



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

WRIT PETITION NO.7152/2024

Shankar Babarao Nalawade,
aged about 79 years, Occ.- Agriculturist,
R/o At Post Krushnapur, Tah. Umarkhed,
District Yavatmal.

... PETITIONER

...VERSUS...

1. The Tehasildar, Tahasil Office
Umarkhed, Tah – Umarkhed,
District Yavatmal.
2. Divisional Commissioner,
Amravati Division, Amravati,
Divisional Commissioner Office,
Civil Lines, Amravati.
3. Godavari Bapurao Nalawade,
aged about 72years, Occ.-Household,
4. Vasantrao Bapurao Nalawade,
aged about 54 years, Occ.- Service
5. Suresh Bapurao Nalawade,
aged about 52 years, Occ.- Agriculturist,
6. Sunita Subhash Tawar,
aged about 56 years, Occ.- Housewife,

respondent No. 3 to 6 R/o. At Post
Krushnapur - 445207, Tahsil
Umarkhed, District Yavatmal

7. Archana Parmeshwar Tawar,
aged about 50 years, Occ.-Housewife,
R/o Borgaon Ashti, Tahasil-
Himayatnagar, District Nanded.
8. Laxmibai Pandurag Jadhav,
aged- Major, Occ.- Housewife,
R/o Wategaon, Tahsil-Hadgaon,
District Nanded
9. Shakuntala Prabhakar Kadam,
aged major, Occ.- Housewife,
R/o Vasant Nagar, Tahasil- Umarkhed,
District Yavatmal
10. Laxmibai Jaiwantrao Wankhede,
aged major, Occ.- Housewife,
R/o Sakhara, Tahasil – Umarkhed,
District Yavatmal
11. Aruna Diliprao Wankhede,
aged major, Occ.- Housewife,
R/o Kharus, Tahasil Umarkhed,
District Yavatmal.
12. Chandrakala Ashokrao Shinde,
aged major, Occ.- Housewife,
R/o Ashti, Tahasil - Hadgaon,
District Nanded.

...**RESPONDENTS**

Shri S.R. Charpe, Advocate for Petitioner

Shri H.D. Futane, Assistant Government Pleader for Respondent
Nos.1 and 2

Shri A.A. Naik, Senior Advocate assisted by Shri V.N. Patre,
Advocate for Respondent Nos. 3 to 12.

CORAM : SMT. M. S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 04/03/2025

DATE OF PRONOUNCING THE JUDGMENT: 15/04/2025

JUDGMENT

RULE. Rule made returnable forthwith. Heard finally by consent of the learned Senior Counsel and Counsel for the respective parties.

2. Being aggrieved by the order dated 30/09/2024 passed by the learned Additional Commissioner, Amravati Division, Amravati thereby rejected the revision application preferred by the Petitioner under Section 257 of the Maharashtra Land Revenue Code, 1966, so also being aggrieved by the illegal orders dated 7/10/2022, 29/03/2023 and dated 04/05/2023 passed by the Respondent no.1-Tehasildar, Umarkhed.

3. Applicant deceased Bapurao Nalawade and respondent No. 8, 9, 11 and 12 were the real brothers and sisters. The Respondent No. 3 is the wife of deceased Bapurao

Nalawade. The Respondent Nos. 4 and 5 are sons of deceased Bapurao and Respondent Nos. 6 and 7 are his daughters.

4. Initially, Regular Civil Suit no. 148/2001 was filed by deceased Bapurao Nalawade for partition and separate possession against the present Petitioner as well as the Respondents Nos. 8 to 12. The said suit was decreed by way of judgment and decree dated 18/06/2007. In pursuance to that Regular Darkhast No. 36 of 2007 was preferred on behalf of deceased Baburao Nalawade for its execution. In the aforesaid proceedings, the learned Civil Court by way of an order dated 01/08/2014 issued a Precept under Section 54 of the Code of Civil Procedure, 1908 to the collector, Yavatmal for execution of the judgment and decree dated 18/06/2007. Upon the receipt of the same, Respondent No.1/the learned Tahsildar registered the aforesaid proceedings as RMN/02/SRV/43/2014-15 and issued notices to the parties. Thereafter the Respondent No.1/Tahasildar referred the matter to Deputy Superintendent of Land Record, Umarkhed for measurement

of suit land and for partition in view of the Precept of Civil Court.

5. The Deputy Superintendent of Land Record, Umarkhed issued notices the parties including the Petitioner. However upon the receipt of the said notice, the Petitioner submitted an application dated 22/04/2022, 25/04/2022 and dated 17/05/2022, pointed out that the Petitioner could not remain present on the appointed dates due to health constrains and further requested in the said application not to conduct measurement in his absence. However without considering the applications and the reasons as disclosed by the Petitioner, learned Deputy Superintendent of Land Record proceeded to effect measurement of the suit properties and to prepare the measurement sheet along with proposed separation of shares. The respondent No.1/Tehasildar Umarkhed, passed an order dated 07/10/2022 accepting the said measurement sheet.

6. However during that time, deceased Baburao expired and therefore an application came to be moved initially on behalf of his Advocate for bringing legal heirs on record and thereafter another application was moved on behalf of Respondent No. 4 Vasantrao for bringing legal heirs on record in respect of deceased Baburao. The said applications were objected on behalf of the Petitioner by filing a written reply. The learned Tahsildar passed an order dated 29/03/2023 directed the Talathi/Revenue Authorities, to place the parties in possession of the respective shares as demarcated in the measurement sheet prepared by the Deputy Superintendent of Land Record under his instructions. Being aggrieved by the order dated 04/05/2023, the Petitioner was constrained to prefer a Revision under section 257 of the Maharashtra Land Revenue Code, before the Learned Divisional Commissioner, Nagpur. The learned Additional Commissioner, Amravati exercising the powers of Divisional Commissioner, Amravati has proceeded to dismiss

the revision preferred on behalf of the Petitioner. The aforesaid order is the subject matter of challenge in the present writ petition.

7. Learned Counsel for the Petitioner contended that the Respondent No.1/Tahsildar Umarkhed, without considering the fact that the measurement sheets were prepared in the absence of the Petitioner by depriving him a reasonable opportunity of remaining present at the time the fields were being measured and measurement sheets were being prepared, passed an impugned order by accepting the said measurement sheet. Issuance of notice to the parties and grant of hearing was not a mere empty formality and in fact, it was of a substantial importance. It is further contended that the Deputy Superintendent of Land Record, acting under the directions of the Respondent No.1/Tahsildar ought to have considered the application submitted on behalf of the Petitioner seeking defer of the measurements due to his illness, as concrete material was placed on record to point out

that the Petitioner suffered from illness and was also hospitalized on the occasions stated in the application. The aforesaid order needs interference by this court and also needs to be set aside.

8. Learned Counsel for petitioner relied on following citations:

- (i) Champalal Bansilal Parate (Dr.) and others Vs. Additional Commissioner and others, 2005 (2) All.M.R. 825,*
- (ii) Vijay Shivram Pathare Vs. City Corporation Limited and Others, 2023 DGLS (Bom.) 3633 &*
- (iii) Chittoori Subbanna Vs. Kudappa Subbanna, 1964 DGLS (SC) 346.*

9. Learned Senior Counsel for the Respondent No. 3 to 12 contended that the Petitioner submitted multiple applications to the Deputy Superintendent of Land Records, but failed to raise any objections or highlight any errors concerning the measurement. Furthermore, when the partition sheet was forwarded to the Tehsildar, Umarkhed, a copy of the

partition chart was provided to the Petitioner on 08/09/2022, affording him an adequate opportunity to voice any concerns. If Petitioner had any genuine issues with the measurement or the partition chart, he would have raised them during the proceedings before the Tehsildar. Therefore, it is abundantly clear from the Petitioner's conduct that he has been deliberately attempting to delay the proceedings by engaging in fraudulent actions before the Court, with the ulterior motive of unlawfully retaining possession of the land belonging to the Respondents. Hence the aforesaid order of Tehsildar needs no interference and needs to be confirmed.

10. Learned Senior Counsel Shri Naik relied on *Khemchand Shankar Choudhary and another Vs. Vishnu Hari Patil and others AIR 1983 SC 124*.

11. Heard both the parties. Perused the impugned order and documents placed on record and considered the citations relied on by both the parties.

12. Present Petition is challenging the orders dated 07/10/2022, 29/03/2023 and 04/05/2023 passed by Tehsildar, Umarkhed and order dated 30/09/2024 passed by the Additional Commissioner, Amravati Division, Amravati.

13. As referred in the facts, the Regular Civil Suit No.148/2001 was filed by Bapurao Nalawade for partition and separate possession, it was decreed by Judgment and Decree dated 18/06/2007. The said judgment and decree confirmed by the Hon'ble Apex Court. There was a Regular Darkhast No.36/2007 came to be preferred on behalf of deceased Baburao Nalawade for its execution. The learned Civil Court by order dated 01/08/2014 issued a 'Precept' under Section 54 of the Code of Civil Procedure, 1908 to the Collector, Yavatmal. After receipt of precept, the Tehsildar registered the proceeding as RMN/02/SRV/43/2014-15 and issued notices to the parties and thereafter referred the matter to Deputy Superintendent of Land Record, Umerkhed (DSLRL) for measurement of suit land and for partition in view of precept

of Civil Court. The DSLR issued notices to the parties to remain present on 22/04/2022. On that day as well as on 25/04/2022, the Petitioner herein filed an application that he could not remain present on the appointed dates due to health constrains. The said authority issued another notice on 05/05/2022 to remain present on 17/05/2022. The another application came to be filed by the present Petitioner for not to conduct measurement in his absence as he was hospitalized and, therefore, unable to remain present. Ultimately on 27/05/2022, the DSLR carried out the measurement and prepared a 'Chart' and forwarded to the Tehsildar, Umerkhed. A communication by DSLR dated 22/08/2022 make it clear that ample opportunity is granted to the Petitioner to remain present for measurement. Even order passed by the learned Tehsildar makes it clear that the present Petitioner herein in spite of service of three notices through Talathi as well as by R.P.A.D., he chooses to remain absent. The Petitioner herein gave his appearance after issuance of 4th notice and sought

time to place his submission. Accordingly, time was granted. The other defendant Nos.2 to 6 gave their consent to the Chart prepared by the DSLR by filing Pursis. However, defendant No.1/present Petitioner herein shown his disagreement to the Chart prepared by the DSLR.

14. Learned Counsel for the Petitioner relied on ***Champalal Bansilal Parate (Dr.)*** (supra), however facts involved in the matter are distinguishable, the ratio may not be applicable to the present set of facts. In the said matter, the Additional Commissioner has found that there was a major flaw to partition done by the Tehsildar, the point regarding the valuation of land involved in the partition has not discussed anywhere by the Tehsildar. The Additional Commissioner found that the object behind the partition is not to allot equal share to each shareholder but as far as possible to allot each shareholder the property of equal value and, therefore, the Additional Commissioner that it better to remand the matter. In the present matter, the only ground raised opposing

partition was that the Special Leave Petition is pending before the Hon'ble Apex Court, which also came to be dismissed subsequently.

15. Learned Counsel for the Petitioner also relied on ***Vijay Shivram Pathare*** (supra), in support of his contention that the Court which passed a preliminary decree can pass second preliminary decree and determine shares of such contesting legal heirs/successor-in-title. However, in the present matter, there was no dispute between the legal heirs of Bapurao. This Court relied on the *ratio* laid down by the Hon'ble Apex Court in ***Phoolchand and another Vs. Gopal Lal***, reported in ***1967 AIR (SC) 1470*** and held that every dispute arising between heirs/successors-in-title of a deceased decree holder in a suit for partition, it is open for the Court which passed a preliminary decree to pass second preliminary decree and determine the shares of such contesting legal heirs/successor-in-title. In view thereof, the Collector or his nominee, being Tehsildar, cannot decide the contesting claims

between legal heirs and issue can only be decided by Civil Court which passed the decree in question. In the present matter, all the legal heirs consented to bring their names on record in place of deceased Baburao.

16. Learned Counsel for the Petitioner also placed reliance on ***Chittoori Subbanna*** (supra), however, ratio in the said matter is not at all relevant in the present set of facts, wherein the Hon'ble apex Court held that a preliminary decree passed earlier does not operate as *res judicata* to the directions for computation of mesne profit. There is no question of mesne profit arising in the present matter.

17. As against this, the learned Senior Counsel for the Respondents relied on ***Khemchand Shankar Choudhary*** (supra), wherein the Hon'ble Apex Court in para 6 held as under :

“6. The Collector who has to effect partition of an estate under Section 54 of the Code of Civil Procedure has no doubt to

divide it in accordance with the decree sent to him. But if a party to such a decree dies leaving some heirs about whose interest there is no dispute should he fold up his hands and return the papers to the civil court? He need not do so. He may proceed to allot the share of the deceased party to his heirs. Similarly he may, when there is no dispute, allot the shares of a deceased party in favour of his legatees. In the case of insolvency of a party, the official receiver may be allotted the share of the insolvent. In the case of transferees pendente lite also, if there is no dispute, the Collector may proceed to make allotment of properties in an equitable manner instead of rejecting their claim for such equitable partition on the ground that they have no locus standi.”

18. It is submitted that the order passed by this Court is under challenged before the Hon’ble Apex Court, however, no order of stay was produced. It is informed by the learned Senior Counsel for the Respondents that Special Leave Petition came to be dismissed on 16/12/2022, that is the only ground raised by the Petitioner herein before the Tehsildar when the Tehsildar proceeded as per judgment and decree passed in the

suit. The Tehsildar proceed to pass the order on 07/10/2022. From the communication of the DSLR and order passed by the Tehsildar, it is abundantly clear that ample opportunities were granted to the Petitioner to submit his contentions. In between, the plaintiff Baburao Nalawade expired on 10/08/2022. There was an application to bring names of his legal heirs. The defendant Nos.2 to 6 have gave no objection and submitted that the applicants are the only legal heirs of deceased Baburao. However, the defendant No.1/Petitioner herein raised an objection that they should place on record the 'Legal Heir Certificate'. It is observed by learned Tehsildar that the defendant No.1/present Petitioner has not denied anywhere that they are not the legal heirs of deceased Baburao. As there was no objection by the defendants and also there was no dispute between the legal heirs of plaintiff, on 04/05/2023 allowed the application for bringing the legal heirs in place of plaintiff. This order was also challenged in the present petition.

19. The order dated 29/03/2023 directing the legal heirs of plaintiff to file application making it clear that while executing the decree whether it should be as per a Will executed by the deceased plaintiff or as per the Succession Act. It appears that thereafter order dated 04/05/2023 is passed directing to bring on record the names of the legal heirs of deceased plaintiff Baburao. The learned Tehsildar was directed to hand over the possession as per the Chart. This order of Tehsildar was challenged by the defendant No.1 by filing Revision Application No.143/2023. The said revision application came to be rejected and order passed by Tehsildar dated 04/05/2023 was confirmed. On perusal of order, it is seen that every aspect is taken into consideration and there is well reasoned order passed by the learned Commissioner. It is specifically observed that at the time of measurement, the son of defendant No.1 Vishwas Shankar Nalawade was present. The learned Commissioner also held that Tehsildar is having a

power to bring on record legal heirs of deceased while proceeding as per precept. Moreover, the defendant Nos.2 to 6 extended their no objection for allotting share of deceased plaintiff to the legal heirs of plaintiff. In between, the defendant Nos.2 to 6 filed a Civil Misc. Application No.89/2023 to the Civil Court wherein on 02/12/2023, a Legal Heirs Certificate was issued. As such, there is no perversity or an error in the orders passed by the Tehsildar, Umerkhed as well as by the Divisional Commissioner, Amravati.

20. The most important is that the Petitioner has never raised any ground of unequal partition. The person who claims that there is unequal partition, he has to substantiate the same. However, in this matter, in spite of granting ample opportunity, the Petitioner failed to raise these objections, whereas the plaintiff as well as defendant Nos.2 to 6 have no objection to the Chart prepared by the DSLR. The Tehsildar passed the orders after granting due opportunity to both the

sides. It appears that all deliberate attempt were made by Petitioner to prolong the execution of decree.

21. As such, there no substance in the Petition. The Writ Petition stands **dismissed**. No order as to costs.

(SMT. M.S. JAWALKAR, J.)

Kirtak