

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.19423 OF 2024

Nandkumar Kisan Yewale and Ors. **...Petitioners**

V/s.

Shivaji Bhikoba Bodke and Ors. **...Respondents**

Mr. S.G. Karandikar with Mr. Drupad S. Patil and Mr. Dheeraj Patil for the Petitioners.

Mr. Ketan Joshi for the Respondents.

Ms. A.A. Nadkarni, AGP for Respondent-State.

CORAM : SANDEEP V. MARNE, J.

Dated : 10 January 2025.

P.C. :

1) Petition challenges legality and validity of order dated 09.02.2021 passed by the Hon'ble Revenue Minister, State of Maharashtra in RTS Revision No. 3420/48/PK.40/J-5 in respect of land bearing Gat No. 271, admeasuring 1 H. 74 R situated at Village Gahunje, Taluka Maval, District Pune (**suit property**).

2) Petitioners are claiming title over suit property on the basis of registered Sale Deed dated 7 October 1977 executed by Shri. Bhikoba Ananda Bodke in favour of Smt. Hirabai Kisan

Digitally
signed by
MEGHA
SHREEDHAR
PARAB
Date:
2025.01.14
10:15:55
+0530

Yewale. The Mutation Entry Nos. 1013, 1036 and 1238 were effected to record name of said Hirabai in revenue record. Said Mutation Entries were cancelled on the ground that said Sale Deed dated 7 October 1977 was executed without obtaining prior permission contemplated under Section 43 of the Bombay Tenancy and Agricultural Land Act, 1948. The said cancellation orders were challenged by Petitioners by filing RTS Appeal 121 of 2008 before Sub Divisional Officer, Maval Sub Division, Pune. Vide order dated 07 August 2013, the said RTS Appeal No. 121 of 2008 was dismissed by Ld. Sub Divisional Officer, Maval. The said order was confirmed by Additional Collector, Pune vide his decision dated 30 May 2016. Being aggrieved thereby Petitioner has filed RTS Revision No. 279 of 2016 before Additional Divisional Commissioner, Pune. The said Revision was allowed vide order dated 20 September 2019. By impugned order dated 9 February 2021, the Hon'ble Revenue Minister, State of Maharashtra set aside order passed by Additional Divisional Commissioner, Pune.

3) In the meantime, Smt. Hirabai Kisan Yewale mother of the petitioners filed Regular Civil Suit No. 15 of 2004 in the Court of Civil Judge Junior Division, Vadgaon, Pune for declaration of title to the suit property and for injunction against the deceased father of the Respondent Nos. 1, 2 and 3 and Grampanchayat Gahunje. Subsequently Respondent Nos. 1, 2 and 3 have filed Regular Civil Suit No. 174 of 2005 in the Court of Civil Judge Junior Division, Vadgaon, Pune seeking

declaration that Sale Deed dated 7 October 1977 is null and void and for injunction. The Petitioners herein have also filed counter claim in the said suit seeking declaration of their title and in the alternative mandatory direction for execution of fresh Sale Deed after obtaining permission and also for declaration of ownership by way of adverse possession.

4) The said Regular Civil Suit No. 174 of 2005 was dismissed in default by the learned Judge of Trial Court. The Plaintiffs have filed restoration application bearing Civil Misc. Application No.38/2017, which is pending. The Counter claim filed by Defendants therein is also pending.

5) Since parties are agitating their claims before Civil Court, I proceed to pass the following order:-

- (i) The issue regarding ownership over suit property, bearing Gat No. 271, admeasuring 1 H. 74 R situated at Village Gahunje, TalukaMaval, District Pune, shall be decided in Regular Civil Suit No. 174 of 2005, after restoration, and counter claim filed therein.
- (ii) The name/s of successful party in suit/ counterclaim shall be recorded in Revenue record by making new mutation entry.
- (iii) Such mutation entry will be recorded without prejudice to a right of unsuccessful party to challenge

said judgment and decree passed in suit/counter claim.

- (iv) Till disposal of suit/ counter claim, parties shall maintain status quo in respect of revenue record and suit property.
- (v) With the consent of the parties Trial Court shall allow application filed by the Plaintiffs for restoration of Regular Civil Suit No.174 of 2005 by passing a formal order of restoration. The Trial Court is requested to expedite hearing of the suits and the counter claim and to make an endeavour to decide the same as expeditiously as possible, preferably within a period of six months.
- (vi) Petitioners shall be at liberty to file fresh suit challenging the legality and validity of Mortgage Deed dated 5 August 2022 executed by Respondents in favour of Pune District Co-operative Bank. The said suit shall be decided on its own merits. All contentions are expressly kept open.

6) With the above directions, the writ Petition is disposed of with no orders as to costs.

[SANDEEP V. MARNE, J.]