



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

938 WRIT PETITION NO. 12437 OF 2024

VITHAL GOVINDRAO MANGNALE

VERSUS

THE STATE OF MAHARASHTRA THROUGH DY COLLECTOR AND LAND
ACQUISITION OFFICER AND OTHERS

...

Mr. Shreyas Deshpande i/b. Mr. Chetan B. Chaudhari, Advocate for the
Petitioner

Mr. A. A. A. Khan, AGP for Respondent No.1/State

Mr. S. N. Janakwade, Advocate for Respondent No.2

...

CORAM : AJIT B. KADETHANKAR, J.

DATE : 12.03.2026

PER COURT :-

. Rule. Rule made returnable forthwith. Considering the nature of controversy involved in the writ petition, the matter is taken up for final disposal with the consent of the parties.

Subject Matter :-

2. An order passed by the 2nd Joint Civil Judge, Senior Division, Nanded on 12.09.2024 in Land Acquisition Reference No.52 of 2020 is under challenge. Vide the impugned order, the learned Civil Judge has allowed an application filed by respondent No.2 under Order I Rule 10 of Civil Procedure Code, whereby the applicant therein is directed to add present respondent No.2 in the array of respondents in the petition.

Brief facts of the case :-

3. The petitioner contends to have purchased Plot bearing No.5/A

situated at Survey No.69/B admeasuring 45.73 sq. meters located at Mouja Vasarni within the municipal limits of Nanded Municipal Corporation. The suit property is purchased vide a registered instrument bearing Registration No.4127 in the year 2005. The said property is the subject matter of compulsory land acquisition at the hands of the State authorities. Accordingly, acquisition proceedings were conducted, which ultimately gave rise to Land Acquisition Reference No.52 of 2020 filed at the behest of the present petitioner before the Court of learned Civil Judge, Senior Division, Nanded.

4. During the pendency of the reference, respondent No.2 filed an application under Order I Rule 10 of the Code of Civil Procedure for being arrayed as a party. It was the contention of the applicant therein that the subject property was purchased by the present petitioner out of joint family income and that, on the basis of a document styled as “Vatanipatrak” i.e. a partition deed purportedly executed on 11.02.2013, the original applicant (respondent No.2) had a 40% share in the said property.

5. The original applicant (respondent No.2) also relied upon certain mutation entries which would show that his name was entered in the mutation record in respect of Survey No.69/B of Plot No.5/A. On the basis of these documents, respondent No.2 contended before the learned Reference Court that the application be allowed and he be added as a party, being a stakeholder in the reference proceedings.

6. The said application was opposed by the present petitioner. The petitioner submitted that the subject property was not a part of any partition deed. Rather, the registered sale deed demonstrates that he has purchased the said property independently out of his self-earned income. The petitioner also relied upon the statements made by respondent No.2 in Writ Petition No.5781 of 2022. Learned counsel Mr. Deshpande submitted that respondent No.2 had

candidly stated on oath in the said writ petition that the alleged partition deed was bogus and denied the same. It was further submitted that mutation entries, being fiscal in nature, do not by themselves confer any right, title, or interest in favour of the applicant. The petitioner, therefore, prayed for rejection of the application.

7. After hearing both the parties, the learned Reference Court appears to have been impressed by the documents produced on behalf of respondent No.2, namely the partition deed, Mutation Entry No.9779, and the 7/12 extract referring thereto. The learned Reference Court found *prima facie* that respondent No.2 was a stakeholder in the subject property and, hence, allowed the application. The impugned order came to be passed on 12.09.2024. Being aggrieved, the petitioner is before this Court.

Submissions on behalf of the parties :-

8. I have heard the learned counsel for the parties as well as the learned AGP extensively. Mr. Deshpande, learned counsel for the petitioner, invited my attention to the copy of the sale deed at page No.28 (Exhibit-C). The recitals of the sale deed show that the petitioner purchased the said property from its previous owner, namely S.D. Associates. Notably, this document nowhere makes any reference to respondent No.2 having any concern with the said property. Learned counsel then invited my attention to the partition deed (Exhibit-B at page No.26), on which respondent No.2 has heavily relied and which forms the basis of the impugned order. The title and contents of the document show that it is styled as a partition deed and purportedly executed between the parties through mutual consent. It is pertinent to note that the said instrument is scribed on a non-judicial stamp paper of Rs.100 and is not a registered document. It is further submitted that the petitioner has already filed a civil suit for partition, which was withdrawn,

and a fresh suit has been instituted wherein respondent No.2 is a party. Learned counsel submits that the application ought not to have been allowed merely on the basis of the said unregistered partition deed and mutation entries. He submits that if, in the civil proceedings, respondent No.2 succeeds in establishing that the property was purchased from joint family income, he may seek appropriate relief at the relevant time.

9. Mr. S. N. Janakwade, learned counsel for the respondent No.2 has strenuously objected the writ petition. Mr. Janakwade, learned counsel was at pains to take me to the mutation entries forming part of his compilation. The mutation entries indicate the name of respondent No.2 in respect of the land bearing Survey No.69/B, Plot No.5/A. He submitted that the said entry is based on Mutation Entry No.9779, which in turn refers to a consent deed executed on non-judicial stamp paper of Rs.100.

10. Learned counsel placed heavy reliance on the document styled as a partition deed and submitted that the property described in Clause No.2 therein is the same property which is the subject matter before the Reference Court. He further submitted that the petitioner, in the civil proceedings, deliberately avoided including the subject property in the suit; however, by way of counterclaim, respondent No.2 brought it on record. He contended that the documents produced were sufficient for the learned Reference Court to conclude that respondent No.2 is a necessary party. To conclude, Mr. Janakwade, learned counsel would submit that the writ petition be dismissed and the order be upheld.

Discussion and findings :-

11. With able assistance of the learned counsel for the parties, I have perused the record and the reasoning of the learned Reference Court. It appears that Clause No.5 of the impugned order shows that reliance has been

placed on the partition deed and mutation entries. The document styled as a partition deed is admittedly unregistered and insufficiently stamped. It is settled law that a partition deed is compulsorily registrable under Section 17 of the Registration Act, and it must also bear proper stamp duty as per the applicable Stamp Act. Such a document cannot be relied upon for any legal purpose.

12. Further, at page No.42 (Exhibit-E), an application filed by respondent No.2 before the Tahsildar, Kandhar, reveals that in paragraph No.4, respondent No.2 himself has stated that the alleged partition deed of 2013 was fraudulently created by the present petitioner and has denied his signatures thereon. Similarly, in Writ Petition No.5781 of 2022 (page No.51), respondent No.2 has, on oath, denied the existence and execution of the said partition deed.

13. It is trite law that mutation entries are only for fiscal purposes and by themselves do not confer or derive title on a party. The title in a suit is derived by a legal and valid instrument of transfer, and as such, the learned Reference Court ought not to have casually examined this aspect of the matter. It was before the Reference Court that the mutation entries were corresponding to the instrument relied upon by Respondent No. 2, which is styled as a Vatani Patrak (partition deed) (supra). The said document, even at a *prima facie* stage, does not appear at all convincing from a legal point of view.

14. Therefore, I am of the considered view that the learned Reference Court has committed an error in exercising jurisdiction while allowing the application under Order I Rule 10 of the Code of Civil Procedure.

15. Needless to mention, the respondent No.2 has every right to establish his interest in the subject matter property in the civil suit that is

pending between the parties.

ORDER

- a. The writ petition is allowed.
- b. The impugned order (Exhibit 'H') dated 12.09.2024 passed by the learned 2nd Joint Civil Judge, Senior Division, Nanded is quashed and set aside.
- c. It is clarified that the observations made in this order shall not affect the civil proceedings pending between the parties. The concerned Civil Court shall decide the same on its own merits and in accordance with law, without being influenced by any observations made herein.
- d. Rule is made absolute in above terms.

[AJIT B. KADETHANKAR, J.]

PRW