



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1386 OF 2022

NAMDEO DYAJA ALIAS DAJIBA THELARI (SUPNAR) AND OTHERS
VERSUS
GAJABAI DAMU THELARI AND OTHERS

Advocate for the Petitioner : Mr. Choudhari N. L.

AGP for Respondents-State : Mr. B. B. Bhise

Advocate for Respondent No. 1 : Senior Advocate Mr. V. D. Hon i/b
Mr. A. V. Hon

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CORAM : ROHIT W. JOSHI, J.

Dated : July 2, 2025

PER COURT :-

1. The petitioners are sons and daughters of late Dajiba Thelari. There is dispute between the petitioners and the respondent No. 1 with respect to the mutation over the suit property which comprises of an agricultural land bearing Gat No. 243/4-1 of village Hatti Khurd, Tq. Sakri, Dist. Dhule. The name of respondent No. 1 was mutated with respect to the suit property vide Mutation Entry No.1610 which is recorded on 18.01.2010. Perusal of the mutation entry will demonstrate that late Dajiba is alleged to have given the suit property to the respondent No. 1 in a family partition. The document of family partition filed on record by the respondent No. 1 alongwith her reply will demonstrate that the said document is a

notarized document executed by Dajiba in favour of the respondent No. 1 on 05.01.2010. On 05.01.2010 itself, an application for mutation is prepared on which thumb impression of Dajiba appears.

2. Dajiba, during his lifetime, challenged the said Mutation Entry No.1610 by filing appeal before respondent No. 5 – Sub-Divisional Officer. There was a delay in filing the said appeal which was condoned by the Sub-Divisional Officer. After the demise of Dajiba, initially, his legal representatives were not brought on record and, therefore, the appeal was dismissed vide order dated 15.06.2017. However, subsequently, the petitioners filed an application for setting aside the abatement and bringing their names as legal representatives of deceased appellant. The said application was allowed and the appeal was taken up for hearing.

3. The learned Sub-Divisional Officer allowed the appeal bearing No. RTS Appeal No. 72/2017, Hatti Khurd, (Old Appeal No. 49/2014) vide order dated 28.05.2018. Against this order, respondent No. 1 preferred an appeal before the respondent No. 4 - Additional Collector in RTS/Appeal/Hatii/91/2018, which was dismissed vide order dated 27.05.2019.

4. Respondent No. 1, thereafter, preferred a revision under Section 257 of the Maharashtra Land Revenue Code which was registered as RTS/Revn/439/2019, which was also dismissed by the respondent No. 3 - Additional Commissioner, Nashik, Nashik Division, vide order dated 24.02.2021. This order came to be challenged by respondent No. 1 by filing a second revision before respondent No. 2 - Hon'ble Minister (Revenue) bearing No. RTS-3121/Case No.58/J-6-A. The Hon'ble Minister has allowed the revision application vide order dated 30.12.2021. The said order is the subject matter of challenge in the present petition.

5. The contention of the learned counsel for the petitioner is that Mutation Entry No. 1610 is recorded in the name of respondent No. 1 on the basis of alleged partition. He states that although the mutation entry is recorded on the basis of partition dated 05.01.2010, the respondent No. 1 has filed a suit for specific performance of contract against the petitioners being Special Civil Suit No. 32 of 2019. Drawing attention to the averments therein, he contends that respondent No. 1 claims in the said suit that she had entered into an agreement of sale dated 13.01.2010 with late Dajiba with respect to the suit property. The petitioners, therefore, contend that there is an inherent contradiction in the case set up by respondent No. 1,

inasmuch as she has got her name mutated in the revenue record on the basis of an alleged partition and has filed a suit for specific performance based on an agreement of sale. The learned Advocate contends that if respondent No. 1 had become owner of the suit property by virtue of partition deed dated 05.01.2010, there was no reason to enter into agreement of sale on 13.01.2010. He points out that the suit for specific performance of contract does not even refer to the alleged partition deed dated 05.01.2010. The learned Advocate, refers to the findings recorded by Hon'ble Minister and criticises the order saying that it is a non-speaking order which does not deal with any contention and particularly the aforesaid contention which goes to the root of the matter.

6. Per contra, Mr. Hon, the learned Senior Advocate appearing for respondent No. 1 raises a strong objection initially on the ground of delay caused in filing of the appeal. He contends that the appeal was filed before the Sub-Divisional Officer after an inordinately long period of four years. The learned Senior Advocate places reliance on judgment of Hon'ble Apex Court in the matter of **Santoshkumar Shivgonda Patil Vs. Balasaheb Tukaram Shevale [(2009)9 SCC 352]** to contend that even in a case where a statute does not prescribe any limitation, proceedings must be filed within a

reasonable period which normally is considered to be three years. He contends that this application was liable to be rejected on the ground of delay itself. As regards merits of the matter, Mr. Hon, learned Advocate contends that the property was mutated in the name of respondent No. 1 at the instance of Dajiba, father of the petitioners and therefore, the said mutation entry should not be disturbed.

7. Having heard rival submissions as aforesaid and having perused the record of the case with the able assistance of the learned Advocates, I find substance in the contention of the learned Advocate for the petitioner that there is an inherent contradiction with respect to the case of respondent No. 1 as regards her entitlement to the suit property. Whereas for the purpose of mutation, she contends that she has received the suit property under a partition dated 05.01.2010, she has filed a suit for specific performance of contract contending that she has entered into agreement of sale with respect to suit property on 13.01.2010. If indeed, there was a document of partition in favour of respondent No. 1 on 05.01.2010, there was no occasion to enter into an agreement of sale subsequently on 13.01.2010. That apart, the suit for specific performance of contract does not even refer to the alleged partition deed dated 05.01.2010.

8. It may be pertinent to note that in paragraph 5 of the plaint there is reference to mutation of the suit property in the name of respondent No. 1. However, there is no reference to the alleged document of partition in the plaint. The plaint also does not explain the reason for entering into agreement on 13.01.2010, if the property was received by the plaintiff by virtue of partition on 05.01.2010. The Hon'ble Minister does not take into considering this vital aspect of the matter.

9. As regards, the aspect of delay while filing the appeal challenging the said mutation entry, the appellant Dajiba had filed an application for condonation of delay. The Sub-Divisional Officer had condoned the delay and thereafter, taken up the appeal for consideration on merits. The order condoning the delay is not challenged by the respondent No. 1. In that view of the matter, the objection pertaining to the delay raised by the respondent No. 1 is liable to be rejected.

10. In view of the reasons mentioned above, in the considered opinion of this Court, the order dated 30.12.2021 passed by the Hon'ble Minister (Revenue), Maharashtra State, Mumbai in Appeal No. RTS-3121/Case No. 58/J-6-A is not sustainable and is

liable to be quashed and set aside. The petition is allowed by quashing and setting aside the said order.

11. It is however, clarified that all the observations made in the present order are only for the purpose of deciding the present petition which pertains to mutation entries. The learned Civil Court while deciding Special Civil Suit No. 32 of 2019, will not be influenced by these observations.

(ROHIT W. JOSHI, J.)

Omkar Joshi