



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11814 OF 2021

1. Nivrutti Shankar Rasal
Died through L.R.s :
 - 1(a) Anil Nivrutti Rasal
Age: 52 yrs. Occu. Agri.
 - 1(b) Sunil Nivrutti Rasal
Age. 50 yrs. Occu. Agri.
 - 1(c) Subhash Nivrutti Rasal
Age: 47 yrs. Occsu. Agri.
2. Bhanudas Popat Rasal
Age: 57 yrs. Occu. Agri.
3. Arun Popat Rasal
Age: 52 yrs. Occu. Agri.

All above R/o. Shedgaon
Tal. Shrigonda, Dist. Ahmednagar

...PETITIONERS
(Org. opponents)

VERSUS

1. The Hon'ble State Minister for Revenue
Maharashtra State, Mumbai-32.
2. The Additional Commissioner
Nashik Division, Nashik.
3. The Additional Collector,
Ahmednagar.
4. The Sub-Divisional Officer
Karjat Sub Division, Karjat.
5. The Tahsildar,
Shrigonda.
6. Ajinath Shankar Sontakke
Died Through L.Rs.

- 6-a Sachin s/o Ajinath Sontakke
Age 27 years, Occ. Agriculture
- 6-b. Rahininath s/o Ajinath Sontakke
Age 32 years, Occ. Agriculture
- 6-c. Nitin s/o Ajinath Sontakke
Age 25 years, Occ. Agriculture.
- 7. Navnath Shankar Sontakke
Age : 44 yrs. Occu. Agri.
- 8. Laxman Rama Sontakke
Age :79 yrs. Occu. Agri.
- 9. Kisan Rama Sontakke
Age : 74 yrs. Occu. Agri.

Respondent Nos. 6 to 9 R/o. Shedgaon
Tal. Shrigonda, Dist. Ahmednagar

...RESPONDENTS
(Resp. No.6 to 9 Org. Appellants)

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Mr.V. D. Hon, Senior Advocate i/by Mr.A. V. Hon Advocate for Petitioners.
Mr. P. D. Patil, AGP for Respondent-State.
Mr.D. S. Patil, h/f Mr.S. S. Gangakhedkar, Advocates for Respondent Nos.
6-a to 6-c and 7 to 9.

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CORAM : KISHORE C. SANT, J.

DATE : 10th JANUARY 2025

PC :-

1. Heard the learned Advocate for the parties.
2. The petition arises out of the Judgment and Order passed by the learned Minister Revenue, dated 11th April 2017 in RTS

No.3317/241/Pra.Kra.68/J-6 revision under Section 257 of the Maharashtra Land Revenue Code, 1966 (for short “MLR Code”). The learned Minister, by the said order, allowed the revision filed by the Respondents. Judgment passed by the learned Divisional Commissioner, Nashik in RTS/Revision/220/2016 came to be set aside and the order passed by the learned Collector in RTS/Appeal/215/2013 came to be confirmed.

3. It is the case of the petitioner that they are having ownership and possession over land survey Nos.221/1 and 221/2 i.e. Gut No.606. In 1927, a sale-deed was executed between Shankar Tukaram Rasal and Dhondiba Babaji Sontakke. By way of sale-deed, Dhondiba Sontakke purchased the property. However, no revenue entries were taken on the basis of said sale-deed. For the first time in 1983, sons of Dhondiba Sontakke namely, Rama Sontakke and Dagdu Sontakke filed an application for mutation of their names in the record of rights. On the basis of application, mutation entry No.509 was taken in the possession column. Mr.Popat Rasal i.e. the father of present petitioner Nos.2 and 3 and deceased Nivrutti Shankar Rasal [now represented by petitioner

No.1(a) to 1(c)] challenged the entry. The said entry was set aside by the Tahsildar and new entry was taken bearing mutation entry No.632 as per order dated 3rd February 1986. In 1987, present respondents filed a suit bearing RCS No.145 of 1987 seeking possession of the suit property. The RCS No.145 of 1987 came to be dismissed by the learned Civil Judge, Junior Division, Shrigonda, by his order dated 26th July 2001. Regular Civil Appeal was preferred their against bearing RCA No. 421 of 2001 came to be dismissed. In the said suit it is observed that, respondents have become owner of the property by way of adverse possession. The said observation is intact as the same is not challenged by the petitioners' side.

4. On 13th March 2008, the present Respondents filed an application for taking mutation entry in their name in possession column by filing RTS No.119 of 2009. The learned Tahsildar rejected the said application. Against the said order, the respondents filed an appeal bearing RTS Appeal No.19 of 2010 before the Sub-Divisional Officer, Karjat. The said RTS Appeal also came to be rejected. The respondents therefore filed revision before the Collector bearing Second RTS Appeal No.215 of

2013. The learned Additional Collector allowed the Second RTS Appeal of the respondents by setting aside the order passed by the learned Tahsildar and learned SDO. The learned Additional Collector directed to take entry in the name of respondents in land Gut No.606 to the area admeasuring of 3H 82R out of total area of 7H 74R.

5. The petitioners challenged the said order passed by the learned Additional Collector before the learned Divisional Commissioner, Nashik. The learned Divisional Commissioner, Nashik allowed the revision of the respondents and set aside the order passed by the learned Additional Collector. The said order was carried to the State Government by the respondents wherein the revision came to be allowed.

6. The learned Senior Advocate vehemently argued that the learned Minister has committed an error and illegality in allowing the second revision of the respondents. The name of the respondents never appeared in revenue record till 1983. No efforts were taken by the respondents to get their names registered. This clearly shows that the respondents were never in possession of the land. The revenue entry necessarily followed the possession over the property. In 1983, there

was no cause of action for making application for the first time. The mutation entry taken in the year 1982 was subsequently cancelled in 1986. Thereafter, there was no question of the respondents filing any application. The plaintiffs lost the suit for possession of the suit property to the extent of 3H 83R from the respondents. That will not give title to the respondents though the finding is recorded that the respondents have perfected their title by adverse possession. The respondents were defendants therein would not get any right in a suit and proceeding filed by the petitioners. He thus, submits that the learned Minister failed to consider this aspect and has erroneously passed the judgment and order and prays to allow the petition.

7. The learned Advocate for the respondents vehemently argued that the substantive rights of the parties have been adjudicated in a suit before the Civil Court. The Civil Court has categorically recorded a finding that the petitioners are not in a possession of the suit land. It is the defendants i.e. present respondents, who are in a possession. The learned Additional District Judge, Ahmadnagar in Appeal No.421 of 2001 has categorically held that the respondents have perfected their

title by adverse possession. There was no question of the present respondents to prove their title in the suit. The observations of the District Court about adverse possession are not challenged by the petitioners. Thus, the petitioners have accepted the possession. The learned Additional Collector and the learned Minister have thus rightly held that the respondents are the owners and are in possession. He thus prays for rejection of the writ petition.

8. The facts are almost admitted. The main fact admitted is that in a civil suit for possession, the petitioners could not succeed, even in an appeal, they failed. The respondents are held to be in possession. As per the legal position as prevailing then, the respondents could not have filed a suit for declaration of ownership on the basis of adverse possession. They only could have taken defence of adverse possession. In any case, it is clear from the record that it is the respondents, who are in possession of the suit land. Very filing of the suit for possession of the petitioners shows that they are not in possession. The revenue record has to follow the title and possession of the party. These aspects are rightly considered by the learned Minister. When there is a finding of

the Civil Court in favour of the respondents, no question remains for taking entry otherwise than the findings recorded by Civil Court. For all these reasons, this Court is not inclined to allow the writ petition. The writ petition deserves to be dismissed and same is hereby dismissed. No order as to costs.

[KISHORE C. SANT, J.]