

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.592 OF 2013

Kusum Sadashiv Mhatre and others ... Applicants
Vs.
Ramesh Mahadev Mhatre and others ... Respondents

Mr. Sagar Joshi for Applicants.
Mr. Kuldeep S. Patil for Respondents.

CORAM : R. G. KETKAR, J.
DATE : MARCH 17, 2016

P.C. :

Heard Mr. Joshi, learned Counsel for applicants and Mr. Patil, learned Counsel for respondents at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908, applicants have challenged the judgment and order dated 09.04.2013 passed by the learned 3rd Joint Civil Judge, Junior Division, Alibaug below exhibit-48 in Regular Civil Suit No.203 of 2011. By that order, the learned trial Judge rejected the application made by the applicants, hereinafter referred to as defendants No.1 to 5. Defendants No.1 to 5 took out application dated 13.02.2013 for framing preliminary issue as to whether the Civil Court has jurisdiction to entertain and try the Suit.

3. Respondents No.1 to 11 have instituted Suit for declaration that plaintiffs and defendants have equal rights in the suit property as per mutation entry No.47.

4. Mr. Joshi strenuously submitted that by mutation entry No.47, names of Ramesh Mahadev Mhatre (plaintiff No.1) and Nirmal Shankar

Mhatre were recorded. By order dated 23.10.1998, the Circle Officer, Pendhabe cancelled that mutation entry. Plaintiffs appeared to have preferred Appeal before Additional Collector, Raigad. Appeal was allowed on 15.11.2008. Against that decision, Revision Application was preferred before the Additional Commissioner, Konkan Division. By order dated 17.05.2010, the Additional Commissioner allowed the Revision Application and quashed and set aside the order of Additional Collector and restored the order of Circle Officer dated 23.10.1998. In short, Mr. Joshi submitted that mutation entry No.47 is cancelled. Having regard to prayer clause 1 of the Suit, the Suit is not maintainable as the plaintiffs are claiming rights in the suit property on the basis of mutation entry No.47. As the mutation entry No.47, itself, is cancelled, the learned trial Judge ought to have allowed the application.

5. On the other hand, Mr. Patil relied upon the order dated 18.07.2011 passed by this Court in Writ Petition No.4292 of 2011. He submitted that aggrieved by the decision of the Additional Commissioner, Konkan Division, plaintiffs instituted that Petition in this Court. This Court declined to interfere with the order of the Additional Commissioner reserving liberty to the plaintiffs to seek appropriate relief and appropriate declaration from the competent forum / court. He submitted that the issue of ownership can be decided only by the Civil Court, and therefore, the learned trial Judge rightly rejected the application.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, mutation entry No.47 recorded names of Ramesh Mahadev Mhatre (plaintiff No.1) and Nirmal Shankar Mhatre. It is not in dispute that the said mutation entry was cancelled by the

revenue authorities. Aggrieved by that decision, plaintiffs instituted Writ Petition in this Court. The said Petition was disposed of reserving liberty to the plaintiffs therein to approach the appropriate forum for seeking appropriate relief and claiming appropriate declaration.

7. It cannot be disputed that the declaration of ownership can be given only by the Civil Court and not by the Revenue Court. In paragraph 5 of the impugned order, the learned trial Judge noted that the Suit is instituted under Section 34 of the Specific Relief Act, 1963 and in view of the decision of this Court in Writ Petition No.4292 of 2011, plaintiffs have instituted the Suit. In view thereof, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, Application fails and the same is dismissed. It is needless to observe that the learned trial Judge will decide the Suit on the basis of material on record and in accordance with law without being influenced by the observations made by this Court in this order and in the impugned order. Order accordingly.

(R. G. KETKAR, J.)

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