



(This order is corrected as per order dated 18.01.2024)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.11690 OF 2023

Mohan Shaligramji Sonawane,
Age : 34 years, Occu. Service,
R/o Saraswati Nagar, Parbhani.

... **Petitioner.**

Versus

1. Shri Mahant Akhileshwar Guru,
Raghunathji @ Jankidas Shri Vaishnav,
Age : 29 years, Occu. Mahant,
R/o Balaji Temple, Subhash Road, Parbhani.
2. Hon'ble Minister of Revenue,
Animal Husbandry and Diary Development,
Maharashtra State, Mantralaya, Mumbai.
3. Additional Divisional Commissioner,
Chhatrapati Sambhajinagar Division,
Chhatrapati Sambhajinagar.
4. Additional Collector,
Parbhani, District Parbhani.
5. Sub Divisional Officer,
Tq. and Dist. Parbhani.
6. Talathi, Parva,
Tq. and Dist. Parbhani.
7. Mahadev Subhashappa Chaudhari,
Age : 47 years, Occu. Business,
R/o Vasmata Road, Shivramnagar,
Parbhani.
8. Shamdas Mohanlal Ramavat,
Age : 60 years, Occu. Agri. and service,
R/o. Marwad Galli, Parbhani.
9. Dhondiraj Vishwanath Khakare,
Age : 50 years, Occu. Business,

R/o Vishwapadmini, Behind Shivram Chitramandir,
Shivram Nagar, Parbhani.

10. Maya Dhondiraj Khakare,
Age : 45 years, Occu. Household,
R/o Vishwapadmini,
Behind Shivram Chitramandir,
Shivram Nagar, Parbhani. ... **Respondents.**

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Advocate for the Petitioner : Mr. V. J. Dixit (Senior Counsel) i/b
Mr. Dixit Sushant V.
AGP for Respondent/s-State : Mrs. M. L. Sangit.
Advocate for Respondent No.1 : Mr. D. S. Bagul.
Advocate for Respondent Nos.7,9,10 : Mr. B. R. Warama.
Advocate for Respondent No.8 : Mr. A. G. Deshmukh h/f
Mr. Amol Ashok Kokad.

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CORAM : S. G. MEHARE, J.
DATE : 08.01.2024

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally
by the consent of the parties.

2. The petitioner claimed to be the Devotee of Balaji Temple, Parbhani. He had raised the dispute about the title of respondent No.1 about the agricultural field Gut No.155 (suit field) of Village Parva, Taluka and District Parbhani. It is the case of the petitioner that Sundarabai, who was the owner of the suit field, had bequeathed the suit field to Balaji Temple, Parbhani, by a Will dated 07.11.1971. The first Mahant Jankidas @ Raghunathdas Shri Vaishnav had applied to the

Revenue Authority to mutate the suit field in the name of Balaji Temple, Subhash Road, Parbhani. Mutation entry No.333 was recorded on his application, and the suit field was again shown as the property of Balaji Temple, Subhash Road, Parbhani in consolidation proceeding. The first Mahant Jankidas @ Raghunathdas Vaishnav had applied to the Assistant Charity Commissioner, Parbhani, to record the suit field as a trust property on 17.08.2009. However, he withdrew that application. Thereafter, first Mahant Jankidas applied for mutation on the basis of another bogus Will of Sundarabai dated 06.11.1971. Mutation entry No.1816 was recorded and sanctioned. After the death of the first Mahant Jankidas, respondent No.1 applied to the Tahasildar to record the name of the temple in the revenue record on 24.04.2020. The S.D.O. sent a request letter to the Government for leave to review mutation No.1816. However, that application is still pending. In the meantime, respondent No.1 filed an application for an heirship certificate. It was granted. Respondent No.1 applied for mutation, and it was recorded as mutation No.2206. The Circle inspector did not sanction that mutation. Respondent No.1 had preferred an appeal before the S.D.O. against that refusal. The S.D.O. allowed the appeal and recorded mutation No.2285 in his name. Taking advantage of the mutation,

respondent No.1 sold the suit field to respondent Nos.7 to 10 by a registered sale deed. Respondent No.8 sold it to Mr. Subhash Ambilwade and his family.

3. The petitioner had applied for the revocation of that certificate. Respondent No.1 applied under order 7 rule 11 of the Civil Procedure Code for rejection of the revocation application. The Court of the first instance rejected that application. This Court also dismissed his revision against that order. The Hon'ble Supreme Court also maintained that order. The said revocation application is still pending.

4. The order of S.D.O and Additional Collector about mutation No.2285 was impugned before the Additional Commissioner. The Additional Commissioner allowed the appeal. Respondent No.1 preferred a revision before Respondent No.2. He allowed the revision. Against the said order, the present petition has been filed.

5. Learned counsel for the contesting respondent has vehemently argued that the petitioner has no locus to impugn the mutation entry as a devotee of the temple for the simple reason that the suit field was never registered as a trust property in the public trust register. The Additional

Commissioner (Revenue) deliberately neglected this aspect. He, without jurisdiction, had discussed the legality and validity of the Will deed in question. He had no jurisdiction to deal with such issues. He also added that the revocation of the heirship certificate proceeding is still pending before the Civil Court. *Prima facie* respondent No.1 is a recognized heir of the first Mahant. Learned counsel for respondent No.1 to support his case relied on the case of ***Manikchand Hiralal Nahar and others Vs. State of Maharashtra and others ; 2018 (1) Mh.L.J. 379***. They have prayed to dismiss the writ petition as the Additional Collector has correctly held that the petitioner has no locus to impugn the mutation entries.

6. Per contra, learned senior counsel for the petitioner referred to the findings of this Court and argued that it has been held that the objection raised by the petitioner could be entertained before the Succession Court. However, he did not deny that at no point in time, the present petitioner, being a Devotee of the Balaji Temple, ever applied before the Assistant Charity Commissioner for adding the suit field as a trust property in pursuance of the earlier mutation entry No.333 based upon the Will deed dated 07.11.1971. He also tried at his level best to convince the Court that the intention of

Sundarabai was to entrust the suit field to the trust to get the *Moksha*. He also added that the respondents are alienating the suit lands. The petitioner is apprehensive that the entire property bequeathed by Sundarabai would be disposed of, which would cause damage to the trust property. Admitting the law on the issue of dealing with the property of the trust, he also requested the Court that the respondent be restrained from alienating the property till an appropriate remedy is availed before the proper forum.

7. Considering the root cause of the dispute, it is to be examined whether the plaintiff, as a Devotee of Balaji Temple, has a locus to impugn the mutation entries and the title of Respondent No.1. The petitioner has a specific case that the testator Sundarabai bequeathed suit field bearing Survey No.155 to Balaji Temple Trust. One way or another, to date, that property is not registered in the public trust register with the Office of the Charity Commissioner. Unless the property is registered as a trust property, *prima facie*, the petitioner cannot claim or object to the rights and title acquired by respondent No.1 under the disputed Will dated 06.11.1971. It appears that there are two Will deeds. One is dated 06.11.1971, and the other is dated 07.11.1971. The record also reveals that in

pursuance of the Will dated 07.11.1971, the mutation entry bearing No.333 was recorded in the name of the Balaji Temple. The record also reveals that the first Mahant Raghunathdas Shri Vaishnav had applied to the Assistant Charity Commissioner, Parbhani, for adding the suit field as a trust property, but it was withdrawn. Hence, it was not registered in a public trust register. If the petitioner is coming with a case that the suit land is a trust property, all these issues should be governed under the Maharashtra Public Trust Act. It is a complete code for disputes regarding the management, trustees, and trust's properties. That apart, a proceeding for revocation of the legal heir certificate granted in favour of respondent No.1 is also sub-judice before the Court. Considering that the suit land is not yet registered as trust property, it is difficult to accept the petitioner's contention that he, being the Devotee of that temple, has a locus to impugn the mutation entries. Considering the facts of the case, the ratio laid down in the case of *Manikchand (supra)* is squarely applicable to the facts and circumstances of the case.

8. For the above reasons, the writ petition stands dismissed, as the petitioner has no locus to impugn the mutation entries. The petitioner is at liberty to approach the proper forum.

9. No order as to costs.
10. Rule stands discharged.

(S. G. MEHARE, J.)

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