

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 827 OF 2015
AND
CIVIL APPLICATION NO. 1796 OF 2015
IN
WRIT PETITION NO. 9127 OF 2005

Vipradas C. Mentkar & Ors. .. Applicants
VS.
Mahadu G. Jambhulkar, since deceased
through legal heir
Namdev M. Jambhulkar & Ors. .. Respondents

Mr. Uday Warunjikar i/b. Mr. Balasaheb Deshmukh for Applicants.
Mr. R. A. Thorat - Senior Advocate i/b. Mr. Sanjay Kshirsagar for Respondents.

CORAM : M. S. SONAK, J.
DATE : 08 JULY 2015

P.C. :-

1] The civil application no. 827 of 2015 seeks recall of order dated 26 February 2015 made by this Court in writ petition no. 9127 of 2005, *inter alia* on the ground that the same was obtained by the petitioners in the petition, by playing a fraud on the Court and in any case, since, on the basis of the order dated 26 February 2015, certain interests of the applicants have been affected, the applicants ought to have been heard before the making of the order.

2] Heard the learned counsels for the parties and perused the record. Admittedly, the applicants were not arrayed as parties to writ petition no. 9127 of 2005. The record discloses that the reliefs in writ petition and the consequent order dated 26 February 2015

made therein relates to entries in the Record of Rights relating to survey no. 233/1. The learned Senior Advocate appearing for the original petitioners in writ petition no. 9127 of 2005 once again, asserts that the petition and the reliefs therein were concerning property surveyed under no. 233/1. The civil application, essentially concerns property surveyed under no. 233/2. Accordingly, it cannot be said that any fraud was practiced upon this Court in either instituting the writ petition or obtaining the order dated 26 February 2015 therein. There is accordingly, no case made out for recall of the order dated 26 February 2015.

3] Mr. Warunjikar, the learned counsel for the applicants however contended that on the basis of the order dated 26 February 2015, the original petitioners seek to interfere with the possession of the applicants to the properties, which are mainly described as properties surveyed under no. 233/2. There is neither any reason nor is this the occasion to go into or entertain such allegations. This is because, it is always open to the applicants to take resort to appropriate civil proceedings for the protection of their alleged rights. As indicated earlier, the order dated 26 February 2015 concerns entries in Record of Rights pertaining to the property surveyed under no. 233/1.

4] Mr. Warunjikar, made reference to some terms of compromise dated 22 November 2005, entered into between the original petitioners in writ petition no. 9127 of 2005 and the applicants. Mr. Warunjikar contends that the effect of such terms was not considered whilst making the order dated 26 February 2015. At least *prima facie*, the compromise terms appear to relate to property surveyed under no. 233/2. That apart, it is settled position in law, which has in fact been reiterated in the order dated 26 February 2015, that mere entries in survey records are not determinative of title of any of the parties to the property.

5] In the aforesaid circumstances, no case is made out for grant of any relief in the two civil applications. The civil applications are dismissed. Interim order made on 29 June 2015 stands vacated.

6] It is however made clear that this Court has not examined the claims of the parties as to title, possession or otherwise on merits in these civil applications and accordingly, all contentions of all parties in this regard are kept open.

7] Mr. Warunjikar prays for continuance of the interim protection granted on 29 June 2015 for a period of four weeks. In the facts and circumstances of this case, I see no reason to continue such interim

protection. The interim protection was granted, because on the previous occasion, a statement was made on behalf of the original petitioners that no action would be taken in pursuance of the order dated 26 February 2015 until the next date. However, it was pointed out that some action was attempted to be taken. Now that this Court has come to the conclusion that an application for recall was not at all warranted in the facts and circumstances of this case, there is no reason to continue the *status quo* order granted on 29 June 2015.

(M. S. SONAK, J.)

Chandka