

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2444 OF 2020

Alongwith

APPEAL FROM ORDER (ST.) NO. 5879 OF 2020

WITH

INTERIM APPLICATION (ST.) NO. 6164 OF 2024

WITH

INTERIM APPLICATION (ST.) NO. 97228 OF 2020

WITH

INTERIM APPLICATION (ST.) NO. 97226 OF 2020

WITH

INTERIM APPLICATION NO. 3728 OF 2020

Alongwith

WRIT PETITION NO. 1447 OF 2024

WITH

INTERIM APPLICATION NO. 7157 OF 2024

Smt. Prabhavati Jagdish Patil,
through CA Ravindra Jagdish Patil

....*Petitioner*

: *Versus* :

Smt. Bhimabai Shankar Thakur
and Ors.

....*Respondents*

Mr. Chandrakant Joshi with Mr. A.C. Joshi, *for the Petitioner/Appellant.*

Mr. Kailas S. Dewal with Mr. Yash Dewal, *for Respondent No.1 in WP-2444-2020, legal heirs of Respondent Nos.1 and 4 in WP-1447-2024 and for Respondent No. 4 in AOST-5879-2020*

Mr. Gautam Jain i/b Mr. M.J. Bhatt *for Respondent Nos.5 to 7 in AOST-5879-2020 and Respondent No.6 in WP-1447-2024.*

Ms. Sulbha D. Chipade AGP *for Respondent State in WP-2444-2020.*

CORAM : SANDEEP V. MARNE, J.

DATED : 12 NOVEMBER 2025.

Oral Order:

1) The challenge in the two Writ Petitions and the Appeal from Order are as under :

WRIT PETITION NO. 2444 OF 2020 :

2) In this Writ Petition, order passed by the Hon'ble Minister (Revenue) dated 27 August 2014 has been challenged. By that order, the Hon'ble Minister has set aside the order passed by the Additional Commissioner dated 8 May 2014 and Mutation Entry No.614.

WRIT PETITION NO. 1447 OF 2024 :

3) In this Writ Petition, Petitioner has challenged order dated 14 February 2022 rejecting the prayer for impleadment of State of

Maharashtra, Thane Municipal Corporation, Collector-Thane and Mr. Mohan Rane-office bearer of Om Sai Vinayak (Vidhan Mandal Officer Employees)Co-op. Hsg. Soc. Ltd. as parties to the Suit. Petitioner has also challenged order dated 28 April 2022 by which the application seeking clarification of order dated 14 February 2022 has been rejected.

APPEAL FROM ORDER (ST.) NO. 5879 OF 2020 :

4) In this Appeal filed under the provisions of Order XLIII Rule 1 of the Civil Procedure Code, 1908 (**the Code**) Appellant has challenged order dated 27 July 2020 passed by the Trial Court dismissing the Application for temporary injunction at Exhibit-98 filed in Regular Civil Suit No. 524/2007.

5) By administrative order dated 21 November 2022 passed by the Hon'ble Chief Justice, the two Writ Petitions and the Appeal from Order are directed to be heard by Court having assignment to decide Writ Petitions arising out of orders passed by the Civil Courts.

6) It would be necessary to make a very brief reference to the factual background in which the two Writ Petitions and Appeal from Order arise. The Petitioner in two Writ Petitions, who is also the Appellant in the Appeal from Order, has instituted Regular Civil Suit No. 524/2007 in the Court of Civil Judge Senior Division, Thane. Her case as pleaded in the plaint is that one Mahadev Sitaram Thakur was the owner of five agricultural land described in Schedule-A. It is claimed that he was holding four agricultural lands mentioned in Schedule-B as a protected tenant. The four agricultural lands described in Schedule-C were owned by one

Jankibai Khandya. Bhau Govind Thakur was the owner in respect of the lands described in Schedule-D. Plaintiff claims that after the death of Jankibai Khandya, her estate was succeeded by Mahadev Sitaram Thakur, Bhagibai Bhau Thakur and Sitaram Kamlya. Mahadev Sitaram Thakur expired 66 years ago leaving behind three sons, Dattu Mahadev Thakur, Bhaskar Mahadev Thakur and Tukaram Mahadev Thakur. Dattu Mahadev Thakur was survived by his daughter-Bhimabai Thakur (**Defendant No.1**). Tukaram Thakur died unmarried, issueless and intestate. Bhaskar Thakur was survived by one daughter-Charibai. Plaintiff claims that she is the daughter of Charibai and that Mahadev Sitaram Thakur was her maternal great-grandfather. Plaintiff accordingly claims one-half share in the suit properties. Plaintiff issued notices dated 17 April 2007 and 8 May 2007 calling upon Defendant No.1-Bhimabai Thakur to effect partition and allot her the share in the suit properties. By reply dated 15 May 2007, Bhimabai Thakur denied the claim of the Plaintiff. Accordingly, the Plaintiff, through her Constituted Attorney, has instituted Regular Civil Suit No. 524/2007 in the Court of Civil Judge Senior Division, Thane for partition and separate possession.

7) It appears that the suit was decreed *ex-parte* on 8 April 2009. Consequent to the decree passed in Regular Civil Suit No. 524/2007, Plaintiff filed an Application before the Revenue Authorities for mutation of her name in respect of one-half share in the suit properties. Based on *ex-parte* decree and the Application preferred by the Plaintiff, Mutation Entry No. 614 was certified mutating her name in respect of one-half share in the suit properties. Defendant No.1 filed Misc. Application No. 374/2009 under the provisions of Order IX Rule 13 of the Code for setting aside *ex-parte* decree. During pendency of the Misc. Application, Defendant No.1 filed RTS Appeal No. 117/2009 before the SDO challenging Mutation

Entry No. 614. Taking note of the application filed for setting aside the *ex-parte* decree, the SDO allowed the Appeal by order dated 18 March 2011 and set aside Mutation Entry No. 614. Plaintiff filed RTS Appeal No. 208 of 2011 before the Deputy Collector, Thane challenging the order of the SDO. The Deputy Collector allowed the Appeal of the Plaintiff by order dated 17 July 2012 and set aside SDO's order dated 18 March 2011. The Deputy Collector restored Mutation Entry No. 614 subject to the outcome of Misc. Application No. 374/2009. Defendant No.1 filed Revision before the Additional Commissioner which was rejected by order dated 8 May 2014. Defendant No.1 thereafter preferred further Revision before the Hon'ble Minister (Revenue) which has been allowed by order dated 27 August 2014. The Hon'ble Minister has set aside Mutation Entry No. 614. After delay of 6 long years, the Plaintiff has filed Writ Petition No. 2444/2020 challenging the order dated 27 August 2014 passed by the Hon'ble Minister.

8) In the meantime, Misc. Application No. 374/2009 preferred by Defendant No.1-Bhimabai came to be allowed by the Trial Court by order dated 15 February 2016 and *ex-parte* decree dated 8 April 2009 came to be set aside. Plaintiff filed Civil Revision Application No. 311/2016 challenging the order dated 15 February 2016, which came to be dismissed by this Court by order dated 7 December 2016. This is how the order setting aside the *ex-parte* decree has attained finality. Accordingly, the suit has proceeded further.

9) It appears that Defendant No.1 sold the land bearing Survey No.100 Hissa No.26A in favour of Defendant No.4-Vihang Enterprises (**Vihang**) during pendency of the Misc. Application. Plaintiff has

accordingly impleaded Defendant No.4-Vihang to the suit. It appears that Defendant No.4 undertook construction on land bearing Survey No.100 Hissa No.26A and accordingly the Plaintiff filed application at Exhibit-98 seeking temporary injunction against Defendant No.4-Vihang from carrying out any construction in the suit property. Initially, ad-interim injunction was refused by the Trial Court by order dated 24 January 2020 which led to filing of Appeal from Order (St.) No.3204/2020 by the Plaintiff. By order dated 14 July 2020, this Court directed the Trial Court Judge to decide the main application for temporary injunction. Accordingly, by order dated 27 July 2020, the Trial Court has proceeded to reject the application at Exhibit-98 and has refused to grant temporary injunction in favour of the Plaintiff from injuncting Defendant No.4 from carrying out construction on land bearing Survey No.100, Hissa No.26A. The order dated 27 July 2020 is subject matter of challenge in Appeal from Order (St.) No.5879/2020.

10) In the meantime, Plaintiff realised that land bearing Survey No.100, Hissa No.26B was handed over by Defendant No.1-Bhimabai to the Government on which a building for constructing flats for government employees was proposed. Accordingly, Plaintiff filed applications at Exhibits-86 and 87 seeking impleadment of the State Government as party to the Suit. By order dated 26 February 2019, the applications at Exhibits-86 and 87 came to be rejected holding that the State Government was not a necessary party to the suit for partition. Plaintiff apparently did not challenge the order dated 26 February 2019 before the higher forum. Instead, Plaintiff was advised to file one more application at Exhibit-141 on 25 September 2020 for joining the State Government, Thane Municipal Corporation, Collector-Thane and Mohan Rane, office bearer of Om Sai Vinayak (Vidhan Mandal Officer CHSL) as parties to the Suit. By referring

to the order passed on 26 February 2019, the applications at Exhibits-86 and 87, the Trial Court proceeded to reject the application at Exhibit-141 by order dated 14 February 2022. Plaintiff filed application at Exhibit-185 seeking clarification of the order dated 14 February 2022 which has been rejected by the Trial Court by order dated 28 April 2022. Orders passed by the Trial Court on 14 February 2022, and 28 April 2022 are subject matter of challenge in Writ Petition No.1447 of 2024.

11) It appears that Defendant No.4-Vihang created further rights in land bearing Survey No. 100, Hissa No.26A in favour of JVM Spaces, who actually constructed the building(s) on the land. Plaintiff has impleaded JVM Spaces as party Defendants to the suit.

12) I have heard Mr. Joshi, the learned counsel appearing for the Petitioner in the two Writ Petitions and for the Appellant in Appeal from Order. He would submit that the State Government is a necessary party to the Suit as land bearing Survey No.100, Hissa No.26B has been erroneously handed over by Defendant No.1-Bhimabai ignoring the position that the Plaintiff also has one-half share in the said land. That unauthorized construction is being carried out on the said portion of the land without the consent of the Plaintiff. He would further submit that Defendant No.1 has committed fraud on the Government Authorities while handing over land bearing Survey No.100, Hissa No.26B by filing a false Affidavit. So far as prayer for impleadment of State Government, Municipal Corporation, Collector-Thane and office bearer of the Society etc. are concerned, Mr. Joshi would submit that mere rejection of earlier applications at Exhibits-86 and 87 cannot be a ground for the purpose of rejecting subsequent application at Exhibit-141. That the principle of *res-*

judicata does not apply when Defendant No.1 has committed fraud. He would also rely upon judgment of this Court in **Haroon Rashid Nizamuddin Umatiya Versus. Jivatlal Putapshi**¹ in support of his contention that composite suit is maintainable against government authorities in respect of their illegal actions and against private persons for partition.

13) So far as land bearing Survey No.100, Hissa No.26A is concerned, he would submit that Defendant No.1 has illegally sold the said portion of land in favour of Defendant No.4 who has created further rights in the said land in favour of JVM Spaces who is now impleaded as Defendant Nos.47 to 49 in the Suit. He would further submit that neither Vihang nor JVM Spaces have any right to carry out any construction in land bearing Survey No.100, Hissa No.26A. That in the development agreement executed in favour of Vihang, Defendant No.1 herself has admitted that Plaintiff has share in the development agreement. Mr. Joshi would further submit that there are ample documents on record to indicate that Plaintiff has a share in the suit properties. That Defendant No.1 is illegally dealing with the suit property during pendency of the suit and third party rights are being created. That therefore the Trial Court Judge ought to have granted injunction to restrain the Defendants from carrying out construction or creating third party rights in the suit property. He would rely upon judgment of the Apex Court in **State of Himachal Pradesh Versus. Keshav Ram**² in support of his contention that revenue entries do not create title.

14) So far as Writ Petition No. 2444/2020 is concerned, Mr. Joshi would submit that the Minister, Revenue has erred in setting aside

1 2003 (4) BCR 346

2 1996 (7) SC 450

Mutation Entry No.614 ignoring the position that Plaintiff has one-half share in the suit properties. That Mutation Entry was certified by the Revenue Authorities after being fully satisfied about share of Plaintiff in the suit properties. That mere filing of Misc. Application for setting aside *ex-parte* decree could not have been a reason for setting aside Mutation Entry No.614.

15) On above broad submissions, Mr. Joshi would pray for setting aside the impugned orders challenged in the two Writ Petitions and Appeal from Order.

16) Mr. Dewal, the learned counsel appearing for legal heirs of Defendant No.1-Bhimabai and for Defendant No.4-Vihang would oppose the Writ Petitions and Appeal from Order. He would submit that Mutation Entry No.614 was certified only on account of passing of *ex-parte* decree. Now that *ex-parte* decree is set aside on 15 February 2016 and Civil Revision Application challenging the said order is rejected on 7 December 2016, Mutation Entry No.614 cannot be allowed to survive. So far as Petitioner's prayer for impleadment of Government and other Authorities are concerned, Mr. Dewal would submit that Plaintiff did not challenge the order dated 26 February 2019 passed on applications at Exhibits-86 and 87 and could not have filed a fresh application for the same purpose. So far as order passed by the Trial Court on 27 July 2020 refusing temporary injunction is concerned, Mr. Dewal would submit that the Appeal from Order is now rendered infructuous in view of the fact that construction of the building is already complete, Occupancy Certificate is issued and Co-operative Society of flat purchasers is formed. Mr. Dewal would also place on record copy of order dated 1 October 2020 disposing

of Writ Petition filed by the Plaintiff challenging Commencement Certificate dated 27 September 2018.

17) Mr. Jain, the Learned counsel appearing for JVM Spaces-Defendant Nos.47 to 49 would also oppose the Petitions and Appeal from order adopting the submissions of Mr. Dewal. He would place on record copy of Occupancy Certificate dated 15 October 2020 issued by the TMC.

18) I have considered the rival submissions canvassed by the learned counsel appearing for the parties.

WRIT PETITION NO. 2444/2020:

19) In this Petition, challenge is to the order dated 27 August 2014 passed by the Hon'ble Minister. It must be observed at the very outset that the Writ Petition suffers from serious delay and laches. The petition appears to have been filed on 9 April 2019 challenging the order dated 27 August 2014. The petition therefore deserves dismissal only on the ground of delay and laches.

20) However, even if the aspect of delay and laches is momentarily ignored, I do not find any serious error in the order passed by the Hon'ble Minister, Revenue particularly on account of the events that occurred subsequently. Mutation Entry No.614 was certified only on account of passing of *ex-parte* decree dated 8 April 2009 in Regular Civil Suit No.524/2007. Perusal of Mutation Entry No.614 would indicate that no other reason is assigned for certification of the same. The *ex-parte*

decree has subsequently been set aside by order dated 15 February 2016. Civil Revision Application No.311/2016 filed by the Plaintiff has been dismissed by this Court by order dated 7 December 2016. Thus, the underlying the reason for which Mutation Entry No.614 was certified, no longer exists. In that view of the matter, there is no warrant for interference in the order passed by the Hon'ble Minister on 27 August 2014. Writ Petition No. 2444/2020 accordingly deserves dismissal.

WRIT PETITION NO.1447/2024 :

21) By this Petition, the Petitioner has challenged order dated 14 February 2022 passed on application at Exhibit-141 filed seeking impleadment of State of Maharashtra, Thane Municipal Corporation, Collector-Thane and Mohan Rane office bearer of Om Sai Vinayak (Vidhan Mandal Officer Employees) Co-op. Hsg. Soc. Ltd. as party Defendants to the Suit. It appears that the reason for impleadment of those officials is essentially the act on the part of the Defendant No.1-Bhimabai in handing over the land bearing Survey No.100, Hissa No.26B to the State Government. The said land was apparently reserved. The land is utilised for the purpose of construction of houses for government employees. Plaintiff complains that since she has 50% share in the land so handed over to the State Government, the act of handing over of said portion of land or the activity of carrying out any construction thereon is illegal. It is because of this reason that Plaintiff desired to implead State Government, Thane Municipal Corporation and officer bearer of the Society as party Defendants to the Suit. It appears that a similar attempt was earlier made by the Plaintiff by filing applications at Exhibits-86 and 87 which came to be rejected by order dated 26 February 2019. Plaintiff did not challenge the said order dated 26 February 2019 and the same has attained finality. In that view of the mater, Plaintiff could not have filed

one more application for impleadment of State Government at Exhibit-141. I therefore do not find any serious error in the order dated 14 February 2022 rejecting the application at Exhibit-141.

22) The second order under challenge in Writ Petition No.1447 of 2024 is passed on 28 April 2022 by which application at Exhibit-185 seeking clarification of order dated 14 February 2022 has been rejected. Since I have already upheld the order dated 14 February 2022, it is not necessary to go into the correctness of reasons recorded while passing order dated 28 April 2022.

23) Even otherwise, it appears that the suit is filed seeking partition of numerous properties. The land bearing Survey No.100, Hissa No.26B is only a small portion of several properties in respect of which partition is sought. If the land was indeed reserved and has been handed over to the State Government, some compensation in respect thereof would be payable. It would be open for the Plaintiff to claim her share in the compensation, if so advised. Alternatively, if Plaintiff succeeds in the Suit, the land bearing Survey No.100, Hissa No.26B can be allotted to the share of Defendant No.1-Bhimabai. I therefore do not find any reason why the State Government and other entities need to be impleaded as party Defendants to the Suit. They have no role to play in partition dispute between Plaintiff and Defendant No. 1. Their entry in the suit would create complications in the Suit, As of now, there are already 49 Defendants to the Suit, and I do not see any reason why more Defendants need to be added to the suit. It has been 18 long years that the Suit is pending, which has not progressed even till the stage of framing Issues. I therefore do not

find any valid reason to entertain Writ Petition No.1447/2024 which also deserves dismissal.

APPEAL FROM ORDER (ST.) NO. 5879 OF 2020

24) In this Appeal, Plaintiff has challenged order dated 27 July 2020 passed by the Trial Court rejecting the application at Exhibit-98 and refusing to grant temporary injunction to restrain Defendant No.4-Vihang from carrying out construction on land bearing Survey No.100, Hissa No.26A. As observed above, Defendant No.1 has granted development rights in respect of the land bearing Survey No.100, Hissa No.26A in favour of Defendant No.4-Vihang who in turn has granted rights in favour of JVM Spaces-Defendant Nos.47 to 49.

25) The Trial Court has conducted *prima-facie* enquiry into the claim of 50% share of the Plaintiff in the suit land. After conduct of such *prima-facie* enquiry, the Trial Court has held in para-28 of the order as under:

28. From the above discussion, this Court concludes that the plaintiff has prima facie failed established that her maternal great-grandfather Mahadev Sitaram Thakur, succeeded Jankibai after her death and hence plaintiff is a co-owner and possessor of the impugned land in survey no 100/26. The plaintiffs' entitlement to a share in property of maternal great-grandfather is a triable issue regarding which no conclusion could be recorded at this stage. From the above pleadings and documents regarding creation of third party interest in favour of M/s JVM space, the present application seeking injunction against defendant no.4, is even otherwise infructuous.

26) Even otherwise, nothing really survives in the Appeal. During pendency of the present Appeal, the entire construction on the land in question is complete and Occupancy Certificate is issued by Thane

Municipal Corporation on 15 October 2020. The flat purchasers have formed Co-operative Society which is registered on 22 April 2021. Therefore, no purpose would be served in restraining Defendant No.4 from carrying out any construction in land bearing Survey No.100 Hissa No.26A. It also appears that Plaintiff had filed Writ Petition (Lodg.) No.5500 of 2020 before the Division Bench challenging Commencement Certificate dated 27 September 2018 which has been dismissed by order dated 1 October 2020 leaving open remedy for the Plaintiff to prosecute the Appeal. Review sought in respect of the order dated 1 October 2020 has also been rejected by order dated 29 January 2021.

27) Considering the above position, in my view, there is no reason to interfere in the order dated 27 July 2020 and the Appeal must necessarily fail.

28) Before passing the operative orders in the two petitions and the Appeal, it must be observed that the suit is pending for the last 18 long years. The same was decreed *ex-parte* and the *ex-parte* decree has been set aside on 15 February 2016. Even after setting aside of the *ex-parte* decree, the suit continues to remain pending for the last 9 long years. If Plaintiff really has share in the suit properties, it is necessary that she prosecutes the Suit and gets the same decided in an expeditious manner. It would therefore be in the interest of the Plaintiff to have the suit decided expeditiously rather than spending any further time in filing the applications and getting the same decided.

29) Accordingly, I proceed to pass the following order :

- (i) Writ Petition Nos. 2444 of 2020 and 1447 of 2024 are dismissed. The pending Interim Application also stands disposed of.
- (ii) Appeal from Order (St.) No. 5879 of 2020 is dismissed. All pending Interim Applications also stand disposed of.
- (iii) The Trial Court is requested to expedite hearing of Regular Civil Suit No. 524/2007 and to make an endeavor to decide the same as expeditiously as possible.

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[SANDEEP V. MARNE, J.]