

rkmore

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6465 OF 2018

The St. John Baptist Church & Anr. ..Petitioners

Versus

Smt.Taibai Ramji Daulati (since deceased)
Through Shri Vilas Daulati & Ors. ..Respondents

Ms.Neeta Karnik, Ms.Regina Correia, Mr.Akshay Gangan I/by A.V.
Chatuphale for the Petitioners.

Mr.Dnyaneshwar Bhosle, for the Respondent Nos.1 and 2.

Mr.S.H.Kankal, AGP for Respondent Nos.3, 4 and 5.

CORAM : REVATI MOHITE DERE, J.

DATED : 22nd OCTOBER 2018

P.C.:

. Heard the learned counsel for the parties.

1] Admittedly, certain documents produced in this Court i.e. the written statement filed in Special Civil Suit No. No.323 of 2000 and the order dated 19th January 2016 passed by the Deputy Superintendent of Land Records, were not produced before the learned Additional Commissioner, Konkan Division, Mumbai, when the learned Commissioner heard the Petitioner's Revision Application No.614 of 2016.

2] Learned A.G.P. submits that since the said documents were not produced before the learned Additional Commissioner, Konkan Division, Mumbai, the said documents could not be considered. He submits that in this view of the matter, it would be appropriate to quash and set aside the order dated 8th November 2017 and the matter be remanded back to the Authority for fresh consideration, in light of the new documents produced in the aforesaid Writ Petition. Learned counsel for the Petitioner has no objection if the matter is remanded back to the learned Additional Commissioner, Konkan Division, Mumbai for fresh consideration.

3] Perused the papers. Learned counsel for the Respondent No.2 submits that the temple in question, is situated on Survey No. 189, Hissa No.4, and not the Petitioner-Church. Learned counsel for the Petitioner relied on two documents to show that the Respondent had in fact admitted that the Temple stood on Survey No.189, Hissa No.2. She further alleges that the Respondent has fraudulently entered their name in the 7/12 extract to show that the temple stands on Survey No.189, Hissa No.4. Learned Counsel for the Respondent No.2 refuted the said allegations. Admittedly, two documents i.e. the written statement filed in Special Civil Suit No. No.323 of 2000 and the order of Deputy Superintendent of Land Records dated 19th January 2016 were not produced before the learned

Additional Commissioner, in Revision Application No.614 of 2016. Considering the same, it would be appropriate to remand the matter back to the learned Additional Commissioner, Konkan Division, Mumbai for fresh consideration.

4] Accordingly, the impugned order dated 8th November, 2017 passed by the learned Additional Commissioner, Konkan Division, Mumbai is quashed and set aside. Revision Application No.614 of 2016 is restored back to its original file. Both the parties to appear before the learned Additional commissioner on 2nd November 2018 at 3.00 p.m., after which the learned Additional Commissioner will give dates convenient to him.

5] The Petitioner is at liberty to file additional documents in addition to the aforesaid documents in support of their claim that the Petitioner-Church stands on Survey No.189, Hissa No.4 and not on Survey No.189, Hissa No.2. Similarly, the Respondent No.2 is also at liberty to file additional documents, if they so desire. After the said documents are filed by the parties, the learned Additional Commissioner, Konkan Division, Mumbai, to decide the matter on its own merits afresh, in accordance with law. All contentions of both the parties are expressly kept open.

6] The learned Additional Commissioner, Konkan Division, Mumbai to dispose of the said Revision Application No.614 of 2016, as expeditiously as possible and preferably before 28th February 2019.

7] The Writ Petition is accordingly disposed of on the aforesaid terms.

All parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)