

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9127 OF 2005

1. Mahadu Ganpat Jambhulkar,
since deceased
2. Sadashiv Ganpat Jambhulkar & Ors. .. Petitioners
vs.
Baban Bhiva More & Ors. .. Respondents

Mr. V. A. Thorat – Senior Advocate with Mr. Sanjay Kshirsagar for
Petitioners.

Mr. Swapnil Mohite i/b. Ms Meenakshi Sakhare for Respondent
Nos. 1 and 2.

Ms Vaishali Nimbalkar – AGP for Respondent No. 3.

CORAM : M. S. SONAK, J.
DATE : 26 FEBRUARY, 2015

P.C. :-

1] This petition is directed against the judgment and order dated 13 June 2005 made by the Additional Commissioner, Pune allowing the revision application instituted by and on behalf of the respondent nos. 1 and 2 as against order dated 22 July 2002 made by the Additional Collector in favour of the petitioners.

2] It is the case of the petitioners that the suit property, which admeasures 11 acres and 11.5 gunthas was purchased by them vide registered sale deed dated 20 April 1960. In pursuance of such purchase, necessary mutation entry no. 1568 was carried out in the

revenue records on 20 June 1961. It is further the case of the petitioners that without any notice to the petitioners, the area of the suit property purchased by the petitioners was indicated as having been reduced from 11 acres and 11.5 gunthas to 7 acres and 31 gunthas. The order by which such reduction in area was effected, is not available in the records of the revenue authorities.

3] It is the case of the petitioners that on 15 September 2001, upon obtaining knowledge about such reduction, the petitioners moved the Sub Divisional Officer (SDO) for restoration of the original entry. The SDO forwarded such application to the Additional Collector, Pune. The proceedings before the Additional Collector came to be numbered as PIT/WS/318/2001. After due notice to the respondent nos. 1 and 2, the Additional Collector by order dated 22 July 2002 struck down the entry recording reduced area and restored the original mutation entry no. 1568. In doing so, the Additional Collector placed reliance upon the judgment and decree dated 31 March 2001 in Civil Suit No. 238 of 2000, which in the meantime had been instituted by the respondent nos. 1 and 2 against the petitioners, in relation to their claim to the suit property.

4] As noted earlier, on 28 January 2000, the respondent nos. 1 and 2 instituted civil suit no. 238 of 2000 against the petitioners,

inter alia claiming declaration, permanent injunction and cancellation of sale deed dated 20 April 1960, which was in fact the basis for mutation entry no. 1568 in favour of the petitioners. In the said civil suit, a specific issue was struck with regard to the ownership of respondent nos. 1 and 2 to the suit property and also whether the sale deed dated 20 April 1960, by which the petitioners had purchased the property from one Gana Genu More was a fabricated one. Both such issues were answered in the negative and the civil suit instituted by the respondent nos. 1 and 2 was dismissed vide judgment and decree dated 31 March 2001.

5] The respondent nos. 1 and 2 carried the matter in appeal to the District Court, which has, by judgment and decree dated 11 October 2004, dismissed the same. The first appellate court has held that the respondent nos. 1 and 2 failed to establish their title and actual possession over the suit property and further failed to establish that the sale deed dated 20 April 1960 was a fictitious one.

6] The respondent nos. 1 and 2, it appears preferred a second appeal to this Court as against the judgment and decree dated 11 October 2004. However, as the same was preferred beyond the prescribed period of limitation, the same was accompanied by an application seeking condonation of delay. The respondent nos. 1

and 2 also instituted a revision application before the Additional Commissioner, Pune questioning, the Additional Collector's order dated 22 July 2002. The Additional Commissioner, by impugned order dated 13 June 2005, has allowed the revision application and set aside the Additional Collector's order dated 22 July 2002. In the impugned order, the Additional Commissioner has held that the Additional Collector should have directed the petitioners to go to the civil court and prove that the sale deed dated 20 April 1960 was a valid one. Further, the impugned order records that it was for the petitioners to establish that the vendor i.e. Gana Genu More was not some fake or non-existent person. Further, it is observed that the civil court has nowhere stated that the petitioners are in possession of the suit property. For all these reasons, the impugned order holds that the Additional Collector was not right in directing restoration of mutation entry no. 1568.

7] This Court, by order dated 16 February 2008 has recorded that the respondent nos. 1 and 2 did not press application for condonation of delay in instituting the second appeal against the judgment and decree dated 11 October 2004. Consequently, the application for condonation of delay as well as the second appeal came to be dismissed on the said date. The judgment and decree in Regular Civil Suit No. 238 of 2000, has thus attained finality.

8] The impugned order made by the Additional Commissioner is required to be set aside for several reasons. In the first place, the Additional Commissioner has not at all seriously gone into the issue as to the manner in which the original mutation entry no. 1568 was varied without any notice to the petitioners. It was submitted that the order by which said variation was brought about is not even available in the records of the revenue authorities. Secondly, it is settled position in law that the revenue entries, *per se*, are not determinative of title of the parties to the property in question. For that purpose, the parties are required to approach the civil court and obtain appropriate decrees or orders, with regard to their status qua the properties concerned. In the present case, the respondent nos. 1 and 2 had approached the Civil Court by instituting civil suit no. 238 of 2000. The Civil Court did not accept the claim of the respondent nos. 1 and 2. The judgment and decree made by the Civil Court has attained finality, since even the second appeal against the same came to be dismissed. The Additional Collector had the benefit of a decree of the Civil Court dated 31 March 2001 and the Additional Collector correctly applied the same and restored the mutation entry no. 1568. The Additional Commissioner, though had the benefit of the judgment and decree dated 31 March 2001 made by the Civil Court and judgment and decree dated 11

October 2004 as made by the Appellate Court, chose to misread or misinterpret the same. On the said basis, the Additional Commissioner, has reversed the Additional Collector. The reversal is patently incorrect and borders upon perversity. The Additional Commissioner was not at all justified in observing that the Additional Collector should have directed the petitioners to approach the Civil Court with regard to the validity of the sale deed dated 20 April 1960 or the genuineness of the vendor Gana Genu More. This was not at all necessary in the present case, particularly in the light of categorical findings recorded in the judgment and decrees of the Civil Courts. Thirdly, the Additional Commissioner was not at all justified in observing that the Civil Courts decrees do not state that the petitioners are not in possession of half portion of the suit property. Such observation, has possibly been made, without adverting to the judgment and decrees of the civil courts, which have since attained finality.

9] In the aforesaid circumstances, the impugned order dated 13 June 2005 is set aside. Rule is made absolute in terms of prayer clause (A). There shall however be no order as to costs.

(M. S. SONAK, J.)