names of respondent Nos.1 to 4 to the extent of 1/5th share.

3. Aggrieved thereby, petitioner filed the revision before the Commissioner which came to be dismissed. The petitioner challenged order of the Commissioner before respondent No.5. Respondent No.5 confirmed order of the Additional Collector.

4. It is not in dispute that in a civil suit bearing No.1022 of 1974 filed by the predecessor of respondent Nos.1 to 4, the Civil Court framed an issue as to whether the predecessor of respondent Nos.1 to 4 had any share in the properties in dispute. The Civil Court recorded a finding that the predecessor of respondent Nos.1 to 4 had no share in the properties in dispute. Such finding was confirmed in appeal by the District Court. The Second Appeal against the said judgment is pending in this Court. The Appellate Court framed an issue as to whether the plaintiff was entitled to partition and separate possession of his share out of the lands in dispute. The Appellate Court answered the issue against the predecessor of respondent Nos.1 to 4. Once the Civil Court concludes that the predecessor of respondent Nos.1 to 4 had no share in the properties in dispute, the rights of the parties would be governed by the adjudication of title by the Civil Court. Therefore, in my opinion, the Authorities below could not have allowed the appeal filed by respondent Nos.1 to 4 to enter their names to the extent of 1/5th share in relation to the property i.e. property described in paragraph 1A of Civil Suit No.1022 of 1974.

Therefore, the writ petition deserves to be allowed.

5. Rule made absolute in terms of prayer clause (a).

6. However, it is made clear that the rights of the parties will depend on adjudication of the Second Appeal in this Court, if at all such Second Appeal is pending.

7. At this stage, learned Advocate for respondent Nos.1 to 4 prays for stay of the judgment for period of four weeks. However, since the Civil Court has concluded the issue, the request for stay of judgment is rejected.

8. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)