NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Writ Petition (227) No.131 of 2011

1. Bishram, aged about 60 years, S/o Kapil,
2. Sagar S/o Khuman, Aged about 35 years.
   Both R/o Village Bhusendi PC No.03, Tehsil, Saja, Distt. Durg (CG).
3. Rajesh S/o Ubhay Ram Sahu, aged about 35 years, R/o Village Khati, Tah. Saja, Distt. Durg (CG).

----Petitioners

Versus

1. CG Revenue Board, Circuit Court, Raipur.
2. Smt. Neera Bai Wd/o Lt. Dudhram Lodhi,
3. Smt. Rahee Bai D/o Lt. Dudhram Lodhi,
4. Amrit Bai W/o (Not known) Lodhi,
   Respondents No.2 to 2 R/o Village Bhusendi , PC No.3, Tehsil Saja, Distt. Durg (CG).
5. Tahsildar, Saja, District Durg (CG).

---- Respondents

For petitioners	Shri V.G. Tamaskar, Advocate.
For respondents No.2&3	Shri PP Sahu, Advocate.
For respondent/State	Shri SP Kale, Deputy Advocate General.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

16/02/2017

1. Learned counsel for the petitioner at the outset submits that he is not fully prepared with the facts of the case and he has no objection if the matter proceeds and is decided after hearing the facts as narrated by the counsel for the respondents. Accordingly, the facts of the case was brought to the notice of the court by the counsel for the respondents No.2&3.

2. The present petition under Article 227 of the Constitution of India has been preferred assailing the order dated 18.11.2010 passed by the Board of Revenue, Bilaspur, in Revenue Revision Case

No.RN/5/R/A-6/631/2007 whereby the Board of Revenue has rejected the revision petition and the order of Upper Collector, Bemetara, in Revenue Case No.39/A/6/2006-07 dated 24.05.2007 has been affirmed.

3. As per counsel for the respondents No.2&3, the dispute revolves around the property which originally stood in the name of Dudhram. The property in dispute is located at village Bhusandi, P.H. No.6, Tehsil Saja, District Durg, measuring 1.40 hectare, which hereinafter shall be referred to as the disputed property. The said Dudhram died in due course of time. The respondents No.2&3 are the legal heirs i.e. wife and daughter of deceased Dudhram. After death of Dudhram, Amrit Bai moved an application before the Tehsildar for mutating the property in her name. The application was allowed on 04.04.2002. After the mutation was got done in the name of Amrit Bai, the said Amrit Bai is said to have sold the property by way of sale deed dated 01.07.2003 in favour of the present petitioners Vishram and Rajesh.

4. The respondents No.2&3, wife and daughter of deceased Dudhram, filed an objection against the said mutation by way of an appeal preferred before the SDM stating that the mutation proceedings have been drawn without noticing them. However, the SDM also rejected the appeal on 05.06.2003. The order of SDM was put to challenge in an appeal before the Collector. The Collector, after due consideration of the facts and circumstances of the case remitted the matter back to the Tehsildar to decide the entire matter of mutation afresh after hearing the parties to dispute. The Additional Tehsildar, after the matter remitted back by the Collector, proceeded further and on 28.08.2006 passed an order in favour of respondents No.2&3 ordering that mutation to be done in the names of respondents No.2&3.

5. The said order of Additional Tehsildar dated 28.08.2006 was put to challenge before the SDM by way of appeal by the petitioners along with Amrit Bai. The SDM vide order dated 29.01.2007 set aside the order of the Additional Tehsildar dated 28.08.2006 and allowing the appeal ordered for mutation to be done in the name of petitioners. The order of SDM dated 29.01.2007 was challenged by the respondents No.2&3 by way of second appeal before the Additional Collector. The Additional Collector, vide order dated 24.05.2007 allowed the appeal and set aside the order of SDM and affirmed the order of Additional Tehsildar dated 28.08.2006. This order of Additional Collector dated 24.05.2007 was also put to challenge before the Board of Revenue under Section 50 of the Chhattisgarh Land Revenue Code, 1959. The Board of Revenue also rejected the revision petition of the petitioners vide order dated 18.11.2010, leading to filing of present petition under Article 227 of the Constitution of India.

6. Learned counsel for the respondents No.2&3 submitted that it is a case where the actual fact is that immediately after the death of Dudhram, Amrit Bai is said to have allegedly sold the property to the present petitioners without knowledge and notice of the respondents

No.2&3. Even mutation proceedings which was at the first instance got done was without any notice to the respondents No.2&3 either by Amrit Bai or from the office of Tehsildar while deciding the mutation proceeding. Thus, the entire proceeding was bad in law and subsequently the superior authorities have turned down the order of the Tehsildar and have ordered for rectification of the mutation done in the name of Amrit Bai.

7. According to respondents No.2&3 there is no illegality or infirmity in the two orders under challenged i.e. order dated 24.05.2007 passed by the Additional Collector as well as order dated 18.11.2010 passed by the Board of Revenue. There is a concurrent findings of two appellate authorities giving specific reasons and also considering the objections and contentions raised by the petitioners before the concerned authorities and as such there is no scope left for exercising the supervisory jurisdiction of this court under Article 227 of the Constitution of India.

8. According to respondents if at all if the status of the petitioners are that of the purchaser of the disputed property from Amrit Bai, their grievance can only be redressed by way of a proceeding instituted before the competent civil court. The petitioners have still not resorted any civil litigation in this regard so as to put forth his claim and seek for declaration of the property. According to the respondents, Amrit Bai did not have any authority to sell the property.

9. It is well settled principle of law that this Court, in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India, should refrain itself from interfering with the order passed by the Court below, except in such cases where perversity, illegality, irregularity or jurisdictional error is writ large on the face of the record, which is not reflected in the present case.

10. After counsel for the respondents No.2&3 had made his arguments, Shri VG Tamaskar, counsel for the petitioners submits that the ground for challenging the order dated 18.11.2010 passed by the Board of Revenue as well as order passed by the Additional Collector dated 24.05.2007 is the fact that once when there was a registered sale deed executed in favour of the petitioners by Amrit Bai as early as in the year, 2003, unless the said registered sale deed is set aside or nullified by any competent civil court. The Tehsildar or the revenue authorities could not have interfered with upon the same. Thus, the orders of Board of Revenue and Additional Collector are bad in law deserving interference.

11. He further argues that authorities have not appreciated the fact that the respondent No.2 was already divorced by the original land owner namely Dudhram and therefore, she had no claim on the property.

12. Counsel for the petitioners relying upon the decision of this High Court in case of Beer Singh Vs. Pratap Singh & Others, reported in 2005(3) MPHT-37-CG, submitted that in view of principle of law laid down in this case, the orders passed by the Board of Revenue and Additional Collector are bad in law and deserve to be set aside and the property has to be mutated back in the name of petitioners. However, he was not able to state as to which paragraph of the said judgment he was relying upon.

13. Having heard the rival contentions put forth on either side and on perusal of records what clearly reflects from the proceedings is the undisputed facts that disputed property was originally standing in the name of Dudhram. After his death Amrit Bai is said to have projecting herself to be the widow of Dudhram moved an application for mutation which stood allowed. The respondents No.2&3 moved an appeal before SDM and then the matter proceeded as narrated by the counsel for respondents No.2&3, Shri PP Sahu, in the preceding paragraphs. Meanwhile, after the mutation got done in the name of Amrit Bai, she sold the property by way of sale deed dated 01.07.2003 to the present petitioners Bishram and Rajesh. Though there was a sale deed executed between Amrit Bai and the present petitioners, but in the revenue papers the property stood recorded in the name of Amrit Bai and vide impugned orders it has finally been ordered to be corrected in the name of respondents No.2&3 who are wife and daughter of the deceased Dudhram.

14. Thus, the bone of contention in the present proceeding was the mutation which was instituted at the first instance before the Tehsildar and got the mutation done in the name of Amrit Bai on 04.04.2002. Which by a series of litigations later before the superior authorities in the revenue courts right up to stage of Board of Revenue. Except for order passed by the SDM on 29.01.2007, all other orders i.e. order of Tehsildar dated 28.08.2006, order by second appellate authority Additional Collector dated 24.05.2007 and the order passed by the Board of Revenue under Section 50 of Land Revenue Code dated 18.11.2010 are all in favour of respondents No.2&3.

15. In the given facts and circumstances of the case, the contention of the petitioners that unless the registered sale deed is set aside, the mutation proceedings could not have been rectified is not sustainable for the reason that sale deed is not in question before any of the authorities. It was the mutation proceeding which was under challenge and the mutation was done in the name of Amrit Bai and not in the name of present petitioners. It is also pertinent to note that Amrit Bai has not challenged the order of Additional Collector dated 24.05.2007 before the Board of Revenue. It is the present petitioners alone who have challenged the said order which also further weakens the case of the petitioners as it appears that the persons whose name have been ordered to be replaced by the Tehsildar, Additional Collector as well as the Board of Revenue is not further contesting the case. The petitioners independently may not have any authority to challenge the order of the Board of Revenue. The only remedy available to the petitioners would be of filing appropriate suit before the competent civil court seeking for declaration in their favour.

16. So far as judgment cited and relied upon by the counsel for the petitioners in the case of Beer Singh (Supra) is concerned, the facts of the case itself would reveal that the said judgment was passed in an entirely different factual background and the bone of contention and principle laid down in that case was also under the circumstances which are totally unconnected and different to the facts of the present case. Therefore, the said judgment is distinguishable on its own facts.

17. In view of the same, the petition being devoid of merit is liable to be and is hereby dismissed. No order as to costs.

Sd/-

(P.Sam Koshy)

Judge

inder