

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

30 WRIT PETITION NO. 7679 OF 2017

PRABHAKAR RUSTUM DAKHANE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Darak B.A.
AGP for Respondent Nos. 1 to 6 : Mr. S.N. Kendre
Advocate for Respondent Nos. 7 to 9 : Mr. Kakde Yuvraj V.
Advocate for Respondent Nos. 10A to 10D : Mr. Choudhari
Yuvraj S.

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CORAM : V. K. JADHAV, J.
DATED : 16th APRIL, 2018

PER COURT:-

1. Heard finally with consent at the admission stage.
2. The petitioner and respondent no.7 are inter-se brothers. After death of their father, immovable property owned and possessed by their father came to be mutated in the name of their mother i.e. respondent no.10 Parwatibai Rustum. Respondent no.7 on the basis of registered partition deed allegedly executed by mother, got succeeded in mutating his name alone in respect of the suit property and even thereafter,

on the strength of the said mutation entry transferred the property in the name of his son and daughter in law i.e. respondent nos.8 and 9 herein. Being aggrieved by the same, the petitioner has preferred an appeal before the learned SDO, Ambad, District Jalna and by judgment and order dated 22.2.2016, the learned SDO, Ambad has allowed the appeal and quashed and set aside the disputed mutations in respect of the suit property. Aggrieved by the same, the respondent nos. 7 to 9 and deceased Parwatibai (she was alive till that time) preferred an appeal before the Additional Collector, Jalna and Additional Collector, Jalna by judgment and order dated 12.5.2016, allowed the appeal and quashed and set aside the judgment and order passed by the learned SDO.

3. Consequently, the present petitioner has preferred revision before the Additional Commissioner, Aurangabad and by judgment and order dated 18.10.2016, the learned Additional Commissioner, Aurangabad has allowed the revision and quashed and set aside the judgment and order passed by the learned Additional Collector and confirmed the judgment and order passed by the learned SDO and further directed

disciplinary action to be initiated against the concerned Talathi and Circle Officer. Aggrieved by the same, the present respondent nos. 7 to 9 had preferred second appeal before the concerned Hon'ble Minister and the Hon'ble Minister, by order dated 8.3.2017 has partly allowed the appeal and quashed and set aside the judgment and order passed by the learned Additional Commissioner and remitted the matter to the Tahsildar, Ambad for making an enquiry as to the legal heirs and to take entries of the legal heirs in respect of the suit property. Hence this writ petition.

4. The learned counsel for the petitioner submits that the learned SDO and the learned Additional Commissioner, Aurangabad have taken a correct view in the matter. The learned counsel submits that both the authorities have taken a view that on the basis of the unregistered partition deed executed only on stamp paper of Rs. 100, no property can be partitioned or transferred in the manner, as it was done and accordingly quashed and set aside the order passed by the Additional Collector. The learned counsel submits that during pendency of the revision before the learned Additional

Commissioner, Parwatibai died and as such the petitioner has filed an application before the learned Additional Commissioner for bringing her legal heirs on record. However, the learned Additional Commissioner has not passed any effective order on the said application and in consequence of which as rightly observed by the Hon'ble Minister, the learned Additional Commissioner has passed the order against the dead person. Thus, the Hon'ble Minister has rightly directed the Tahsildar to make an enquiry into the legal heirs and further to take entries of all the legal heirs in respect of the suit property, however, erroneously quashed and set aside the entire judgment and order passed by the learned Additional Commissioner and as such the mutation entries recorded in favour of respondent nos. 7 to 9 also came to be restored.

5. The learned counsel for respondent nos. 7 to 9 submits that the learned Additional Collector has rightly considered the case of the respondents and on the basis of the deed of partition executed by the mother of respondent no.7, quashed and set aside the judgment and order passed by the learned SDO. The learned counsel submits that after the judgment and order

passed by the learned Additional Commissioner, the Mutation Entry No. 3212 came to be sanctioned and in accordance with that, all the previous mutation entries in respect of the suit property came to be cancelled. Consequently, the Minister has remanded the matter to the Tahsildar to the extent of the enquiry as to the legal heirs and further to take appropriate mutation entry in respect of the suit property. The learned counsel submits that there is no fault in the order passed by the Hon'ble Minister. There is no substance in the writ petition. The writ petition is thus liable to be dismissed.

6. The learned counsel for respondent nos. 10A to 10D submits that, even if Mutation Entry No. 3212 is kept as it is, there is no mentioning of names of the daughters in respect of the suit property and as such their interest may kindly be protected.

7. It appears that the parties have not approached the Civil Court except the petitioner who has filed a suit simplicitor for a decree of perpetual injunction. None of the parties had approached the trial Court for partition and separate possession

in respect of the suit property. Apart from this, even if the suit property is considered as an ancestral property, the mother hardly gets any right to mutate her name entirely in respect of the suit property and thereafter partition the suit property amongst only one son. Alternatively, even if it is considered that it is a self acquired property of deceased Rustum (father of petitioner and respondent no.7), then also after the death of Rustum who died intestate, the property would be inherited by all his surviving legal heirs. In any eventuality, the order passed by the learned SDO and by the learned Additional Commissioner to the extent of cancellation of mutation entries taken in favour of respondent no.7 and thereafter in favour of respondent nos. 8 and 9, appears to be correct, proper and legal. Furthermore, in terms of the judgment and order passed by the learned Additional Commissioner, the Mutation Entry No. 3212 came to be sanctioned and as a effect thereof, the earlier mutation entries sanctioned in favour of the respondent no.7 and subsequently in favour of respondent nos.8 and 9 came to be cancelled.

8. During pendency of the revision before the Additional Commissioner, Aurangabad, the mother i.e. Parwatibai died.

Even, though the petitioner has filed an application for bringing on record all the legal heirs, the learned Additional Commissioner has not passed any effective order on it. Thus, the learned Additional Commissioner has passed the judgment and order against dead person i.e. deceased Parwatibai.

9. In view of the same, the Hon'ble Minister has rightly remitted the matter to the Tahsildar, Ambad to make an enquiry about the legal heirs of deceased Rustum and Parwatibai and to take appropriate entries in respect of the suit property. The Hon'ble Minister has obviously protected the interest of the daughters who are impleaded as respondent nos. 10A to 10D herein. However, it appears that the Hon'ble Minister has erroneously quashed and set aside the entire judgment and order passed by the learned Additional Commissioner. In consequence thereof, the earlier orders passed by the learned SDO, which is confirmed by the Additional Commissioner also came to be quashed and set aside.

10. Thus the order passed by the Hon'ble Minister can be modified to the extent that the judgment and order passed by

the learned Additional Commissioner is set aside to the extent of the order passed against deceased person. However, the Mutation Entry No. 3212 sanctioned on the basis of the judgment and order passed by the learned Additional Commissioner would remain effective and enforceable till effective order is passed by the Tahsildar after concluding the enquiry. With this modification, this writ petition can be disposed of. Hence, the following order:

ORDER

- i) Writ petition is hereby partly allowed.
- ii) The judgment and order dated 8.3.2017 passed by the Hon'ble Minister is modified to the extent that the effect of the Mutation Entry No. 3212 would remain as it is in terms of the judgment and order passed by the learned Additional Commissioner, Aurangabad, confirming thereby the order passed by the learned SDO, Ambad.
- iii) Rest of the order passed by the Hon'ble Minister stands

confirmed.

iv) The Tahsildar, Ambad is hereby directed to complete the enquiry and pass appropriate orders within three months from today.

v) Writ petition is accordingly disposed of. No costs.

(V. K. JADHAV, J.)

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