



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

WRIT PETITION (WP) NO.5704 OF 2023

- 1) Homdev s/o Sevakram Sahare
Aged about -52 years, Occ-
Agriculturist,
- 2) Narayan s/o Sevakram Sahare
Aged about -50 years, Occ-
Agriculturist,
- 3) Vasudeo s/o Sevakram Sahare
Aged about -46 years, Occ-
Agriculturist,
- 4) Hiranman s/o Sevakram Sahare
Aged about -43 years, Occ-
Agriculturist,
- 5) Gopichand s/o Moreshwar Sahare
Aged about -60 years, Occ-
Agriculturist,
- 6) Nathu s/o Moreshwar Sahare
Aged about -56 years, Occ-
Agriculturist,
- 7) Hivraj s/o Moreshwar Sahare,
Aged about -52 years, Occ-
Agriculturist,
All Petitioner Nos.1 to 7 are residing at
Jamtha, Post Gumgaon, VCA Stadium,
Wardha Road, Nagpur.

.... Petitioner(s)

// VERSUS //

- 1) The Additional Commissioner

Nagpur Division, Nagpur.
Office at Old Secretariate Building,
Opp. GPO, Civil Lines, Nagpur.

- 2) The Additional Collector Nagpur
Office at Collector Compound, Civil
Lines, Nagpur.
- 3) The Sub-Divisional Officer, Nagpur
Gramin, Nagpur Office at Gramin
Tahasil Office, Opp. Panchayat Samiti
Nagpur.
- 4) The Tahasildar (Nagpur Gramin)
Office at Gramin Tahasil Office, Opp.
Panchayat Samiti, Nagpur.
- 5) Smt. Sumitrabai Deorao Mahajan,
Aged about - 80, Occ-House Wife,
R/o- Near Atta Chakki, Somalwada,
Manish Nagar, Nagpur.
- 6) Madhukar s/o Patiram Chakole
Aged about-73 yrs., Occ-Agriculturist,
- 7) Vijay s/o Madhukar Chakole
Aged about- 40 years, Occ-
Agriculturist,
Both 6 & 7 resident of Plot No.364,
Garoba Maidan, Harihar Nagar,
Nagpur.
- 8) Smt. Pramila w/o Sanjay Kubde
Aged about-45yrs, Occ-Housewife,
R/o- Chandra Nagar Old Pardi,
Behind H.B.Town-47, Nagpur.

... Respondent(s)

Mr. Sunil Manohar, Sr. Advocate a/b Mr. A.K. Neware, Advocate for the
Petitioners

Mr. Alap Palshikar AGP for the respondent Nos.1 to 4/State

Mr. Nitin Bargat, Advocate for the respondent Nos.5 to 8.

CORAM : ANIL S. KILOR, J.

RESERVED ON : 09.05.2024

PRONOUNCED ON : 16.08.2024

JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.
3. This writ petition takes exception to the order dated 23.08.2023 passed by the respondent No.1-Additional Commissioner, Nagpur, rejecting the revision application preferred by the petitioners and thereby upholding the order dated 02.11.2022 passed by the Additional Collector, Nagpur, setting aside the order dated 16.11.2021 passed by the Sub-Divisional Officer(SDO), Nagpur Gramin, setting aside the order of the Tahsildar, dated 26.11.2019, allowing the application preferred by the respondent Nos.5 to 8 and thereby, directing to correct the 7/12 extracts and to add the names of the respondent Nos.5 to 8 in relation to the lands in question.

4. The brief facts of the present petition are as follows:
5. Late Vishwanath Sitaram Sahare had purchased agricultural fields situated at Mouza-Jamtha, P.H. No.42, Survey No. 101, area-1.62HR, S.No.95/1 area-3.69HR, S.No.95/2 area-0.88 HR, S.No.105/B1 area-2.41HR, and S.No.105/B2 area- 2.40HR (old Survey No. 62/1, 71/1, 63/3, 65, 70, 63/3, 67/3, 68/1, 68/2, 69/6) during his life time. The respondent No.5 is the daughter of Late Vishwanath Sahare and respondent No.6 to 8 are legal heirs of the another daughter Smt.Nani (who had expired). Late Vishwanath Sahare during his life time in the year 1984 had orally partitioned the property amongst his two sons i.e. Moreshwar and Sevakram and himself. The said oral partition was brought into effect by recording the same in the revenue record by way of mutation entry No.99 dated 14.11.1984.
6. The Respondent No.5 to 8 after expiry of almost 34 years had filed application for mutation of their names on the above said properties, contending that all the above said properties are ancestral properties and therefore, Vishwanath Sitaram Sahare had no right to partition the said properties with his sons, and had

accordingly claimed that even the respondents, who are legal heirs of the daughters of Vishwanath have right in the property and therefore, their names be mutated in the revenue records.

7. It is submitted that by the said application, indirectly the respondents were challenging the mutual oral partition executed on 14.11.1984 between Late Vishawanath Sitaram Sahare and his sons namely Sevakram and Moreshwar and that too after 34 years.

8. The Tahsildar allowed the application holding that the names of respondent Nos.5 to 8 need to be added in the revenue record. The said order of the Tahsildar dated 26.11.2019 was the subject of challenge before the SDO, who set aside the order of the Tahsildar vide his order dated 16.11.2021, which was set aside by the Additional Collector, maintaining the order of the Tahsildar, vide order dated 02.11.2022. The additional Commissioner thereafter on filing a revision application by the petitioners, rejected the same and maintained the order of the Additional Collector and the order of the Tahsildar.

9. The respondent No.1-Additional Commissioner has held that daughters have right in the properties of the father, since their date

of birth and they are joint owners. For this purpose, the respondent No.1 relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Vinita Sharma Vs. Rakesh Sharma***, reported in 2020 SCC OnLine SC 64.

10. The respondent No.1 further held that the 7/12 extracts were in the name of Vishwanath alone and since his two sons Moreshwar and Sevakram were not the joint owners or co-owners of the lands in question, the partition is not permissible.

11. Thus, in light of the above referred observations made by the respondent No.1, the Additional Commissioner, a question which arises for consideration is, whether the revenue authorities have jurisdiction to decide the validity of the partition ?

12. I have heard the learned counsel for the respective parties.

13. The Co-ordinate Bench of this Court in the case of ***Shrikant R. Sankanwar And Ors. vs Krishna Balu Naukudkar***, reported in 2003 (2) Mh.LJ. 276, has held that while exercising powers for mutation of entry, pursuant to the request in that regard either

orally or in writing by a person claiming to have acquired right as specified under Section 149 of the Code, the Talathi is required to insist and to consider the documentary evidence in support of such claim before effecting any mutation of entry when the property apparently appears to be worth Rs. 100/- or above. It is further held that the entries in the revenue records are basically for revenue purposes and do not by themselves constitute title to the property in favour of any person. It is further held that while exercising the powers under the said Code and the rules made thereunder, the Authorities under the Code, cannot assume jurisdiction under different statutes to investigate into the rights of the parties in relation to properties which are referred to in the applications for mutation of the entries.

14. The Co-ordinate Bench of this Court in the case of ***Shrikant*** (supra), has relied upon the judgment of the Gujrat High Court in the case of **Evergreen Apartment Co-operative Housing Society Ltd. v. Special Secretary (Appeals) Revenue Department, Gujarat State** reported in AIR 1992 Gujarat 118, wherein the Gujrat High

Court, while dealing with the scope of powers of the Revenue Authorities in the matter of the application for mutation of entries under Bombay Land Revenue Code, has held that the revenue authorities cannot pass orders of cancelling the entries on an assumption that the transaction recorded in the entry are against the provisions of a particular enactment. Whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following the procedure prescribed therein and by giving an opportunity of hearing to the concerned parties likely to be affected by any order that may be passed.

15. Therefore, in the case in hand, I find favour with the submissions made by Mr. Manohar, learned Senior Advocate for the petitioners that the impugned order passed by the respondent No.1 holding the partition between Vishwanath and his two sons Moreshwar and Sevakram is illegal, is without jurisdiction.

16. The Hon'ble Supreme Court of India, in the case of ***Mahila Bajrangi vs. Badribai*** reported in (2003) 2 SCC 464, wherein the Hon'ble Supreme Court of India, has held that the Revenue

Authority ordering mutation of revenue records cannot be Pro tanto held to be a Civil Court of concurrent and competent jurisdiction to adjudicate questions of title to immovable property.

17. In light of the above observations, I find substance in the submissions of Shri Manohar, learned Senior Advocate for the petitioners that when the suit is pending between the parties relating to the lands in question, the respondent No.1 ought not to have gone into the title or validity of the partition deed.

18. In the circumstances, considering the above referred well settled law, I have no hesitation to hold that the respondent No.1 has exceeded his jurisdiction while holding the oral partition between Vishwanath and his two sons Moreshwar and Sevakram, is illegal.

19. In that view of the matter, the submissions made by the learned counsel for the respondent Nos.5 to 8, pointing that the daughters have right in the property of the father or the submission that the Tahsildar, Additional Collector and Additional Commissioner have rightly held that the oral partition is bad in law,

cannot be accepted at this stage and such points can be raised and decided in the civil suit which is pending between the parties.

Accordingly, I pass the following order:

- (i) The writ petition is **allowed**.
- (ii) The order dated 23.08.2023 passed by the Respondent No.1-Additional Commissioner, Nagpur, the order dated 02.11.2022 passed by the respondent No.2-Additional Collector, Nagpur and the order dated 26.11.2019 passed by the respondent No.1-Tahsildar, Nagpur Gramin, are hereby quashed and set aside and the order dated 16.11.2021 passed by the respondent No.3-SDO, Nagpur Gramin, is hereby confirmed.

Rule accordingly. No costs.

[ANIL S. KILOR, J.]