
(2001) 07 BOM CK 0028
In the Bombay High Court
Case No : Writ Petition No. 1340 of 2000

Nalini Patil

APPELLANT

Vs

Girdhar Kashinath Patil and Others

RESPONDENT

Date of Decision : 27-07-2001

Acts Referred:

Maharashtra Land Revenue Code, 1966 — Section 149

Citation : (2002) 2 BomCR 287 : (2002) 4 MhLj 728

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : A.H. Vaishnav, for the Appellant; Sunil Kulkarni, for respondent Nos. 1 and 2 and Umakant Patil, Asstt. Government Pleader, for the Respondent

Final Decision : Partly Allowed

Judgement

R.M.S. Khandeparkar, J.—The petition arises from the judgment and order dated 31st December 1999 passed by the Additional Commissioner, Nashik allowing the revision application filed by the respondents Nos. 1 and 2 against the order of the Additional Collector, Jalgaon dated 19th January 1999. The Additional Collector, Jalgaon in RTS Appeal No. 56/98, by the said order of 19th January 1999, had allowed the appeal filed by the petitioner against the order of the Sub Divisional Officer Bhusawal dated 6th April 1998. The said Sub-Divisional Officer, Bhusawal by his order dated 6th April 1998 in RTS Revision No. 47/97 had rejected the revision application filed by the petitioner against the mutation of entry No. 1319 and other mutation entries carried out by the Talathi of village Rajore on 27th July 1995 pursuant to application stated to have been filed by one Onkar Patil.

2. It is the case of the petitioner that Onkar Pandurang Patil was her husband and he had purchased agriculture land being Gut No. 205 admeasuring 46 area in the village of Rajore by a deed dated 5th February 1979 for a consideration of Rs. 9000/-. Pursuant to the purchase of the property, mutation of entry, in record of rights was carried out under No. 1086 in favour of Onkar Patil in relation to the said property. It is further contention of the petitioner that the said property was

self acquired property of Onkar Patil as it was purchased out of his own income and it was not forming part of the joint family property. Oral partition of the ancestral properties of the family consisting of Onkar Patil and his three brothers - Kashinath, Pandit and Bhagwat was carried out and it was recorded in the form of Smaran Patra same did not include the said property. It is further case of the petitioner that Onkar Patil converted the said property into non-agricultural land and divided the same into 9 plots and it was also recorded in "Hakka Nondani Patra" in Form No. 6 in the name of Onkar Patil. The respondents No. 1 and 2 are the nephews of Onkar Patil. It is contention of the petitioner that an application in the name of Onkar Patil came to be filed with the Talathi of Rajore on 27th April 1995 requesting for deletion of name of Onkar Patil and inclusion of the respondent No. 1 in his place in relation to the said property for the reasons stated in the said application. According to the petitioner even before the receipt of the said application, the Talathi of Rajore caused mutation of entry by deleting the name of Onkar Patil and by including the name of respondent No. 1 in relation to the said property on 24th April 1995 i.e. three days prior to the submission of the said application. It is further case of the petitioner that no notice of the said application was received by Onkar Patil before the mutation of entry was caused. Said Onkar Patil expired on 7th of April 1996. Meanwhile, on 5th December 1995 the respondent No. 1 executed sale-deeds in respect of plots Nos. 5 to 8 of the said property in favour of respondent No. 2 as Chairman of Onkar Sahakari Grah Nirman Sanstha Maryadit, Rajore. Based on the said sale-deeds mutation entries Nos. 1327 to 1330 were sanctioned by the Talathi of Rajore in favour of the respondent No. 2 on 21st June 1996. Thereupon the petitioner filed revision application RTS No. 47 of 1997 before the Sub Divisional Officer, Bhusawal against the mutation entry No. 1319 as well as subsequent mutation entries in relation to the said property. The said revision application was rejected by the Sub Divisional Officer on 6th April 1998. As already observed above, RTS Appeal No. 56/98 against the said order of the Sub-Divisional Officer was allowed by the Additional Collector by his order dated 19-1-1999. However, the same was set aside by the Additional Commissioner, Nashik in RTS Revision No. 85/1999. Meanwhile, the petitioner also filed Special Civil Suit No. 74 of 1998 in the court of the Civil Judge, Senior Division, Jalgaon for declaration of ownership and injunction against the respondents No. 1 and 2. Though, initially by order dated 5-3-1998 status quo order was passed by the Civil Court the same was vacated on 16th October 1998. Appeal from Order No. 118 of 1998 against the order of the trial Court was dismissed by the High Court on 21-12-1998 with the observation that the construction in the suit plots would be subject to the final outcome of the suit. Meanwhile on 11-3-1999 respondents No. 1 and 2 paid stamp duty on an application dated 27-7-1995 and the said stamp duty was collected by the Collector with his endorsement thereof.

3. While assailing the impugned order, the learned advocate for the petitioner has submitted that the Talathi, while exercising powers u/s 149 of the Maharashtra Land Revenue Code 1966 regarding mutation of entries in the

revenue records, is not entitled to cause mutation of any entry unless the party, requesting for such mutation, produces before the authority, a lawful and duly stamped and registered document regarding acquisition of right when the property in question is worth Rs. 100/- and above. The property having been purchased by Onkar Patil in 1979 for a sum of Rs. 9000/- assignment of any right in respect thereof in favour of any other person cannot be otherwise than duly stamped and registered document and since the application dated 27-7-1995 was not accompanied by any such document, the Talathi had no authority to cause any mutation in relation to the said property. Grievance was also made regarding the mutation entry having been made much prior to the filing of the application of 27th July 1995 itself and in that regard the certified copy of the mutation entry was produced disclosing the entry having been effected on 24th July 1995 though the application stated to have been filed on 27-7-1995. Referring to Section 154 of the Code, it was submitted that it is obligatory for the registering authority to intimate the Talathi of the concerned village about the registration of the agricultural land or in respect of which a record of right has been prepared within stipulated time. Reference was also made to three Government Circulars dated 20th March 1992, 8th July 1992 and 26th May 1995 explaining the scope of powers of Talathi while acting u/s 149 of the Code and issued by the Government of Maharashtra for the purpose of guidance of the Talathi in that regard. Reference was also made to Rule 11 of the Maharashtra Land Revenue Record of Rights And Registers (Preparation And Maintenance) Rules, 1971. (hereinafter called as "the said rules"). It refers to Section 154 of the Code and provides for causing necessary entries in the register of mutation pursuant to receipt of the intimation regarding registration of the document from the registering authorities. In spite of all these provisions of laws specifically providing that the mutation of entries pursuant to the acquisition of rights can be effected only after proper document in that regard is produced, according to the learned advocate for the petitioner, the Talathi having caused the mutation of entries in contravention of the said provisions of law, the same was liable to be quashed and set aside, and therefore there was no justification for the Additional Commissioner, Nashik to interfere with the order of the additional Collector, Jalgaon. The learned advocate for the petitioner has also sought to challenge the mutation of entry on the ground that the property is not joint family property but a self acquired property of Onkar Patil and, therefore there was no occasion for Onkar Patil to convey the property in favour of respondent No. 1 in the manner which is stated to have been conveyed in the application dated 27-7-1995 and that itself shows that the application was a fabricated one and was not actually filed by Onkar Patil. Reliance is also sought to be placed in the decision in the matter of Mangal Prasad Vs. Vth Additional District Judge, Basti and others, and Ram Gati Chaube Vs. Ran Adhar Chaube, in support of the contentions on behalf of the petitioner.

4. On the other hand, the learned advocate appearing on behalf of the respondents Nos. 1 and 2 has submitted that the Talathi is duly empowered to

cause necessary mutation of entries pursuant to the oral as well as written intimation about acquisition of right to any immovable property within the limits of the village in respect of which the Talathi is in charge. Once it is apparent that by the application dated 27-7-1995, the Talathi was duly informed about acquisition of right in favour of respondent No. 1 by none other than the person to whom the property belonged to, no fault could have been found with the mutation of entry caused by the Talathi in respect of the property in question. Referring to Section 149 of the Code, it was sought to be contended that the mutation of entry is to be effected for collateral purposes. It was further submitted that it is only for recovery of land revenue and not for any other purpose that such entries are made and such entries do not recognise any right or title in respect of the property in favour of the persons in whose favour the entries stands. Besides, Section 149 of the Code itself states that the Talathi can cause mutation of entry on oral or written intimation of the acquisition of right by the party and, therefore, there is no scope for finding fault with the mutation entry No. 1319 by the Talathi of the village Rajore effected on 11th August 1995. The contention on behalf of the petitioner that the application dated 27-7-1995 was a fabricated application was strongly objected to by the learned advocate for the respondents by contending that the very fact that the petitioner had filed to secure any equitable relief from the Civil Court apparently discloses that the contention in that regard on behalf of the petitioner is absolutely devoid of substance. According to the learned advocate for the respondents, there is no substance in the contention on behalf of the petitioner that the application was filed on 27th July 1995 whereas the order was passed on 24th of July 1995. According to the learned advocate for the respondents, therefore, no interference is called for in the impugned judgment and order of the Additional Commissioner, Nashik.

5. Section 149 of the Code provides that any person acquiring by succession, survivorship, inheritance, partition, purchase mortgage, gift, lease or otherwise, any right as holder, occupant, owner, mortgagee, landlord Government lessee or tenant of the land situated in any part of the State or assignee of the rent or revenue thereof, shall report orally or in writing his acquisition of such right to the Talathi within three months from the date of such acquisition, and the said Talathi shall at once give a written acknowledgment of the receipt of such report to the person making it : provided that, where the person acquiring the right is a minor or otherwise disqualified, his guardian or other person having charge of his property shall make the report to the Talathi: provided also that, where a person claims to have acquired a right with the permission of the Collector where such permission is required under the provisions of this Code or any law for the time being in force, such person shall on being required by the Talathi so to produce such evidence of the order by which such permission is given as may be required by rules made under this Code. Explanation I to Section 149 provides that the rights mentioned therein include a mortgage without possession, but do not include an easement or a charge not amounting to a mortgage of the kind

specified in Section 100 of the Transfer of Property Act, 1882. Explanation II provides that a person in whose favour a mortgage is discharged or extinguished or lease determined, acquires a right within the meaning of the said section. Explanation III states that for the purpose of the said Chapter, the term "Talathi" includes any person appointed by the Collector to perform the duties of a Talathi under the said Chapter.

6. Section 149 is found in the Code under Chapter X which deals with Land records. It is classified in Part "A" of the said Chapter, which deals with Record of Rights. Section 148 therein specifies that record of rights to be maintained in every village and such record shall include the particulars regarding the names of the persons in occupation of the property, their respective interests as well as conditions or liabilities attached thereto, rent or revenue if any payable by or any two of such persons and any other particulars which State Government may prescribe by rules made in that behalf. Section 150 of the Code pertains to register of mutations and register of disputed cases. Sub-section (2) thereof provides that whenever a Talathi makes an entry in the register of mutations, he shall at the same time post up a complete copy of the entry in a conspicuous place in the Chavdi, and shall give written intimation to all persons appearing from the record of rights or register of mutations to be interested in the mutation, and to any other person whom he has reason to believe to be interested therein. Sub-section (3) provides that when any objection to any entry made under Sub-section (1) in the register of mutations is made either orally or in writing to the Talathi, it shall be the duty of the Talathi to enter the particulars of the objections in a register of disputed cases. The Talathi shall at once give a written acknowledgment for the objection to the person making it in the prescribed form. Sub-section (5) provides that the transfer of entries from the register of mutations to the record of rights shall be effected subject to such rules as may be made by the State Government in that behalf and provided that an entry in the register of mutations shall not be transferred to the record of rights until such entry has been duly certified. Proviso to Sub-section (6) provides that no entry shall be certified unless notice in that behalf is served on the parties concerned. Section 151 deals with obligation to furnish to information, obligation to furnish entries from record of rights etc. to holder or tenant in booklet form and to maintain booklet etc.

7. Section 154 which is yet another section, which has been heavily relied upon by the petitioner, provides that when any document purporting to create assign or extinguish any title to, or any charge on, land used for agricultural purposes, or in respect of which a record of rights has been prepared is registered under the Indian Registration Act, 1908, the officer registering the document shall send intimation to the Talathi of the village in which the land is situate and to the Tahsildar of the taluka, in such form and at such times as may be prescribed by rules made under the Code. Section 157 provides that an entry in the record of rights and a certified entry in the register of mutations shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefore.

8. Section 156 of the code provides that in addition to the map, the registers and the record of rights, there shall be prepared for each village such other land records as may be prescribed. The term "prescribed" has been defined in Section 2(28) to mean prescribed by the rules made by the State Government under the Code. The State Government has framed the said rules. Inter alia, the same provides for detail procedure in the matter of preparation of record of rights pertaining to the properties in the State. Rule 8 therein fixes the responsibility for maintenance of record of rights and register of mutations in relation to each village with the Tahsildar within whose jurisdiction the village is situated. In terms of Rule 11 the Tahsildar is required to make necessary entries in the register of mutations. The rule provides that as soon as an intimation regarding registration of documents referred to in Section 154 of the Code is received by the Talathi, he shall make separate entries in the register of mutations in respect of the mutation effected by each of the said documents. Rule 12 thereof provides that where rights in any land are acquired as a result of transfer of such land, and such transfer required the previous permission of the Collector, the Talathi shall require the person making the report to him u/s 149 to produce before him such permission or such evidence of the order by which such permission or evidence is produced, the Talathi shall record this fact at the end of the entry in column 2 of the mutation register. If the permission is obtained but not produced, or such permission is not at all obtained, the Talathi shall record this fact also as aforesaid.

9. Yet, another relevant provisions of law, though not referred to by the parties but very much necessary to be considered is rule 9 of the said Rules, 1971. It provides that the acknowledgment of the receipt of the report made by any person u/s 149 shall be made in Form VII The Form VII prescribed thereunder reads thus :

"FORM VII (See Rules 9 and 22) Form of Acknowledgment of the Report Regarding Acquisition of Right. Received from _____ of village _____ taluka _____ on _____ 19 ____ a report orally/in writing regarding the acquisition of rights in respect of Survey No. _____ Sub-division No. _____ of _____ village, in the _____ taluka with the following documents in support thereof. Date: _____ Place : _____ Talathi of _____"

10. Bare reading of Section 149 discloses that question of mutation of entry by the Talathi on oral or written intimation in that regard by any person can arise only in case where the person has acquired some right to the immovable property in the concerned village. The section indicates various modes of acquisition of rights in such properties, which can entitle the party to request for necessary mutation of entry in relation to such properties in the record of rights. The modes of acquisition of rights specified therein are by way of succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise. Considering the phraseology of the section, it is but natural that the expression

"otherwise" has to be read ejusdem generis with the preceding expressions. It cannot be disputed that for the purpose of acquisition of right in immovable property either by way of succession, or survivorship, or inheritance or partition or purchase or mortgage or gift or lease, there are various statutory provisions indifferent statutes. None of those statutory provisions would entitle any person to claim right to any immovable property by any of the modes specified in the said section otherwise than by following the procedure prescribed under the respective statutes. These provisions of law invariably provide for necessary documentation either by way of deeds inter vivos or by way of order of the court or the authority. The provisions contained in the Indian Registration Act as well as in the Indian Stamp Act provide that such document relating to a property worth Rs. 100/- and above is not only required to be registered with the registering authority but is also required to be properly accompanied by necessary stamp duty. No doubt, if the stamp duty even is found to have been paid less, the deficiency can be subsequently remedied by paying necessary penalty but the same has to be by following the procedure prescribed in that regard. This clearly discloses that the acquisition of right in respect of immovable property worth Rs. 100/- and above to be intimated to the Talathi u/s 149 of the Code for the purpose of mutation of entry, must be by way of appropriate document and not otherwise. The conclusion to this effect is inevitable from various other provisions in the Code and other statutory provisions of law relating to the matter.

11. As rightly submitted by the learned advocate for the petitioner, Section 154 of the code makes it obligatory for the registering authority to give necessary intimation to the Talathi of the concerned village, moment a document in relation to the agricultural land or in respect of which record of rights is created is registered under the said Act before such registering authority. In other words, every document of conveyance of right in any immovable property specified u/s 154 of the code, moment is subjected to registration, the intimation in that regard has to follow to the Talathi of the concerned village. This is also apparent from the second proviso to Section 149 of the Code itself. The said proviso exempts the person acquiring right to the property by virtue of any registered document from informing about his acquisition of right to the Talathi. This further discloses that it is only in case of a document which is not required to be registered in accordance with the Indian Registration Act, that the Talathi can act for the purpose of mutation of entry u/s 149 on an application or oral intimation without being accompanied by the document in support of the claim of acquisition of right. Such an eventuality naturally would arise only in case of immovable property worth less than Rs. 100/- and not otherwise. This is clear from rule 9 of the said Rules and the Form prescribed thereunder. Form VII which prescribes the form of receipt regarding the oral or written intimation by a person regarding acquisition of right u/s 149 for the purpose of mutation of rights specifically provides for the application to be accompanied by the documents in support of such application.

12. It is, therefore, clear that while exercising powers for mutation of entry pursuant to the request in that regard either orally or in writing by a person claiming to have acquired right as specified u/s 149 of the Code, the Talathi is required to insist and to consider the documentary evidence in support of such claim before effecting any mutation of entry when the property apparently appears to be worth Rs. 100/- or above. Undisputedly the property in question admeasures 46 acres in area. It was purchased by Onkar Patil in 1979 for a sum of Rs. 9000/-. Once this fact is not in dispute, it was but necessary that the application ought to have been accompanied by the necessary document of conveyance of right therein. The provisions of Section 149 of the Code are to be harmoniously interpreted. There is no doubt that the Code basically relates to the land revenue and the matters connected thereto as has been submitted by the learned advocate for the respondents No. 1 and 2. However, simultaneously the various provisions contained therein in the Code and particularly Section 157 thereof clearly gives presumptive value to the entries made in the record of rights as well as in the register of mutations and bearing the same in mind the authority acting u/s 149 cannot be presumed to have unbridled and unguided powers. Any other interpretation of Section 149 and permitting the Talathi to cause mutation of entries on mere applications by the parties without any support of a lawful document in respect to the claim of acquisition of rights to the immovable property may virtually amount to giving carte blanche to the authority to cause any entry in those records and such power can certainly be misused by such authority and there cannot be a better example of such instance than the case in hand.

13. The learned advocate for the petitioner is justified in placing reliance on the decision of the Full Bench of Allahabad High Court in Ram Gati Chaube "s case. The Full Bench therein has held that as the compromise application declared rights to immovable property worth more than Rs. 100/-, required registration u/s 17(1) and having not being registered, it was ineffective and inadmissible in evidence. So also, in Mangal Prasad"s case the learned single Judge of the Allahabad High Court has held that if the document is a recognition of pre-existing right then it can be called the memo of partition but when the rights are created or extinguished by the document, the same requires registration, Section 149 of the Code clearly speaks about acquisition of right and it does not speak about existing rights. Question of mutation u/s 149 of the Code would arise only when there is a transfer of right from one person to another in relation to any immovable property and not otherwise. The rights may be transferred by different modes specifically referred to u/s 149 but it basically speaks about the change of interest of one person in favour of another person in relation to the immovable property. Certainly such change or transfer of interests or rights in the property, which are referred to in the said section, are to be supported by necessary documentary evidence. Needless to say the documentary evidence must be a document which can lawfully create a right and not otherwise. As already observed that in case of immovable property worth Rs. 100/- and above

right therein cannot be said to have been conveyed in favour of another person by one person unless necessary document in writing in that regard is executed with payment of proper stamp duty thereon and the same is registered under the Indian Registration Act.

14. Undisputedly the application which is dated 27-7-1995, but contended to be of 24th July 1995 by the respondents without going into the said controversy regarding the date of the application, the fact remains that the same was not supported by any documentary evidence regarding transfer of right in relation to the property in question from Onkar Patil to either respondent No. 1 or to any other person. Equally it is true that, on 11th March 1999 certain stamp duty was paid on the application dated 27-7-1995. However the document of payment of stamp duty does not disclose the prescribed procedure for the purpose of impounding an instrument had been followed, nor it is the case that the relevant application itself was impounded in accordance with the provisions of law provided under the Indian Stamp Act. Being so, for all purposes there was no document disclosing acquisition of right in favour of respondent No. 1 so as to warrant mutation of entry No. 1319 by the Talathi of Rajore. Once the entry No. 1319 is held to be bad in law all subsequent entries are also required to be quashed as all the subsequent entries were made on the basis of mutation entry No. 1319 in favour of respondent No. 1 and once the said entry in favour of respondent No. 1 itself is to be quashed, needless to say that all the subsequent entries in relation to the said property are also required to be quashed and the original entry in favour of Onkar Patil made under entry No. 1086 to be restored.

15. The petitioner also seeks to challenge the claim by the respondent No. 1 to the suit property based on the application dated 27-7-1995. The question relating to ownership of property is undisputedly is pending before the Civil Court in Special Civil Suit No.74 of 1998. Besides, it is a disputed question of fact and cannot be gone into in the writ petition. All other points which are sought to be challenged in the petition therefore cannot gone into in this petition and undisputedly the parties are at lis in relation to the property in question before the Civil Court and, therefore, any observations in relation to the issues which may arise for consideration in the said suit would prejudice the rights of the parties and, therefore, it is necessary to restrain from making any comments in respect of those matters.

16. In the result, the petition partly succeeds. The impugned judgment and order dated 31st December 1999 in RTS Revision No. 85 of 1999 passed by the additional Commissioner Nashik as well as the judgment and order dated 6th April 1998 passed by the Sub Divisional Officer, Bhusawal division, Bhusawal in RTS revision No. 47 of 1997 as well as the mutation entry No. 1319 by the Talathi of village Rajore in relation to the said property and the subsequent entries in relation to the said property in Record of Rights and Register of Mutations are hereby quashed and set aside and the mutation entry No. 1086 in favour of Onkar Patil is hereby restored along with the confirmation of the order

dated 19th January 1999 of the Additional Collector Jalgaon in RTS Appeal No. 56 of 1998.

17. Rule is made absolute in the above terms with no order as to costs.

18. Certified copy expedited.