

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.703 OF 2015

Mandabai Revannath Gade ..PETITIONER

VERSUS

Alka Namdeo Kadu, L.Rs.
Namdeo Ramchandra Kadu & ors. ..RESPONDENTS

Mr Vivek V. Tarde, Advocate for petitioner;
Respondent No.1-A in person

CORAM : N.W. SAMBRE, J.

DATE : 7th April, 2015

ORAL ORDER :

Respondent no.1-A herein has appeared in person. In response to Court's query, he has informed that he has studied in Marathi medium and has passed 8th standard. He was offered an option by this Court on last two occasions to provide services of Advocate from the panel of Legal Aid Committee to represent him in the present matter or he may take help from the Legal Services Authority, however, he has refused the same. He has chosen to argue the matter in person and persuaded this Court to take up his matter at the earliest.

2. Learned Counsel appearing on behalf of the petitioner submits that Regular Civil Suit No.179 of 2009, for declaration and perpetual injunction,

came to be decreed on 21st October, 2011, in favour of the petitioner with following order :-

“1. The suit is decreed with costs.

2. It is hereby declared that the defendant no.1 got compromised and decreed the RCS No.89/2007, by way of an illegal and wrongful means, in respect of house property nos.1940 and 1941, more particularly described in para-1 of the plaint.

3. It is hereby further declared that the defendant no.1 has not acquired any right, title or interest by virtue of decree drawn in RCS No.89/2007, in respect of house property nos.1940 and 1941, more particularly described in para-1 of the plaint.

4. The defendant no.2 i.e. Rahuri Municipal Council, through their officials, agents, servants, or assignees etc; are hereby restrained by way of perpetual injunction from entering the name of defendant no.1 in the Assessment Register, in respect of house property nos.1940 and 1941, on the strength of decree drawn in RCS No.89/2007, otherwise than in due process of law.

5. Decree be drawn up accordingly.”

3. According to the learned Counsel, the petitioner-respondent No. 1, being legal representative of respondent no.1 (husband of deceased

Alka), is an appellant in Regular Civil Appeal No.445 of 2011, preferred against the said judgment and decree. The said appeal is pending on the file of learned Ad hoc District Judge-2, Ahmednagar. In the said appeal, respondent no.1 moved an application Exh.70 with prayer for production of documents and filing of affidavit.

4. Learned Ad hoc District Judge-2, Ahmednagar, passed order dated 24th April, 2014, below Exh.70,0 in Regular Civil Appeal No.445 of 2011, permitting production of documents in favour of the respondent, under Order 41, Rule 27 of the Code of Civil Procedure.

5. The petitioner is not aggrieved by the said observations. The petitioner, who claims to be respondent and successful plaintiff, has questioned the legality and validity of observations made in paragraph 2 of the said order, which read thus :-

“The appellant has further prayed that after the death of his wife, the names of legal heirs be mutated in revenue record and accordingly, the directions be given to the revenue authorities. The appellant is at liberty to make an application to the revenue authorities to mutate their names. The revenue authorities may consider his application as per rules to mutate the names of legal heirs.”

6. The Ad hoc District Judge-2, while making such observations, while deciding application Exh.70 was required to consider the prayer of present respondent no.1 in his application Exh.70 and the learned Counsel for the petitioner was right in pointing out that once there is a decree in his favour, the Ad hoc District Judge-2, as if he is exercising powers under Article 142 or 226 of the Constitution of India, has proceeded to pass an order directing the Tahsildar to deal with the application for mutation, if preferred by present respondent no.1.

7. When respondent no.1, who appears in person was confronted with the above referred issue, he was unable to answer the query of the Court so as to point out the prayer to that effect in the application Exh.70 and the cause for the learned Ad hoc District Judge-2 to pass the said order.

8. Upon perusal of the record, it is noticed that the observations made in paragraph 2 of the order dated 24th April, 2014, passed below Exh.70 passed by Ad hoc District Judge-2, were uncalled for, particularly in absence of any prayer to that effect before the said Court at the behest of the present respondent, the Court below has also lost sight of the fact that the present petitioner is successful before the Trial Court and the decree is not stayed in an appeal.

9. In view thereof, it will be appropriate to set aside the observations made in paragraph 2 of the order dated 24th April, 2014, passed by Ad hoc District Judge-2, Ahmednagar and accordingly they are set aside, as said Court has exceeded jurisdiction.

10. Thus, the petition succeeds to the above extent and stands allowed with no order as to costs.

(N.W. SAMBRE, J.)

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