

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 16081 of 2019**

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TANSUKHBHAI LALLUBHAI

Versus

STATE OF GUJARAT
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Appearance:

MRS NISHA M PARIKH for the Petitioner(s) No.

1,2,3,4,5,6

for the Respondent(s) No. 10,2,3,4,5,6,7,8,9

MR NIKUNJ KANARA AGP for the Respondent(s) No. 1
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CORAM: HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI**Date : 30/09/2019****ORAL ORDER**

1. In this petition, which is filed under Article 226 of the Constitution of India as well as under the provision of the Bombay Land Revenue Code and the Rules made thereunder, the petitioners have prayed that the order dated 29.03.2019/10.04.2019 passed by the respondent – SSRD, the order dated 13.11.2017 passed by the respondent – Collector and the order dated 07.07.2014 passed by the respondent – Deputy Collector be quashed and set aside and also Mutation Entry No.2373 and Mutation Entry No.467 be quashed and set aside and thereby direct the concerned revenue authority to mutate the name of the petitioners in the revenue record.
2. The factual matrix of the case is as under:
 - 2.1 The parcels of land bearing Survey No.67 admeasuring 2226 sq.meters, Survey No.68 admeasuring 10,263 sq. meters and Survey No.69 admeasuring 6374 sq. meters situated at

Village : Adajan, Sub-District : Surat City, District Surat, were the ancestral lands and were originally running in the names of Gordhanbhai Harkhabhai and Makanbhai Harkhabhai in the revenue records. One of the original owners viz., Gordhanbhai Harkhabhai died on 21.07.1960 and, therefore, names of his heirs viz., Dahiben Gordhanbhai and Hargovanbhai Gordhanbhai were mutated in the revenue record, having half share in the land in question. Thereafter, another original owner viz., Makanbhai Harkhabhai also died on 29.11.1968 leaving behind his widow viz., Jamanaben Makanbhai, two daughters viz., Dhanuben and Maniben and a son viz., Chimanbhai.

- 2.2 It is alleged that without the knowledge and consent of daughters (Dhanubhai and Maniben) of deceased Makanbhai Harkhabhai, only name of his son i.e. Chimanbhai Makanbhai was mutated in the revenue record vide Mutation Entry No.2773 dated 24.12.1968 as if the deceased Makanbhai has no other heirs except him. Likewise, the private respondents behind the back of the petitioners and their predecessors and by forging the documents, entered the name of only Chimanbhai Makanbhai in the revenue records vide Mutation Entry No.2373 for the land bearing Survey Nos.200 admeasuring 8055 sq. meters, Survey No.106/1 admeasuring 12242 sq. meters situated at Mouje Adajan, Taluka City, District Surat.

Similarly, the same is situation for land bearing Survey No.315, Block No.293 admeasuring 5666 sq.meters of Mouje Pal, Taluka City, District Surat and a Mutation Entry No.467 was mutated in the revenue record.

- 2.3 It is stated that the petitioners are the lineal heirs of Maniben daughter of Makanbhai Harkhabhai. Therefore, the petitioners preferred RTS Appeal No.178 of 2013 before the Deputy Collector, City Prant, Surat, for cancellation of Mutation Entry No.2373 and 467. The petitioners did not file separate application for condonation of delay but requested in the appeal itself to condone the delay. The Deputy Collector, City Prant, Surat, refused to condone the delay and dismissed the appeal on the ground of delay without considering the case of the petitioner on merits, vide order dated 07.07.2014. Being aggrieved by the order passed by the Deputy Collector, the petitioners preferred Revision Application being RTS/Revision/ Reg. No.289 of 2014 before the Collector. However, the Collector, Surat also dismissed the appeal vide order dated 13.11.2017. The petitioners, thereafter, challenged the said order passed by the Collector, by filing a Revision Application being MVV/HKP/Surat/24 of 2018 before respondent No.2 - SSRD. The said Revision Application was also dismissed by

respondent No.2 SSRD, vide order dated 29.03.2019/10.04.2019. The petitioners, therefore, approached this Court by filing the present petition.

3. Learned advocate for the petitioners submitted that the land in question was ancestral land and was running in the name of one Makanbhai Harkhabhai, who is father of petitioners' mother and, hence, the petitioners have rights, title and interest in the land in question as the petitioners are straight-line heirs of Maniben, who is daughter of original land owner, Makanbhai Harkhabhai. It is contended that there is no partition of ancestral land in question and after the death of original land owner, Makanbhai Harkhabhai, one Chimanbhai had forged the signature of his two sisters and concocted the documents to the effect that they have relinquished their rights and based on it, he has entered into his name in the revenue record in connivance with the Talati-cum-Mantri. It is contended that while posting such entry, the petitioners were not served with any notice issued under Section 135-D of the Bombay Land Revenue Code and thus without verifying the record, the aforesaid entry has been made. It is contended that when the petitioners came to know about the mutation of the entry, proceedings were initiated and, hence, it cannot be said that there is delay in pursuing the remedy. It is, therefore, contended that while considering the issues, the respondent authorities have not properly

considered the facts of the present case and passed impugned orders, which are required to be quashed and set aside and the respondent authorities may be directed to mutate the names of the petitioners in the revenue record for the land in question.

4. On the other hand, learned AGP has supported the reasoning given by the respondent authorities. It is submitted that the petitioners have preferred Appeal after a period of more than 44 years and there is no explanation offered by the petitioners for such delay and, hence, looking to the conduct of the petitioners, the petitioners are not entitled to claim any relief as prayed for in the petition. It is submitted that in fact, the mother of the petitioners were made to understand about the situation and till her death, no suit was filed nor any complaint was filed and, thereafter in the year 2003, Regular Civil Suit No.297/2003 was filed and, thereafter in the year 2011, Regular Civil Suit No.314/2011 was also filed. Thus in the facts of the present case, it is not open for the petitioners to challenge entry made in 1968 at this stage. It is, therefore, urged that no error is committed by the respondent authorities while not entertaining the request of the petitioner and, therefore, this petition be dismissed.
5. This Court has considered the submissions canvassed by learned advocates appearing for the parties as well as material placed on record. It is not in dispute that the disputed entry is

mutated in the revenue record in the year 1968, which has been challenged by the petitioners after a period of more than 44 years i.e. in the year 2013. It is alleged by petitioners that the private respondents have forged the signature and concocted the statement of their mothers, by which, rights have been relinquished and based on it, entry came to be mutated in the revenue record. However it is required to be noted that at the relevant point of time, the mother of the petitioners was alive and was made to understand about the situation and till her death, she has not instituted any suit nor she has initiated any criminal proceedings claiming rights in the land in question. It is now well settled that the revenue entry is only for the fiscal purpose and the rights of the parties can be established in the civil proceedings. The conduct of the petitioners is also required to be considered by this Court while exercising the jurisdiction under Article 226 of the Constitution of India because they remained silent for almost 44 years and, thereafter, they have initiated proceedings. It is required to be noted that the petitioners have instituted two different suits i.e. Regular Civil Suit No.297/2003 in the year 2003 and Regular Civil Suit No.314/2011 in the year 2011. Even one Regular Civil Suit No.60/2003 is also filed by one Chandrakant Chimanbhai Patel. Thus from this fact itself, it is clear that civil proceedings are pending before the competent civil court for deciding the issue of rights of the parties.

6. Therefore considering the facts of the present case and looking to the reasoning recorded by the respondent authorities while passing impugned orders, it cannot be said that any error is committed by the respondent authorities and, hence, no interference is required in the present case. The petition is accordingly dismissed. It is, however, clarified that the rights of the parties are subject to final outcome of the civil proceedings pending before the competent civil court.

(VIPUL M. PANCHOLI, J.)

Gautam