

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.4359 OF 2021**

DAGADU SHIVAJI LODHE DECEASED THR LRS EKNATH
DAGADU LODHE AND ANOTHER
VERSUS
BHAURAO FAKIRA DONGRE DECEASED THR LRS
MUKTABAI BHAURAO DONGRE AND OTHERS

...
Mr. Shantanu A. Deshpande, Advocate for the Petitioners.

...
**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 17th FEBRUARY, 2023.**

PER COURT:-

1. Heard.

2. The challenge in the petition is to the order dated 10.06.2020 passed by the 2nd Joint Civil Judge, Junior Division in Miscellaneous Civil Application No.05/2009, whereby the application filed for correction of sale deed executed pursuant to the decree came to be rejected on the ground of limitation.

3. This is a peculiar case in which in spite of decree being passed in their favour in the year 1979, the decree holders are unable to enjoy the fruits of their decree due to an inadvertent mistake caused in filing the execution application.

4. The original plaintiff had instituted suit being RCS No.113/1975 for redemption of mortgage by conditional sale, which was decreed on 05.05.1979. The decree was put in execution and came to be satisfied by executing sale deed through the Court. In the execution application, due to an inadvertent error on part of the original plaintiffs, the gut numbers came to be stated as Gut No.141 instead of Gut No.111. As far as survey

numbers is concerned, the survey numbers were correctly referred to and the only error was in stating the gut numbers, as a result of which in the sale deed which was executed by the Court, the suit property was mentioned as Gut No.141. After the execution of the sale deed the legal heirs of the original plaintiff for the first time in the year 1998, after the execution of the sale deed in the year 1985, noticed this error when an application was moved to mutate their names in the revenue records.

5. In the year 1998, a Miscellaneous Civil Application filed being No.6/1998 under Section 152 of the Code of Civil Procedure for correction of the gut number in the executed sale deed. For the period from 1998 to 2006 the application under Section 152 remained pending and on 25.08.2006 the said application was withdrawn with liberty to file fresh application. Pursuant to the liberty granted, Miscellaneous Civil Application No.05/2009 came to be filed under Section 151 of the Code of Civil Procedure by which a direction was sought to the Sub Registrar for correction of the Gut No.141 to Gut No.111 in the sale deed executed in the year 1985. There was an opposition to the said application by the legal heirs of the judgment debtors. This application came to be rejected by the Executing Court on 08.08.2012, which was subject matter of writ petition before this Court being Writ Petition No.46/2015. By order dated 11.08.2014, after discussing the case laws on the subject, this Court quashed and set aside the order dated 08.08.2012 and restored the Miscellaneous Civil Application to the file of the Joint Civil Judge while granting liberty to the petitioners to make an application for carrying out appropriate correction in the prayer Clause of the said application.

6. Miscellaneous Civil Application has once again been rejected by the Executing Court.

7. Heard the learned counsel appearing for the petitioners. Although, respondents have been served, no appearance has been caused on behalf of the respondents and considering the facts of the case, the petition has been taken up for hearing.

8. Learned counsel for the petitioners has taken this Court through various proceedings which have been filed since the year 1979. He would further submit that it is clear from the order of this Court dated 11.08.2014 passed in Writ Petition No.46/2013 that there is no necessity of filing second suit for carrying out the correction of the decree and the only remedy available is under the provision of Sections 151 and 152 of the Code of Civil Procedure.

9. The Executing Court while deciding Miscellaneous Civil Application No.05/2009 had framed two issues, which read as under:

| Sr. No. | Points | Findings |
|---------|--|-------------------------|
| 1 | Whether mistake caused in mentioning the Survey Number and Gat Number in the sale deed executed by the Court on dated 29.11.1985 can be rectified without filing separate suit for rectification of sale deed? | Yes |
| 2 | Whether the application is in limitation? | No |
| 3 | What Order? | Application is rejected |

10. As far as findings on the issue no.1 is concerned, the Executing Court has held that the mistake caused in mentioning

survey numbers and gat numbers in the sale deed can be rectified without filing a separate suit. However, the Executing Court has answered the issue no.2 of limitation in the negative. It was held that the Miscellaneous Civil Application was filed after the gap of 13 years from the date of execution of the sale deed by the Court and the application being covered by Article 137 of the Limitation Act ought to have been filed within a period of three years from the date of knowledge or when the right to apply accrues. The Executing Court further held that there is no detailed application stating the date of knowledge and explaining the delay of near about 13 years in filing Miscellaneous Civil Application No.6/1998. It was held that the application is beyond limitation and has recorded a negative finding on point no.2.

11. The entire history of the litigation was before the Executing Court, which has dealt with the application previously and this Court had quashed and set aside the earlier order of rejection. The facts which are noted in the impugned order passed in the Civil Application itself makes it clear the manner in which and the reasons for which there was delay in filing of the application. Learned Trial Court without appreciating that due to an inadvertent error which has been caused not only by the decree holder in filing the execution application in as much as although the survey numbers were mentioned correctly the gut numbers came to be mentioned incorrectly and the Executing Court by issuing direction for execution of the sale deed have also mentioned incorrect survey number as such, it cannot be said that there was error only on the part of the decree holder and not on the part of the Executing Court. Such being a case it was expected that the Executing Court would rectify the errors,

especially when there is no challenge as far as the facts of the case in concerned. The applicant, who has obtained decree in his favour in the year 1979 has still to benefit from the fruits of his decree due to an inadvertent error and as such, the Court was not powerless while exercising the power under Section 151 and 152 of the Code of Civil Procedure to issue necessary direction for correction in the sale deed. Learned counsel for the petitioners has relied upon the decisions of this Court in case of ***Hansabai Shripati Bhosale Vs. Parubai Gopal Bhosale since deceased through her legal heirs Tanaji Gopal Bhosale and Others***, reported in ***2009 (5) Mh.L.J. 500*** and ***Ratnakar Bank Ltd., Kolhapur Vs. Usha Rajaram Nimbalkar***, reported in ***2013 (5) Mh.L.J. 524***.

12. In the case of ***Ratnakar Bank Ltd., Kolhapur*** (supra) this Court after considering the various provisions have held that it is not an application under Order VI Rule 17 of the Code of Civil Procedure as regards the amendment of the pleadings, but inherent powers under Section 151 and powers to permit an amendment under Section 153 of the Code of Civil Procedure, which is applicable. This Court further held that it would lead to a travesty of justice as the petitioners therein who had a decree in their favour passed as long back as in the year 1974 and also a sale certificate of the year 1980 would be deprived of the possession of the property on the ground of mere technicalities.

13. Considering the decision of this Court and decision in the case of ***Hansabai Shripati Bhosale*** (supra), which is squarely applicable to the facts of the case, the order of the

Executing Court rejecting the application is clearly unsustainable. It needs to be noted that the powers exercised under Section 151 and 152 of the Code of Civil Procedure are for the purpose of rectifying the errors and are meant to advance real and substantial justice to the parties. In my opinion, in a case of correction in the gut numbers, hyper technical view has been adopted by the Executing Court. The reasons for the delay is clearly set out in the application and is delay is sufficiently explained. The provisions of Section 5 of the Limitation Act are elastic enough to apply the law in meaningful manner to subserve the ends of justice.

14. In the light of the above, the Petition succeeds. The impugned order dated 10.06.2020 is hereby quashed and set aside and Miscellaneous Civil Application No.05/2009 is allowed.

(SHARMILA U. DESHMUKH)
JUDGE

Devendra/February-2023