

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 333 OF 2016

RAJSING SHEETALSING VARMA
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Shri Savangikar Subhash K.
AGP for Respondents 1, 3 to 5 : Shri Bhagat N.T.
Advocate for Respondent 2 : Shri Biradar C.D. h/f Shri Irale E.G.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 28, 2017

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PER COURT :-

1. The petitioner is aggrieved by the orders passed by respondent No.1 - Additional Commissioner, Aurangabad dated 26.10.2015 and the judgment of respondent No.4 - Sub Divisional Officer, Latur dated 27.11.2012.

2. I have heard the learned Advocates for the respective sides.

3. Considering the order that I intend to pass in the light of the law laid down by this Court in the matter of Shrikant R. Sankanwar and others Vs. Krishna Balu Noukudkar [2003 (3) BCR 45], that I am not advertent to their entire submissions.

4. The petitioner and respondent No.2 are real brothers, who are nearing their 80's. Issue is as regards the mutation entry. Contention of respondent No.1 is that the mutation entry No.259 dated 10.4.1984 has been an outcome of a partition agreement between the parties, which is placed on record. The petitioner has agreed to part with the portion of the land. In RCS No.183 of 2005, preferred by the petitioner, it has been categorically admitted by the petitioner that there was a partition of the ancestral property several years ago and after the demise of their father Shitalsing about 50 years ago.

5. It is informed that the petitioner has instituted RCS No.809 of 2016 before the trial Court at Ausa, District Latur for seeking possession and injunction against respondent No.2.

6. This Court in the matter of Shrikant R. Sankanwar (*supra*), has laid down the law that a mutation entry is based on the best evidence placed before the revenue authorities. However, the mutation entry does not crystallize the right or title or interest of any party as the revenue authorities have no jurisdiction to do so. It is the Civil Court, which decides the dispute and crystallizes the right and title of the litigant. Said findings of the Civil Court are binding upon the revenue authorities and mutation entries are, therefore, to be based on such conclusions. *Vice versa* is not permissible.

7. Considering the above and by the consent of the parties, this petition is disposed off in order to enable the litigating sides to contest RCS No.809 of 2016. Until then, the possession of the respondent No.2 and the mutation entry with regard to the portion of land at issue shall be protected with an embargo that respondent No.2 or his assignees or successors in interest shall not alienate the said property or create third party interest without permission from the trial Court.

(RAVINDRA V. GHUGE, J.)

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