

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5290 OF 2016

ASHABI SHAIKH ISMAIL AND ANOTHER
VERSUS
ANUSAYABAI DEVIDAS PHAD AND OTHERS

Advocate for Petitioner : Shri S.S. Tope.
Advocate for Respondent No. 1 to 4 : Shri R.S. Deshmukh
and Shri A.A. Munde.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 11th July, 2017

PER COURT :

1. The petitioners are aggrieved by the order dated 19/03/2016, passed by the Additional Commissioner, Aurangabad, by which, the Revision Petition filed by the respondents is allowed and the order of the Additional Collector, Ambajogai dated 06/02/2015, is set aside and the order of the Sub-Divisional Officer, Ambajogai dated 03/12/2012, is confirmed.

2. The grievance of the petitioners is that they have preferred a Special Civil Suit No. 41/2009, with respect to land Gut Nos.

142 and 129 of Village Devhala, Tq. Parli (V). Based on the same, the petitioner approached the Sub-Divisional Officer requesting that no mutation entry be taken on the basis of the sale deed executed by respondent No.5, in favour of respondent Nos. 1 to 4, dated 24/02/2010, which is after the institution of the suit. Contention is that Section 52 of the Transfer of Property Act, prohibits creation of third party interest, once the suit instituted. Yet, respondent No. 5 has alienated the property after the institution of the suit.

3. It emerges from the record that the Sub-Divisional Officer, by order dated 03/12/2012 has directed the recording of a mutation entry. The petitioners challenged the same before the District Collector/who has allowed the appeal. The respondents approached the Additional Commissioner by filing a Revision Petition and by the impugned order, the Revision Petition was allowed and the order of the S.D.O. regarding the mutation entry was sustained.

4. This Court has laid down the law in the matter of

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Naukudkar [2003 (3) BCR 45], concluding that mutation entries do not decide the right or title or interest of any litigating side. Mutation entries are only for the taxation and fiscal purposes. They would not crystallize the right or title of any party. It is also held that the Civil Court can alone decide the right or title of a claimant in a Civil Suit and the conclusion of the Civil Court would be binding upon the revenue authorities.

5. Considering the above, this petition is disposed of by holding that the impugned order of the Additional Commissioner and of the S.D.O. would not amount to deciding the rights of the parties. The mutation entry at issue would be subject to the result of the Special Civil Suit No. 41/2009. The Trial Court is, therefore, directed to decide the said suit as expeditiously as possible and preferably on / or before 30/04/2018. Until the decision in the suit, the respondents shall not acquire any right or title in so far as the suit property is concerned, by virtue of the mutation entry and the litigating sides are precluded and restrained from creating any third party

interest and from alienating the property, without the leave of the Trial Court.

(RAVINDRA V. GHUGE, J.)

S.P.C.