

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7105 OF 2015

Prasad Dondiba Kande,
Age : 45 years, Occu.Agril.,
R/o Kausadi, Taluka Jintoor,
District Parbhani

...PETITIONER

VERSUS

Pandharinath Vishwanath Deshmukh,
[More], Age Major, Occu. Agril.
R/o. Bhogaon [Devi], Taluka Jintoor,
District Parbhani

...RESPONDENT

...

Advocate for the Petitioner : Shri S.R. Shirsat h/f.
Shri S.S.Jadhavar
Advocate for the Respondent : Shri P. P. Khandagale

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 04th JULY, 2018.**

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ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith by the consent of the parties and heard finally.

2. The petitioner is aggrieved by the judgment of the Additional Commissioner, Aurangabad dated 27/05/2015, by which, the Revision Application filed by the respondent herein,

has been allowed and the mutation entry No. 164 is cancelled till the decision of the competent Civil Court.

3. I have considered the strenuous submissions of the learned Advocates for the respective sides.

4. The Civil Court proceeding in R.C.S.No.168/1995 preferred by the respondent- Pandharinath has already been dismissed in default by the order of the Trial Court dated 06/07/1998. It is obvious, therefore, that there was no civil suit pending before any Court when the Additional Commissioner, Aurangabad delivered the order dated 27/05/2015. Learned Advocate for the respondent- Pandharinath submits, on instructions, that Pandharinath has not initiated any proceedings for seeking restoration of RCS No. 168/1995.

5. The petitioner Prasad contends that a mutation entry No. 164 recording his name in the revenue record on 04/11/1995, is on the basis of a registered sale-deed. After a lapse of 13 years, Pandharinath has challenged the mutation

entry before the Deputy Collector on 12/01/2007. The Deputy Collector has concluded that the allegations between the parties cannot be gone into by a revenue authority and the important condition of the sale-deed that Rs. 10,000/- would be paid by Prasad to Pandharinath is not fulfilled. On this impression, the Appeal filed by respondent- Pandharinath was allowed.

6. Prasad preferred an Appeal under Section 247 of the MLR Code before the Additional Collector who has perused the entire record and has found that the payment of Rs. 10,000/- by Prasad to Pandharinath is evidenced by a receipt which was registered in the office of the Sub-Registrar, Jintoor, District Parbhani bearing No. 569 dated 02/04/1974. He, therefore, concluded that the terms and conditions of the sale-deed were fulfilled and hence, he allowed the Appeal filed by Prasad by order dated 16/06/2009.

7. Pandharinath preferred a Revision under Section 257 of the MLR Code before the Additional Collector who concluded that as mutation entry No. 164 was taken after 20 years, it

cannot be sustained. He lost sight of the fact that Prasad was a minor when the transaction took place and after he attained the age of majority, the further course was adopted. The said authority however, lost sight of the evidence in the form of payment of the residual amount, by which Prasad had fulfilled the contract.

8. This Court, in the matter of *Shrikant R. Sankanwar and Ors. vs Krishna Balu Naukudkar, 2003 (3) BomCR 45*, while dealing with the issue of mutation entries, has observed that a litigant seeking a mutation entry in his name should putforth his best evidence, if no civil court proceedings are pending. A registered sale-deed is held to be strong evidence. Unless such a sale-deed is set aside by any civil court, the revenue authorities can rely upon such a document and carry out a mutation entry. If a civil court proceeding is pending, the verdict of the civil court would bind the revenue authorities as the civil court can decide the right, title and interest of a litigant over a property.

9. Considering the above, I find that the Additional

Revisional Commissioner has lost sight of the registered receipt No. 569 dated 02/04/1974, by which, Pandharinath was paid the amount of Rs.10,000/-. Copy of the said receipt is placed on record at page Nos. 17 and 18 of the petition paper book. So also the claim of Pandharinath seeking a declaration of ownership of the said property has been to put to rest by the dismissal of RCS No. 168/1995.

10. Considering the above, this petition is allowed in terms of prayer clause B which reads as under :-

"B] By issuing writ of certiorari or any other appropriate writ, order or direction, the judgment and order dated 27.05.2015 passed by the learned Additional Commissioner, Aurangabad Division, Aurangabad in Case No. ROR/REV/28/2010/P may kindly be quashed and set aside".

11. Rule made absolute.

(RAVINDRA V. GHUGE, J.)

shp/-