



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

WRIT PETITION NO.5477 OF 2019

Govardhan s/o Ganuji Dongardive,
Aged about 65 years,
Occ.: Retd., R/o. Kawtha (Kholapur),
Tah. Murtizapur,
District – Akola.

..... **PETITIONER**

...V E R S U S...

1. The Divisional Commissioner,
Amravati Division, Amravati.
2. Additional Collector, Akola,
Tah and District – Akola.
3. Sub Divisional Officer, Murtizapur,
Tah. Murtizapur, District – Akola.
4. Tahsildar, Murtizapur,
Tah. Murtizapur, District – Akola.
5. Talathi Kawtha (Kholapur),
Tah. Murtizapur, District – Akola.
6. Eknath S/o Sadu @ Sadashiv Dongardive,
Aged about 52 years, Occ.: Service,
R/o. Shubham Row House, House No.8,
M.G. Nagar, Near Jwalamata Lawns,
Sinnar Shirdi Road, Sinnar (Nashik),
Tah. And District – Nashik.
7. Smt. Rukhamabai wd/o Ramesh Dongardive,
Aged about 59 years, Occ.: Household,
R/o. Kawtha (Kholapur), Tah. Murtizapur,
District – Akola.
8. Ratnadip s/o Ramesh Dongardive,
Aged about 31 years, Occ.: Labour,

R/o. Kawtha (Kholapur),
Tah. Murtizapur, District – Akola.

9. Babita w/o Prabhudas Ingle,
Aged about 32 years,
Occ.: Household, R/o. Akot File,
Shankar Nagar, Akola,
Tah. And District – Akola.
10. Vaishali w/o Mahesh Mohod,
Aged about 27 years,
Occ.: Household, R/o. Old Kalamna
Kamthi Road, Nagpur.

..... **RESPONDENTS**

Mr. S. S. Dhengale, Advocate for Petitioner.
Ms. Mayuri Deshmukh, AGP for Respondent Nos.1 to
5/State.

CORAM: **ANIL L. PANSARE, J.**
DATE: **8th JULY, 2024.**

ORAL JUDGMENT:

1. Rule. Rule made returnable forth. Heard finally with
consent of learned counsel appearing for the parties.
2. One Mr. Ganu Dongardive (since deceased) had
purchased suit property namely, agricultural land admeasuring
1.68 hectare in Gat No.327 situated at Kawatha Kholapur, Taluka
Murtizapur, District Akola. Ganu has a son, namely, Gowardhan
(petitioner herein) and daughter, namely, Durgabai. Ganu had
married to Saraswatibai. The contesting respondent Nos.6 to 10

are legal representatives of Sadu, the real brother of Ganu. None appeared for them despite service.

3. It appears from the revenue entries and other papers that Sadu was cultivating the land for considerable period viz. about 20 to 25 years, naturally on behalf of Ganu, unless otherwise shown.

4. The counsel for petitioner submits that on 01.01.2001 a mutation entry has been effected by the Talathi, mutating the aforesaid land in favour of Sadu only on the basis of he cultivating the aforesaid land for 20 to 25 years. The entry further indicates that Saraswatibai, the wife of Ganu has consented for the said entry.

5. The petitioner herein had challenged this entry before the Sub-Divisional Officer who vide order dated 12.07.2016 has quashed and set aside the mutation entry.

6. This order was challenged by respondent Nos.6 to 10 before the Additional Collector who vide order dated 07.09.2017 found no substance in the challenge and accordingly dismissed the appeal.

7. The respondent then approached the Divisional Commissioner who has set aside the order passed by the Additional Collector and remanded the matter back to the Sub Divisional Officer, Murtizapur to decide the same afresh. The Divisional Commissioner has opined that unless it is proved that the disputed property was jointly purchased by Ganu, it would not be proper to cancel the disputed mutation entry. The learned Divisional Commissioner has noted that the mutation entry is taken on the basis of continuous cultivation and further with consent of Saraswatibai. He then opined that the status of property, as regards ancestral or self-acquired could be decided only by the competent Civil Court. Accordingly, he rendered a finding that unless the controversy is decided by Civil Court the revenue authority below ought not to have disturbed the revenue entry noted by the Talathi.

8. I find this reasoning to be full of conjunctures and surmises. Upon making a specific query to the learned AGP as to whether the issue as regards the joint purchase of land or as regards the status of property, whether ancestral or self-acquired was raised before the Divisional Commissioner or any authority below, she fairly submits that she could not find such an issue

having been raised before any authority. In that view of the matter, I have no hesitation to hold that the entire reasons assigned by the Additional Commissioner are imaginary.

9. In fact the basic entry viz. the mutation entry recorded by the Talathi does not show any right having been claimed by respondent Nos.6 to 10 on any other ground except that Sadu was cultivating the land for 20 to 25 years. In that sense the prime reason that was assigned to mutate the disputed land in the name of Sadu was that he cultivated the land for 20 to 25 years and secondly Saraswatibai, the wife of Ganu had consented for such entry.

10. In my view, Sadu, on the basis of continuous cultivation of land can neither seek ownership or possession over the land. In fact the identical issue has been considered by the Hon'ble Supreme Court in the case of ***Narayan Laxman Patil v. M/s Gala Construction Company Private Limited and others [2015 AIR (SCW) 6333]***. The judgment has been cited by the learned counsel for petitioner. The finding in paragraphs 18 and 19 will not only disclose the facts but also the preposition of law on this point, which read thus:

18. It is thus clear that to exercise the right under

section 148 read with Sections 149 and 150 of the Code for entering one's name in the Record of Rights, the applicant has to be a holder, occupant, owner, mortgagee or tenant. Such a right is also available to a person acquiring interest in the property by succession, survivorship, inheritance, partition, purchase mortgage, gift, lease or otherwise. We fully approve the view taken by the Bombay High Court in the aforesaid decision. The appellant claimed that he along with others is in possession of the suit land for the last 15-20 years and, therefore, his claim was required to be entered in the "Other Rights" column. This contention has been rejected by the Sub-Divisional Officer as well as by the Deputy Collector (Appeals) but confirmed by the Additional Commissioner. Merely a holder or occupant does not meet the requirements of law for exercising such a right. Section 2(12) of the Code, as reproduced hereinabove, makes it clear that to be a "land holder" or "holder of land" means to be lawfully in possession of land, whether such possession is actual or not and as per Section 2(23) "occupant" means a holder in actual possession of unalienated land. It was, therefore, necessary for the appellant to prove that his possession or occupation over the suit land was lawful or he had come in possession by a legal conveyance/title or any other instrument like receipt etc. to which the Respondent No. 1 was a party or at its instance. It is also not the case of the appellant that he has perfected his title over the land in question by way of adverse possession.

19. Merely saying that the Respondent No. 1 or the original owner did not object at any time to the possession, does not make his possession lawful, even if it is accepted that he was in possession. The appellant has to prove his title of possession by pointing out that it was lawful and if such requirement could not be proved, mutation entry is required to be cancelled.

Recording the name of the appellant along with six others in the other rights column merely on the basis of possession is nothing short of perversity and unless the officer concerned was satisfied that the said possession was lawful such an entry could not have been made irrespective of whether the original owners appeared and contested the plea and more so when the officer was performing a statutory duty. When the statute states that a duty has to be performed or an enquiry has to be conducted in a particular manner, it is well settled, it has to be done in that manner alone and it was necessary for the Tehsildar to ensure that the requirements of the Code were satisfied by the petitioners' predecessor.

As could be seen, merely because a person was in possession and original owner did not object would not render the possession lawful. The possessor will have to prove his title of possession by pointing out that the possession was lawful and if such requirement is not proved, mutation entry as recorded ought to be cancelled.

11. In the present case, there appears no dispute that Ganu owned the property and the petitioner is one of his legal representatives. Saraswatibai has expired. Durgabai is said to be alive. In view thereof the revenue authority ought to have mutated names of petitioner and Durgabai as legal representatives of Ganu, considering the settled position of law as noted above.

12. The order passed by the Additional Commissioner is therefore erroneous and thus liable to be quashed and set aside and stands so. Consequently, the order passed by the Additional Collector and Sub Divisional Officer stands restored, resulting into quashing mutation entry recorded by the Talathi.

13. The Tahsildar – respondent No.4 shall proceed to register the names of both the legal representatives of Ganu in the revenue record, if there is no other legal impediment, which shall be done by following due process of law.

14. Rule is made absolute in the above terms. No order as to costs.

JUDGE

NSN