

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6034 OF 2016

M/s. Veekaylal Investment Co. Pvt. Ltd. ... Petitioner

vs.

Shri. Bhalchandra D. Patil & ors. ... Respondents

Mr. Atul Rajadhyaksha, Senior Advocate a/w Akhilesh Dubey, A. G. Kundekar i/by Rajeev r. Sharma, Advocate for the petitioner.

Mr. Vindu P. Pandey i/by Pushpraj Singh, Advocate for respondent no.1.

Mrs. R. S. Gulekar, Section Officer, Court Receiver present.

Coram : Smt. R. P. SondurBaldota, J.

Date : 1st August, 2016.

P.C. :

1. Rule. Rule returnable forthwith. By consent of the parties the petition is taken up for final hearing at the stage of admission. Heard the counsel.

2. This petition filed under Article 227 of the Constitution of India challenges the orders of the Maharashtra Revenue Tribunal the copies whereof are annexed to the petition at pages 273 to 283. There are in all nine orders passed during the period 25th March, 2015 to 7th April, 2016. The subject matter of the nine orders is production of Will of one Haji Ali Mohammad Haji Cassum, who died on 7th November, 1946 and in respect of whose assets the administrative suit being Suit No.

3514 of 1947 was filed in this Court. By the order dated 30th June, 1950 this Court appointed Court Receiver, High Court, Bombay as the receiver of the assets of the deceased. By the subsequent order dated 25th November, 1952 the Court Receiver was permitted to sell land admeasuring about 644 Acre situate at village Dehisar, Borivli by way of public auction. Mr. K. Lalchand, the founder of the petitioner company purchased the property in auction on 27th March, 1962 for the consideration of Rs.13,50,000/-. On the death of K. Lalchand, pursuant to the order of this Court dated 29th July, 1970, conveyances were executed by the Court Receiver in favour of the “nominees of Veekaylal on the said Messers Veekaylal Investment Co. Pvt. Ltd.” The petitioner thus became owner of that property having purchased the same in a public auction by the Court Receiver, High Court, Bombay pursuant to the orders of this Court.

3. More than 51 years after the auction and 43 years after execution of conveyance respondents no.1 to 6 raised claim of being agricultural tenant in respect of a portion of the land purchased by the petitioner. The Tahsildar and Agricultural Land Tribunal as the first authority and the District Collector, Bandra as the appellate authority accepted their claim. The petitioner has therefore carried the orders to the Maharashtra Revenue Tribunal by way of TNC/REV/MSD/23/2015.

4. In the first order under challenge dated 25th March, 2015 the Tribunal noted that the record of Suit No. 3415 of 1947 produced by the petitioner did not contain copy of the Will of Haji Ali Mohammad Cassum and held that in the absence of the Will it is not possible to decide the revision. The reasons

stated in the order therefor are :

“Copy of that Will is also not produced along with the documents today produce. As the documents are not sufficient to enlighten on the issue that the subject matter, the property in dispute is included in the Will, no inference can be drawn that the properties given in the possession of court received, are the subject matter of the same litigation. In absence of document showing subject matter of the litigation, before this forum and before the judicature of High Court of Bombay gave rise to the litigation before the Revenue authorities, nexus is required to be established. As the nexus is not established from the documents today produced, no reliance can be placed merely on the oral submissions on behalf of revision applicant. The interim application to be considered only after such documents are produced.”

Thereafter the Tribunal adjourned the revision to 18th April, 2015, 30th June, 2015, 30th July, 2015, 29th September, 2015, 31st October, 2015, 23rd December, 2015, 23rd March, 2016 and 7th April, 2016 for production of the Will.

5. Mr. Rajadhyaksha, the learned Senior Advocate appearing for the petitioner submits that on 5th May, 2015 the petitioner had made an application to the Bombay City Civil Court, to which the suit has since been transferred and renumbered as Suit No. 7002 of 1947, for copy of the Will to enable the petitioner to produce the same before the Tribunal. The Assistant Registrar, Decree Department of the Bombay City Civil Court communicated to the petitioner's advocate by the letter dated 25th June, 2015, that copy of the Will is not found in the records and proceedings of Suit No. 7002 of 1947 received from this Court. The other document of which the petitioner

had sought a copy was the report of the receiver dated 29th March, 1962. As regards that document the petitioner is informed that the document being in badly torn condition, it's certified copy cannot be issued. The petitioner had brought this communication to the notice of the Tribunal on 23rd December, 2015. But the outcome thereof was only further adjournment. From the communication produced the Tribunal apparently carried an impression that the Bombay City Civil Court has directed the parties to search for that document and place it on record. There is no such direction in the communication from the Bombay City Civil Court. In any case, Mr. Rajadhyaksha points out that the petitioner not being a party to that suit, cannot possibly search for the document.

6. It has rightly been submitted by Mr. Rajadhyaksha that the petitioner having purchased the property pursuant to the court's order and through court there can be no doubt about it's title to the property in question. The deed of conveyance in favour of the petitioner is executed by the Court Receiver, High Court, Bombay. That deed of conveyance is the document of title of the petitioner. Besides the administrative suit is still pending. Neither any party to the suit nor any third person has challenged the sale at any point of time. In the circumstances, the relevancy of will before the Tribunal would be a debatable question. However, without going into that question once it is seen that it is impossible for the petitioner to produce the document and that the petitioner has made all possible efforts to get the same, it was necessary for the Tribunal to proceed with the hearing of the matter before it without the Will. It is always open for the Tribunal to draw an inference permissible in law, if

the Tribunal arrives at the opinion that the petitioner is avoiding to produce the document though in it's possession. In the circumstances, the petition is disposed off with following order :

: O r d e r :

The direction by the Tribunal for production of copy of the Will, which is the subject matter of Suit No. 7002 of 1947 is set aside. The Tribunal shall proceed with the revision application before it, without the Will.

[Smt. R. P. SondurBaldota, J.]