

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4389 OF 1994

Rajaram s/o Balasaheb Mumule
alias Naikwade

Petitioner

Versus

Rukhminibai alleged w/o
Balasaheb Mujmule & another

Respondents

Mr. G.N.Chincholkar advocate for the petitioner
Mr. N.T. Bhagat, AGP for Respondent No.2

CORAM : **RAVINDRA V. GHUGE, J**

(Date : 13th July, 2017.)

PER COURT :-

1 The respondent No.2 Rukhminibai claims to be the second wife of Balasaheb Mujmule alias Naikwade. She preferred a proceeding before the Tahsildar, seeking a mutation entry on the basis of her claim that, she is the second wife of Balasaheb. Considering this aspect and there being no evidence at all before the Tahsildar as regards the marriage of Rukhminibai with Balasaheb and that too during the life time of the first wife Kamalabai, the Tahsildar rejected the objections of Rukhminibai.

2 She, therefore, approached the Sub Divisional Officer, Jalna, by preferring an Appeal under section 247 of the MLR Code

on 8.10.1990. After hearing the parties, the Sub Divisional Officer concluded that, there was a claim by five persons that, they were successors of the deceased Balasaheb. The mutation entry under challenge was sanctioned by the order under Appeal. Kamalabai w/o Balasaheb Mujmule was given 14.35 acres of land in gut numbers 426, 265 and 148. Rukhminibai has objected the same on the ground that, she is a legally wedded second wife of deceased Balasaheb and under section 10 of the Hindu Succession Act, Rukhminibai and Kalamabai will have a right to the extent of one share over the property.

3 The Sub Divisional Officer noted the objections of the son of Balasaheb, whose mother is Kamalabai that, the Hindu Law would not recognize a second wife during subsistence of the first marriage and since the first wife Kamalabai is still alive, the Sub Divisional Officer therefore dismissed the Appeal, by concluding that the order of the Tahsidlar dated 30.9.1990 does not call for interference and the parties may seek determination of their rights before the Civil Court.

4 Rukhminibai then preferred an Appeal before the Additional Collector, who has concluded that the parties are at liberty to approach the Civil Court for getting their shares decided and for crystallizing their rights. While passing the said order dated

29.7.1992, he allowed the the Appeal filed by Rukhminibai. 5555

5 Consequentially, the petitioner Rajaram s/o Balasaheb whose mother is Kamalabai, preferred a Revision Petition No.1998 under the MLR Code for challenging the order of the Additional Collector. By the impugned order, the Additional Commissioner concluded that Rukinibai will have to first establish that she is the legally wedded wife of deceased Balasaheb. Balasaheb, during his life time had denied his second marriage. The Additional Commissioner therefore concluded that the Additional Collector has rightly noted that the parties will have to approach the Civil Court for deciding their rights.

6 I have considered the grounds raised by the petitioner and have gone through the record.

7 The grievance of the petitioner - herein is that the mutation entry No.123 dated 16.1.1989 carried out by the Tahsildar be sustained and it be concluded that Rukhminibai has no share in the property.

8 This Court, in the matter of **Shrikant R. Sankanwar and others versus Krishna Balu Naukudkar** (2003 (3) BCR 45) has concluded that, the mutation entries are purely revenue entries for fiscal purposes and have no sanctity there beyond.

Mutation entries do not crystallize any right or title or interest of any party. Rights or titles to a property are to be decided by the Civil Court and the Civil Court would therefore crystallize the rights and such conclusions would then be binding upon the revenue authorities.

9 The petitioner submits that Rukhminibai had preferred RCS No.42/2012 , seeing partition and separate possession, which has been recently dismissed on 8.2.2016.The petitioner has no knowledge whether any Regular Civil appeal has been filed by Rukhminibai. As such, Rukhminibai is held dis-entitled by the Civil Court.

10 In the light of the above, I do find that the impugned orders are liable to be set aside. Liberty had already been given to the litigating sides to approach the Civil Court and as such, this petition deserves to be allowed. Petition, is therefore, allowed in terms of prayer clause (B) which reads as under:-

“ (B) The Judgment and order dated 29.8.1994 passed by Additional Commissioner, Aurangabad in case No.1992/REV/R/2 and the Judgment and order dated 22.7.1992 passed by the Additional Collector, Jalna in case No.1991/REV/Appeal/CR-31 may be cancelled and set aside . “

11 Needless to state, the revenue entries shall be subject to the decision of the Civil Court.

12 Rule is made absolute accordingly.

(RAVINDRA V. GHUGE , J)

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