

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11427 OF 2014

Anil Hindurao Adik @ Suravashi ... Petitioner

Vs.

The State of Maharashtra and others ... Respondents

Mr. Kirit Hakani for Petitioner.

Mr. S. M. Kamble for Respondents No.7 and 9A to 9C.

Mr. P. P. Pujari, AGP for Respondents No.1 to 6-State.

Mr. S. S. Patwardhan for Respondents No.8A to 8C.

CORAM : R. G. KETKAR, J.

DATE : NOVEMBER 29, 2018

P.C. :

Heard Mr. Hakani, learned Counsel for the petitioner, Mr.Kamble, learned Counsel for respondents No.7 and 9A to 9C, Mr. Pujari, learned AGP for respondents No.1 to 6-State and Mr. Patwardhan, learned Counsel for respondents No.8A to 8C at length.

2. This Petition takes exception to the judgment and order dated 21.08.2014 passed by the Hon'ble Revenue Minister in Revision Application No.RTS 3813/4409/Pra.Kra.Ko.54/J-5A. By that order, the Hon'ble Minister allowed the Revision Application preferred by respondents No.7, 8A to 8C and 9A to 9C and set aside the order dated 25.01.2012 passed by the Additional Collector, Kolhapur in R.T.S./ Second Appeal/251/2010 and order dated 02.05.2013 passed by the Additional Commissioner, Pune Division, Pune in RTS Revision Application No.147 of 2012. In paragraph 27 of the impugned order, the Hon'ble Minister observed that petitioner, who was respondent therein, had produced the genealogy to contend that he is the heir of Ganu Vithu Adik. The question of declaration of heirship is within the domain of Civil Court. The petitioner has not obtained heirship certificate from the Competent Court. Accordingly, the Hon'ble Minister has also set aside mutation entry No.50736.

3. The Petition was heard for 'admission' on 09.02.2015. Notice was issued to the respondents and in the meanwhile, parties were directed to maintain status-quo as of that date. The said interim order is operating till date.

4. The petitioner claims that properties in dispute belonged to Ganu Vithu Adik. He died on 11.12.1941, leaving behind Hindurao, father of the petitioner. Petitioner filed application on 06.07.2009 for entering his name in the Record of Rights. In pursuance thereof, mutation entry No.50736 was made. On 15.07.2009, respondents No.7, 8A to 8C and 9A to 9C filed application for recalling the mutation entry on the strength of gift deed dated 03.10.1944 executed by Ganu in favour of their predecessors among other grounds. By order dated 26.02.2010, Tahsildar cancelled mutation entry No.50376. Aggrieved by that decision, petitioner preferred appeal before Sub-Divisional Officer, Karvir Division, Kolhapur. On 01.11.2010, appeal was dismissed. Aggrieved by these decisions, petitioner instituted R.T.S. Appeal No.251 of 2010. The Additional Collector, Kolhapur allowed the appeal and set aside the order of the Authorities below and remitted the matter to Tahsildar for fresh enquiry. Against that order, respondents preferred Revision Application, which was dismissed on 02.05.2013 by Additional Commissioner, Pune Division, Pune. Against that decision, respondents preferred Revision Application before the Hon'ble Minister, which was allowed by the impugned order on 21.08.2014. After perusing the impugned order and in particular, paragraph 27, I do not find that the Hon'ble Minister has committed any error in holding that the issue whether petitioner is heir of Ganu Vithu can be decided by the competent Civil Court.

5. In view thereof, Mr. Hakani seeks permission to withdraw this

Petition with liberty to institute Suit for declaration of the petitioner's rights. He states that within 8 weeks from today, petitioner will file Suit before the appropriate Civil Court. He further submits that as the interim order is operating from 09.02.2015, the same may be continued for a period of 12 weeks from today so as to enable the petitioner to obtain suitable interim order in the Suit proposed to be filed within 8 weeks from today.

6. In view thereof, on the motion made by Mr. Hakani, Petition is allowed to be withdrawn with liberty to institute Suit before appropriate Civil Court. The said Suit and application for interim relief shall be filed within a period of 8 weeks from today. The petitioner is prosecuting this Petition bonafide. If such Suit is filed within 8 weeks from today, the time spent in prosecuting this Petition from 16.12.2014 till today shall be excluded while considering the issue of limitation. If such Suit is filed within 8 weeks from today, the parties shall maintain status-quo as of 09.02.2015 for a period of 12 weeks from today. The petitioner shall move for interim relief urgently. If the petitioner does not file Suit within 8 weeks, the interim order shall stand automatically vacated without further reference to the Court. It is made clear that I have not examined merits of the case. All contentions of the parties on merits are expressly kept open. Continuation of the interim order shall not be construed as expression of merits either way. Order accordingly.

(R. G. KETKAR, J.)

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