

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.4484 OF 2015

Sheikh Hassan Mohammad Fatakare	]	
(since deceased) through his legal heirs	]	
and representatives;	]	
a. Noor Mohammad Hassan Fatakare & Ors.	]	Petitioners
Versus		
Abdul Rehman Ibrahim Fatakare and others.	]	Respondents

.....

Mr. G.S. Godbole, Senior Advocate i/b Sumit S Kothari, for Petitioners.

Mr. M.A. Arijith a/w Nikhil Mallelwar i/b Sachin Pawar, for Respondents No.1A, 1B, 2,4 and 5.

Mr. Y.D. Patil, A.G.P, for Respondent No.7.

Mr. Pawan S. Patil, for Respondent No.8.

.....

CORAM : R.G. KETKAR, J.

DATE : 10TH DECEMBER, 2018.

P.C:

Heard Mr. Godbole, learned senior Counsel for the petitioners, Mr. Arijith, learned Counsel for respondents No.1A,1B, 2,4 and 5, Mr. Y.D. Patil, learned A.G.P, for respondent No.7 and Mr. Pawan Patil, learned Counsel for respondent No.8 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the orders;

[1] dated 10th January, 2012 passed by the Additional Collector Raigad Alibaug in Appeal No.319 of 2011 (Exhibit E)

[2] dated 9th January, 2013 passed by the Additional Commissioner, Konkan Division in Revision Application No.45 of 2012 (Exhibit F) as also

[3] order dated 27th August, 2014 passed by the Hon'ble Minister for Revenue in Revision Application No. 309/J-4(A) (Exhibit H).

3. The petitioner filed application dated 8th October, 2010 before Tahsildar, Tala for retaining his name in respect of Gat No.993-A, 993-B and 449 situate at Mauje Tala, Taluka Tala. By order dated 5th November, 2011, Tahasildar Tala directed retention of name of the petitioner in respect of these lands and deletion of the names of other persons. Talsildar Tala also directed entering name of the petitioner in respect of Gat No.993A and 993 B and name of Rehman in respect of area of 0.10.0 in respect of Gat No.449 and deletion of names of other persons. Aggrieved by that order, the respondents No.1 to 5 preferred RTS Appeal No.93 of 2011 before Sub Divisional Officer, Mangaon Division, Mangaon (for short 'S.D.O'). By order dated 15th September, 2011, S.D.O dismissed the appeal and upheld the order dated 5th February, 2011 passed by Tahsildar, Tala. Aggrieved by these orders, the respondents No.1 to 5 filed appeal under section 247 of the Land Revenue Code, 1966 (for short 'Code') before Additional Collector, Raigad, Alibaug. By order dated 10th January, 2012, the Additional Collector set aside the orders of Tahsildar, Tala and S.D.O, Tala and also cancelled mutation entry No.1325. Aggrieved by this order, the petitioner instituted revision application under section 257 of the Code before Additional Commissioner, Konkan Division. By order dated 9th January, 2013, the Additional Commissioner set aside the order dated 15th September, 2011 passed by S.D.O, Mangaon as also order dated 5th February, 2011 passed by Tahsidar, Tala. It is against this order, the petitioner instituted revision application before the Hon'ble Minister, Revenue. By order dated 27th August, 2014, the Hon'ble Minister dismissed the revision application and upheld the order of the Additional Commissioner dated 9th January, 2013. It is against this order, the petitioners have instituted the present Petition.

4. In support of this Petition, Mr. Godbole strenuously contended that the impugned orders are passed on the premise that the suit is pending in the Civil Court and in the absence of consent of the sharers, Tahsildar Tala had passed order under section 85 of the Code. He submitted that R.C.S No.30 of 2011 was withdrawn on 12th March, 2018 with liberty to file a fresh suit on the same cause of action. The order granting liberty to file fresh suit on the same cause of action is under challenge in the Writ Petition filed in this Court. The said Petition is pending.

5. On the other hand Mr. Arijith and Mr. Patil submitted that respondents No.1 to 5 have instituted R.C.S Suit No.152 of 2018 in the Court of Civil Judge, Senior Division, Mangaon, inter alia, praying for declaration that the properties in question herein are jointly owned by the plaintiff and defendant and that the plaintiff has equal share; for partition by metes and bounds. He submitted that as the civil suit is pending between the parties, the petitioners can agitate the contentions which are raised in the present Petition in the civil suit.

6. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As mentioned earlier, the dispute is in respect of entering names of the parties in respect of Gat No.993-A and 993-B and Gat No.449. As mentioned earlier, R.C.S suit No.3 of 2011 was instituted for partition which was withdrawn on 12th March, 2018. Thereafter, R.C.S Suit No.152 of 2018 is instituted on 10th December, 2018. It is settled principle of law that mutation entries do not confer title or decide issue of title. The issue of title can be decided in a civil suit. It is, therefore, not necessary to go into validity of the impugned orders.

7. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, the Petition fails and the

same is dismissed. The petitioners would be at liberty to agitate the points raised in this Petition either in the written statement and/or are also at liberty to set up counter claim and/or institute a substantive suit. All contentions of both the sides in that regard are kept open. Order accordingly.

[R.G. KETKAR, J.]