IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8702 OF 2012

Karansing s/o Kachrusing Kakas
Age : 47 years, Occu-Agriculture
R/o Karnapura, Cantonment,
Aurangabad. … PETITIONER

Versus

1] The State of Maharashtra
(Copy to be served on Govt.
Pleader, High Court of Bombay,
Bench at Aurangabad.)

2] Additional Commissiner
Aurangabad

3] Additional Collector
Aurangabad

4] Sub Divisional Officer,
Vaijapur, Dist.Aurangabad

5] Tahsildar,
Gangapur,Tq. Gangapur
Dist.Aurangabad.

6] Vijay s/o Uttamrao Deshmukh

Age 54 years, Occu-Business
R/o Matruchhaya Municipal
Colony, Kileark, Aurangabad

7] Vikas s/o Uttamrao Deshmukh
Age 51 years, occu-Agri
N-5, H-35, Satyam Nagar
CIDCO, Aurangabad. .. RESPONDENTS

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Mr.K.F.Shingare Adv. for petitioner
Mr.P.S.Patil,AGP for respondents No.1 to 5
Mr.D.P.Palodkar, Adv. for Respondent no.6.
Respondent no.7 served and absent

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CORAM : V.L.ACHLIYA,J.

RESERVED ON : 20TH APRIL,2016
PRONOUNCED ON : 6th May, 2016

ORAL JUDGMENT :

Rule. Rule returnable forthwith. With the consent of parties, Petition is taken up for final disposal at admission stage.

2] The petitioner claims to be owner of land bearing gat no.12 admeasuring 1 H 62 R situated at village Ramrai, Tq. Gangapur, Dist.Aurangabad which he has purchased from respondent no.7 for valuable consideration of Rs.20 lakh vide registered sale deed executed on 22/1/2010(which is hereinafter referred as said land). The vendor of the petitioner i.e. the respondent no.7 had purchased the said land vide registered sale deed dated 11/1/1982. Immediately after the purchase of said land, the name of respondent no.7 was duly recorded in the revenue record. Since after purchase of said land, the respondent no.7 was in physical possession and cultivating the land. He had also obtained loan of Rs.1 lakh from Prerana Nagari Sahakari Bank Ltd. Aurangabad which was repaid in the year 2006 by providing the same as colateral security for the loan. Since respondent no.7 was holding the clear and marketable title and the name of respondent no.2 was also recorded in the revenue record as owner and in possession of said land the petitioner has purchased said land for which he has parted with consideration amount of Rs.20 lakh to respondent no.7.

3] According to the case set out by the petitioner, though the respondent no.6 has no right, title and interest in the said land, still he prepared a bogus document in respect of said land and secured the loan from Bank of Maharashtra. Towards unpaid loan of said Bank, the proceeding was filed against respondent no.6 before the Debt Recovery Tribunal, Aurangabad. In said proceeding, the said property of respondent no.7 was attached towards recovery of loan. The respondent no.7 appeared in that matter and raised an objection to the attachment of the property by pointing that property is owned by him. Vide order dated 18/8/2009, the objection was upheld and the said property was released from attachment. The respondent no.6 had challenged the order dated 18/8/2009 by filing Writ Petition No.1270/2010 before this Court and same was dismissed on 13/9/2010 for want of removal of objection. Inspite of that the respondent no.6 submitted an application in the year 2009 before the Tahsildar-respondent no.5 for taking mutation entry in his name in the record of rights in respect of said land on the basis of alleged unregistered partition deed dated 26/3/1997. The application moved by respondent no.6 was rejected by respondent no.5 by order dated 31/12/2009. The order passed by the Tahsildar was challenged in Appeal by respondent no.7 before the respondent no.4 who in turn allowed the appeal vide judgment and order dated 12/3/2010. As against said order, the respondent no.7 preferred appeal before respondent no.3 which was rejected vide order dated 29/5/2010. In said appeal, first time the petitioner was made party. Lateron the revision preferred by petitioner against said order before the respondent no.2 was also rejected by order dated 12/1/2011. The petitioner was not party before respondents no.4 and 5. Still while passing orders by respondent no.4, made certain observations and recorded findings as to right, title and interest of petitioner and also observed that the sale deed in his favour is illegal and hit by Section

52 of Transfer of Property Act. Being aggrieved by such orders affecting his right and causing impact over Civil Suit filed by him the petitioner has filed this petition.

4] The learned counsel for the petitioner assailed the order passed by respondents no.2 to 4 with contention that they have decided the matter as if they have authority to decide the right, title and interest of rival parties and also made observations affecting rights of petitioner. By referring various observations recorded by respondents no.2 to 4 while passing the impugned orders, learned counsel has urged that those observations and findings recorded are not sustainable in law as respondents no. 2 to 4 have no authority in law to decide the right, title and interest of a person to the property and more particularly the petitioner who was not party to proceeding before respondent no.4. He has submitted that the role attributed to the revenue authorities while dealing with application to make entries in the revenue record confined to entering ones name in the record of rights. They have no authority in law to decide the right, title and interest of such person in the property. So also, they had no right to uphold the legality and validity of so called partition deed dated 26/3/1997. It is further pointed out that the mutation entry recorded in the revenue record in the name of respondent no.7 has not been disputed nor challenged at any point of time by respondent no.6. So also the sale deed executed in favour of petitioner by respondent no.7 was also not challenged by respondent no.6. In absence of challenge to the right, title and interest of respondent no.7 and as that of the petitioner as purchaser of the said property, the respondent no.4 should not have observed in the order that the sale deed in favour of petitioner is illegal and hit by Section 52 of Transfer of Property Act and going to the extent to hold that respondent no.6 became owner of property by virtue of alleged Memorandum of Partition.

5] The learned counsel for petitioner has further submitted that without any right, title and interest in said property the respondent no.6 has sold the property in favour of one Nandkumar Sopan Karad vide sale deed dated 8/7/2010 and the petitioner was dispossessed from the said land. He was therefore, required to file Suit before the Civil Judge, Senior Division, Vaijapur in which he has claimed declaration in respect of sale deed dated 8/7/2012 as well as possession of the said land. In view of the order passed by respondents no.2 to 4 making observations in respect of the right, title and interest in the said land as that of respondent no.6 without any jurisdiction vested with them, petitioner has preferred this petition challenging those orders. In support of the submissions advanced, the learned counsel has placed reliance upon the decision of this

Court in the case of **Shrikant R. Sankanwar and others V/s Krishna Balu Naukudkar reported in 2003 (2) Mh.L.J. 276.**

6] Mr.D.P.Palodkar, learned counsel appearing for respondent no.6 supported the orders passed by respondents no.2 to 4. He has submitted that respondent no.6 has moved an application before respondent no.5 on the basis of Memorandum of Partition in respect of oral partition made between respondents no.6 and 7 and other family members. The documents on the basis of which mutation was sought is a Memorandum of Partition of oral partition which was already taken place between respondents no.6 and 7 and other family members. Respondents no.6 and 7 are the signatories of said memorandum besides other persons. Not only the oral partition was made in the year 1996, same was acted upon by all the beneficiaries who were signatories to said memorandum of partition including respondents no.6 and 7. He has submitted that as Memorandum of Partition requires no registration the respondent no.5 ought to have recorded the entry in respect of said land in favour of respondent no.6. In view of this the order of rejection was rightly set aside by appellate authorities as well as the revisional authority. He has submitted that the documents of Memorandum of Partition though unregistered, same is admissible in law and same can be acted upon. In support of this submission, the learned counsel has placed reliance upon decision of the Apex Court in the case of **[1] Munna Lal (Dead) by L.Rs. Etc. V/s Surai Bhan and others reported in AIR 1975 S.C. 1119; [2] Roshan Singh and others V/s Zile Singh and others reported in AIR 1988 S.C. 881 and [3] Narendra Kante V/s Anuradha Kante and others reported in (2010) 2 S.C.C.77.**

7] I have carefully considered the submissions advanced and also perused the impugned orders. It is settled law that the entries in the revenue records are basically for the revenue purpose and do not by themselves constitute title to the property in favour of any person. Such entries can undoubtedly be corroborative piece of evidence to establish certain rights of the parties in relation to the property but they themselves cannot create any title in favour of any person in relation to immovable property. It is also to be noted that while exercising the powers under the Maharashtra Revenue Code and the Rules made thereunder, the revenue authorities acting under the said Code cannot assume jurisdiction under different statutes to investigate into the rights of the parties in relation to the properties which are referred and falls for consideration in the application for mutation of entries submitted before the revenue authorities. Section 149 of the Maharashtra Land Revenue Code (hereinafter referred to as “said Code) provides that any person acquiring by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as holder, occupant, owner, mortgagee, land, Government lessee or tenant of the land situated in any part of the State or assignee of the rent or revenue thereof, shall report orally or in writing his acquisition of such right to the Talathi within three months from the date of such acquisition and the Talathi shall at once give a written acknowledgment of the receipt of such report to the person making it and where the person acquiring the right is a minor or otherwise disqualified, his guardian or other person having charge of his property shall make the report to the Talathi. However, in a case wherein any person acquiring a right with the permission of the Collector or by virtue of a registered document is exempted from the obligation to make any such report to the Talathi.

8] Thus in a case wherein a person has acquired any right in any immovable property, he has to report either oral or in writing the rights so acquired. But in the case wherein the person acquiring right is by virtue of any registered document, then such person is exempted from obligation to make such report to the Talathi. This distinction is based on account of duty caste upon the registering authority to intimate to the Talathi the fact of such acquisition of right in favour of any person in relation to property by virtue of registered document. The provisions to this effect casting obligation upon the registering authorities find place in Section 154 of M.L.R. Code.

9] Section 150(1) of the said Code provides that the Talathi shall enter in a register of mutations every report made to him under Section 149 or any intimation or acquisition or transfer under Section 154 from any Collector or the registering authority. Sub-section (2) of Section 150 provides that whenever a Talathi makes an entry in the register of mutations, he shall at the same time post up a complete copy of the entry in a conspicuous place in the Chavdi, and shall give written intimation to all persons appearing from the record of rights or register of mutations to be interested in the mutation, and to any other person whom he has reason to believe to be interested therein. Sub-section (3) of Section 150 provides that when any objection to any entry under sub-section (1) in the register of mutations is made either orally or in writing to the Talathi, it shall be the duty of the Talathi to enter the particulars of such objection in a register of disputed cases and Talathi shall at once give a written acknowledgment for the objection to the person making it in the prescribed form. Sub-section (4) of Section 150 provides that the disputes entered in the register of disputed cases shall as far as possible be disposed of within one year by a revenue or survey officer not below the rank of an Aval Karkun and orders disposing of objections entered in such register shall be recorded in the register of mutations by such officer in such manner as may be prescribed by the rules made by the State Government in that behalf. Sub-section (5) of section 150 provides that the transfer of entries from the register of mutations to the record of rights shall be effected subject to such Rules as may be made by the State Government in that behalf, provided that entry in the register of mutations shall not be transferred to the record of rights until such entry has been duly certified. Sub-section (6) of section 150 deals within the certification of the entries by the Revenue officer; and sub-section (7) speaks of State Government's power to direct for maintenance of register of tenancies in such a manner and under such procedure as may be prescribed by the rules.

10] It is further to be noted that u/s 328 of the M.L.R. Code, the Government is empowered to frame rules for the purpose of carrying into the effect of the provisions of M.L.R. Code. Accordingly the State Government has framed Maharashtra Land Revenue Record of Rights and Registers (Preparation and Maintenance) Rules, 1971 (hereinafter referred as said Rules). Rule 8 of said Rules provides the procedure in detail to be followed for maintenance of record of rights and register of mutation and the manner in which the application for recording the entry into the record to be taken which includes the issuance of notice etc. Rule 9 deals with the receipt of report u/s 149. Rule 10 provides that the register of mutation shall be in form VIII. Rule 11 provides for the procedure to be adopted in the cases wherein intimation regarding registration of document is received u/s 154 of the M.L.R. Code for making entry in the revenue record. Rule 12 provides the procedure in the case in which prior permission of the Collector is must before effecting transfer of the land. The procedure to be followed for the purpose of certifying the entry in the register of mutation as well as for deciding the objection to mutation has been prescribed under Rule 17,18 and 19 of the said Rules.

11] Thus plain reading of Section 149 and 150 of the M.L.R. Code and the Rules referred above, discloses that the powers which are to be exercised by the revenue officers in relation to the mutation of entries in the revenue records, pertaining to immovable properties in the villages are basically for the purpose of updating such revenue records in respect of rights acquired by the parties in different modes specified under Section 149. Such right might have been acquired by way of any document executed by the parties and duly registered or on account of pronouncement of the decision by the Courts or authorities competent to deal with the matters pertaining to the right and interest of the parties in relation to the immovable property. Neither Section 149 nor Section 150 empowers the revenue authorities acting thereunder and the procedure prescribed under said Rules to adjudicate upon the rights of the parties, or their title to the immovable property. Thus, the provisions of law as referred, only deals with revenue record to be updated in relation to the immovable properties for the purpose of assessment of revenue and collection thereof. It nowhere vest the authority with revenue authorities to determine the right, title and interest of person in the property while taking entry in revenue record. At the most such entries can be used as a corroborative piece of evidence to establish certain rights of the parties in relation to the property. But the entries in the revenue record themselves cannot constitute any title in favour of any person in relation to any immovable property.

12] In the instant case, the petitioner claims the acquisition of title in said property by virtue of the registered sale deed dated 22/1/2010 The fact is not in dispute that vendor of the petitioner i.e. the respondent no.7 had purchased the said property in the year 1982 by registered sale deed and the revenue record was duly mutated on the basis of said documents. Whereas, the respondent no.6 has claimed the entry in the revenue record on the basis of alleged Memorandum of Partition claimed to be recorded before Notary on 26/3/1997 wherein it is mentioned that the family members have mutually agreed to partition the property on 20/3/1996 and the oral partition was made. By virtue of the oral partition, the land in question claimed to fall in the share of respondent no.6 and based upon said Memorandum of Partition, respondent no.6 approached the Tahsildar to record the change in the mutation entry in his name. The application appears to be filed in the year 2009 i.e. after period of 13 years after alleged Partition amongst the family members. In the mean time, the said property was provided as security for the loan obtained by respondent no.6 and attached during the course of recovery of dues of the financial institution as against respondent no.7. On the objection raised by respondent no.7, the property was released from attachment by Recovery Officer of Debt Recovery Tribunal, Aurangabad by order dated 18/8/2009. While passing said order, the Recovery Officer has observed that the document as claimed by respondent no.6 created right, title and interest in the said land i.e. Memorandum of Partition cannot be acted upon as same property also mortgaged by respondent no.7 with Prerana Nagari Sahakari Bank Ltd. Aurangabad from where he secured loan and made payment. The objection of respondent no.7 was upheld.

13] So far as proposition of law as laid down in the cases referred by learned counsel for respondent no.6 the law is settled on this issue. However, such issue can be addressed by Court adjudicating right, title and interest of the person in the property and not by Revenue Authorities. The question raised before this Court is whether on the basis of such document the revenue authority can determine the right, title and interest of respondent no.6 in the property. Certainly such issue cannot be adjudicated by the revenue authorities in absence of authority vested in them under the provisions of M.L.R. Code, while dealing with the matter relating to taking revenue entry and updating register of property. In this view of the matter and settled position in law, that the entries in the revenue record are basically for the revenue purpose and do not themselves constitute title to the property, the order passed by respondents no. 2 to 4 and observations made therein are not sustainable in law.

14] The order passed by respondent no.5 i.e. the Tahsildar dated 31/12/2007 was passed after giving due opportunity of hearing to respondents no.6 and 7. There appears to be no reason for the appellate authority i.e. respondents no.6 and 7 to have interfered with the order passed by respondent no.5. There are no cogent and convincing reasons recorded to set aside the order passed by the Tahsildar. While deciding the appeal the respondent no.4 has gone to the extent of examining the validity of sale deed executed in favour of the petitioner and held that same is hit by Section 52 of Transfer of Property Act and same is illegal. The observations made and findings recorded in this context are unsustainable in law and falls beyond the jurisdiction and authorities vested with the revenue authority. To embark upon to decide the right, title and interest of the person on the basis of such document in exercise of powers as Appellate Authority is not sustainable in law. In first place, Section 52 of Transfer of Property Act, have no applicability to proceedings before the revenue authorities. Moreover, the revenue authorities have no authority under the law to adjudicate upon the rights of the parties as to the title of the property. In fact the appellate authority as well as revisional authority should have confined themselves to examine the correctness of the order passed by the Tahsildar-respondent no.5 within the scope of Section 149, 150, 154 of the M.L.R. Code and relevant rules of 1971 framed in that behalf. So also while dealing with the Revision Application the respondent no.2 should have examined the matter in limited sphere of powers of Revisional Authority. The revisional authority i.e. the respondent no.2 has gone to the extent of observing that the transfer effected in favour of the petitioner vide sale deed dated 27/1/2010 is in violation of Section 52 of M.L.R. Code although there is no such provision in M.L.R.Code. In this view of the matter, the order passed by respondents no.2 to 4 are not sustainable in law and same are liable to be set aside. While deciding the appeals and revision by respondents no.2 to 4 they have exceeded their jurisdiction and authority vested in them and made certain declaration and observations adversely affecting the interest of petitioner, who was not party to proceedings before respondents no.2 and 5. By doing this the authorities have transgressed the jurisdiction available to them under the provisions of the M.L.R.Code and Rules made thereunder. The illegality committed by respondent no.2 has been reiterated by the appellate authority as well as the revisional authority. Apparently all of them have acted beyond the powers vested in them in relation to the proceeding pertaining to mutation of entries under the M.L.R. Code. Therefore, such orders cannot sustained in law and liable to be quashed and set aside.

15] In the result, Petition deserves to be allowed in terms of prayer clause “C”. Accordingly the Petition is allowed in terms of prayer clause “C” The petitioner, respondents no.6 and 7 are directed to appear before Tahsildar on 1/6/2016 and file their written submissions. After giving opportunity of hearing to all concerned, which includes the petitioner and the persons to whom the respondent no.6 has sold the land, respondent no.5 is directed to decide the matter afresh. No order as to costs.

16] Rule made absolute in above terms.

(V.L.ACHLIYA,J.)

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