



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 1551 OF 2023

- 1] Paresh Krushnarao Sitaram Rathod,
aged about 45 years, Occ. Agriculturist,
R/o Fulumri, Tq. Manora, Dist. Washim.
- 2] Vidya Krushnarao Rathod,
aged about 40 years, Occ. Agriculturist,
R/o Ranise Nagar, Near Jagruti School,
Akola, Tq. & District – Akola.

...PETITIONERS

Versus

- 1] The Additional Commissioner,
Amravati Division, Amravati.
- 2] The Additional Collector,
Washim, District – Washim.
- 3] The Sub-Divisional Officer,
Karanja, Tq. Karanja, District – Washim.
- 4] The Tahsildar,
Manora, District – Washim.
- 5] The Talathi,
Mauje Fulumri, Tq. Manora,
District – Washim.
- 6] Sau. Shobhatai @ Babitai Pradeep Rathod,
aged about 46 years, Occ. Agriculturist,
R/o Fulumri, Tq. Manora, District – Washim.
- 7] Panchafula Shubhash Rathod,
aged @ Adult, Occ. Agriculturist,
R/o Dhanora Khurda, Tq. Digras, District – Yavatmal.
- 8] Narmada Dyandeo Rathod,

aged @ Adult, Occ. Agriculturist,
R/o Asola, Tq. Ner, District – Yavatmal.

...RESPONDENTS

Shri S.M. Vaishnav, Counsel for the petitioners (through VC).

Shri H.D. Dubey, A.G.P. for respondent nos. 1 to 4.

Shri D.S. Gawande, Counsel for respondent nos. 6 and 7 (through VC).

CORAM : ANIL L. PANSARE, J.

DATE : AUGUST 20, 2024

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally by consent of the learned Counsel for the parties at the stage of admission itself.

2] The challenge is to order dated 7/10/2022 passed by the Additional Commissioner, Amravati Division, Amravati, in Revision Application No. 242/RTS-64/Fulumri/Washim/2019-20, thereby the Additional Commissioner upheld the order dated 20/1/2020 passed by the Additional Collector, Washim, who upheld the order dated 16/5/2018 passed by the Sub-Divisional Officer, Karanja, who upheld the order dated 7/9/2017 passed by the Tahsildar, Manora. All the authorities have refused the request made by the petitioners to mutate

their names in 7/12 extract.

3] The request was so made by the petitioners on the basis of the judgment and decree dated 2/9/2002 passed by the Joint Civil Judge Junior Division, Mangrulpir, in Regular Civil Suit No. 19/2000. The decree was passed in a suit filed by respondent nos. 6 and 7 against the father of the petitioners for declaration, possession and mesne profit. Respondent nos. 6 and 7 sought a declaration that the agreement executed between their father and the petitioners' father, was not binding on them.

4] It will be appropriate here to narrate certain facts that required respondent nos. 6 and 7 to file the aforesaid suit.

5] The petitioners' father suffered a money decree in a suit filed by the father of respondent nos. 6 and 7. Subsequent to the decree so passed, the parties, viz., the petitioners' father and the father of respondent nos. 6 and 7, entered into an agreement to satisfy the decree. The parties decided to let the father of respondent nos. 6 and 7 cultivate the agricultural land

bearing Survey No. 265, owned by the petitioners' father for 11 years. Accordingly, the petitioners' father executed sale deed in favour of the father of respondent nos. 6 and 7 in respect of the said land. The parties then entered into an agreement stating therein that the father of respondent nos. 6 and 7 shall hold possession of the property for 11 years and thereafter shall execute reconveyance of the suit property in favour of the petitioners' father. Once 11 years passed, the father of respondent nos. 6 and 7 executed a document, called possession receipt, in favour of the petitioners' father. However, he did not execute reconveyance. Unfortunately, before executing reconveyance, the father of respondent nos. 6 and 7 expired.

6] Thereafter, respondent nos. 6 and 7 filed the aforesaid suit seeking declaration that the agreement executed between the petitioners' father and the father of respondent nos. 6 and 7, is not binding on them.

7] The trial Court dismissed the suit. In doing so, it

categorically held that on 27/1/1996, the father of respondent nos. 6 and 7 has handed over the possession of the suit land to the petitioners' father. The trial Court further held that respondent nos. 6 and 7 have admitted the aforesaid status. Accordingly, the trial Court held that the petitioners' father is in possession of the suit land. The trial Court further held that the petitioners' father has performed his part of contract and it is for the respondent nos. 6 and 7 to perform their part of contract by executing reconveyance in favour of the petitioners' father. Despite such a clear finding, the Tahsildar has observed that the petitioners failed to prove their possession over the suit land. The Tahsildar then proceeded further to record that merely because respondent nos. 6 and 7 have admitted that the petitioners are in possession of the suit land, their possession doesn't become legal. Accordingly, the request made by the petitioners to record their names in 7/12 extract, has been rejected. This finding has been upheld by the Sub-Divisional Officer, Additional Collector and Additional Commissioner.

8] As is evident, none of the Officers appear to have

applied their mind; rather have conveniently ignored the finding rendered by the trial Court, while rejecting the request made by the petitioners to record their names in 7/12 extract.

9] At this stage, the learned Counsel for respondent nos. 6 and 7 submits that the request of the petitioners to record their names in Extract – 7 could not have been granted as it relates to ownership, which remains with respondent nos. 6 and 7 until the sale deed executed in their favour has been quashed and set aside. He, however, submit that the names of the petitioners could have been recorded in Extract – 12.

10] The learned Counsel for the petitioners has even otherwise restricted his challenge to the extent of not recording the names of the petitioners in Extract – 12 and, therefore, the matter is being considered in the light of the aforesaid request and accordingly the facts are noted above. In that sense, the authorities below, if were of the opinion that for want of title deed in favour of the petitioners their name could not be recorded in Extract – 7, there appears no reason why the

authorities could not have allowed the request made by the petitioners to record their names in Extract – 12, particularly when there is a categorical finding rendered by the trial Court as regards the possession of the petitioners over the suit land.

11] Put all together, the authorities below have committed serious error of law in not taking into account the finding of the Court as regards possession of the petitioners on the suit land. They ought to have recorded the names of the petitioners in Extract – 12, if not in Extract – 7. The orders passed by the authorities below are unsustainable in law. Hence, the following order :

ORDER

I] The Writ Petition is partly allowed.

II] The order dated 7/10/2022 passed by the Additional Commissioner, Amravati Division, Amravati, in Revision Application No. 242/RTS-64/Fulumri/Washim/ 2019-20, order dated 20/1/2020 passed by the Additional Collector,

Washim, in Case No. RTS-64/Fulumri/28/2017-18, order dated 16/5/2018 passed by the Sub-Divisional Officer, Karanja, in Case No. RTS-64/Fulumri Division-1/15/2017-18 and order dated 7/9/2017 passed by the Tahsildar, Manora, in Case No. RTS-64/Fulumri Division – 1/1/2016-17, are quashed and set aside.

III] Respondent no. 4 – Tahsildar, Manora and respondent no. 5 – Talathi, Mouza – Fulumri, Manora, are directed to mutate the names of the petitioners in Extract – 12 of the disputed land in terms of the judgment and decree dated 2/9/2002 passed by the Joint Civil Judge Junior Division, Mangrulpir, in Regular Civil Suit No. 19/2000.

12] Rule is made absolute in the above terms.

JUDGE

Sumit