

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 523 OF 2017

MARIA ANA YVETTE CLOTILDES PERES E
ALMEIDA.,

... Petitioner

Versus

COTTAGE INDUSTRIES EXPOSITION LTD.
AND ANR.,

... Respondents

Mr. John Abreu Lobo, Advocate for the Petitioner.

Mr. Sanjay K. Mangeshkar with Mr. Vibhav Amonkar,
Advocates for the Respondent No. 1.

Coram:- C. V. BHADANG, J.

Date:- 5th December 2017

ORAL ORDER:

Heard Mr. Lobo, the learned Counsel for the petitioner and
Shri Mangeshkar, the learned Counsel for the respondent no. 1.
None appears for respondent no. 2, though served.

2. The petitioner is challenging the order dated 13.03.2015,
passed by the learned Deputy Collector, whereby the preliminary
objection raised by the petitioner, to the partition proceedings
initiated by the respondent no. 2, has been overruled.

3. The brief facts are that the petitioner and the respondent no.
2, who are sisters, have entered into a Deed of Partition dated
16.08.2003. According to the petitioner, the said Deed has not

been acted upon and no partition has been effected by metes and bounds. The respondent no. 2 sold a part of the land, which is shown to have fallen to her share, to the respondent no. 1, by Deed of Sale dated 13.03.2007. The respondent no. 1 initiated partition proceedings under Section 61 of the Goa, Daman and Diu Land Revenue Code, 1968, for demarcation of the land, in which the petitioner (respondent no. 2 before the learned Deputy Collector) had raised a preliminary objection to the maintainability of the application, in view of the pendency of an appeal, arising out of mutation proceedings. It was contended that the mutation effected on 20.06.2014 was behind the back of the petitioner. The petitioner sought to challenge the order of mutation in an appeal, which was barred by limitation and an application for condonation of delay in filing the appeal against the order dated 20.06.2014, is pending before the learned Deputy Collector. In short, it was contended that the partition proceedings could not be proceeded with, unless and until the order in the mutation proceedings attains finality.

4. The learned Deputy Collector by the impugned order has dismissed the preliminary objection and has directed the DSLR to carry out partition on the strength of Deed of Sale dated 13.03.2007 and the Deed of Partition dated 16.08.2003.

5. It may be mentioned that the petitioner had challenged the said order before the learned Administrative Tribunal in Land Revenue Appeal No. 19/2015, which was dismissed on 19.01.2017, on the ground that the appeal is not maintainable as it is against an interim order. The petitioner in the present petition also challenges the order of the learned Administrative Tribunal, holding that the appeal is not maintainable. However, in my considered view, it is not necessary to go into the said issue, in as much as, the petitioner, by way of the present petition, is also challenging the order of rejection of the preliminary objection, passed by the learned Deputy Collector. The only contention raised is that unless and until the mutation proceedings attain finality, the partition proceedings cannot be proceeded with.

6. On hearing the learned Counsel for the parties, I do not find that any case for interference is made out. At this stage, all that the learned Deputy Collector has done is that, the DSLR is directed to carry out the partition on the strength of the Deed of Sale dated 13.03.2007 and the Deed of Partition dated 16.08.2003. The learned Counsel for the petitioner submitted that the portion allotted to the respondent no. 2, as per the Deed of Partition dated 16.08.2003, is not in existence at loco. If that be so, the report of the DSLR, would facilitate the decision on the controversy. It will assist the learned Deputy Collector to

decide the controversy more effectively and the petitioner shall also get an opportunity to raise all such contentions as may be available in law, at the time of confirmation of the partition and as such, no prejudice would be caused to the petitioner.

7. In that view of the matter, I decline to entertain the petition, which is accordingly dismissed.

Needless to mention that the petitioner shall be entitled to raise all such contentions, as may be available in law and fact, at the time of the confirmation of the partition and the learned Deputy Collector shall not be influenced by the observations made in the impugned order, while deciding the issue of confirmation of the partition. In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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