IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 6735 OF 2018

Mohammed Hassan Malbari & Anr. ...Petitioners

Versus

State of Maharashtra
(Nos.1 to 6) through the Collector of Thane & Ors. ...Respondents

…...

Dr. Abhinav Chandrachud a/w. Ms. Neha Prashant and Mr. Amol Kumeria for the Petitioners.
Mr. A.R. Metkari, AGP for Respondent Nos. 1 to 4 and 6.
Mr. Pradeep J. Thorat for Respondent Nos. 7 to 12.

…...

CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JULY 13, 2018

P.C. :

1. Rule. Rule made returnable forthwith. By consent of the parties, the Petition is heard finally and disposed of at the stage of admission.

2. This Petition invoking the Writ Jurisdiction of this Court under Article 227 of the Constitution of India is filed wherein the order dated 20th November, 2017 passed by the learned Civil Judge, Senior Division, Link Court, Bhiwandi thereby rejecting the

application filed by the plaintiffs below exhibit 147 in Special Civil Suit No. 485 of 2005 for issuance of summons and also for production of the original documents from the Office of Tahsildar Phoolpur, Village- Kansa, Allahabad and from the Office of Tahsildar, District – Thane is challenged.

3. The petitioners, who are the original plaintiffs, have filed a Special Civil Suit No. 485 of 2005 praying that the Sale Deed dated 7th October, 1997 executed between the plaintiffs and the defendants be declared as null and void and the same be cancelled. In the said suit, an application was moved by defendant Nos. 7 to 12 i.e., respondent Nos. 7 to 12 for bringing 7/12 extract on record in respect of the property in Phoolpur, Allahabad. The said application was allowed by the trial Court. However, this Court by its order dated 3rd February 2015 in Writ Petition No. 2003 of 2014 directed the trial Court to give an opportunity to the plaintiffs to lead rebuttal evidence after the cross-examination of defendant Nos. 7 to 12 if the Plaintiffs so desire. It is further ordered that both the cross-examination as also the rebuttal evidence to be completed without break. Thereafter, the plaintiffs moved an application below exhibit 147 requesting

that a witness from the Revenue Department to be called for production of original documents in respect of the mutation entry. The learned Judge of the trial Court has rejected the said application hence, this Writ Petition.

4. The learned Counsel for the petitioners/ plaintiffs has submitted that pursuant to the order dated 3rd February, 2015 passed by this Court in Writ Petition No. 2003 of 2014, the plaintiffs were entitled to adduce evidence by way of rebuttal evidence and for that purpose, the plaintiffs want to rely on the application which was moved by defendant Nos. 7 to 12 praying for mutation entry no. 1209 of the suit property and also want evidence of the enquiry if taken place at the time of said mutation. He has further submitted that the status of defendant Nos. 7 to 12 as an agriculturist is challenged by the plaintiffs. It is further pleaded that defendant Nos. 7 to 12 are non-agriculturists and, therefore, the said purchase of the agricultural land is illegal. In order to lead rebuttal evidence and as 7/12 extract of the suit land was produced, these documents are required to demolish the case of the defendants.

5. In reply, the learned Counsel for respondent Nos. 7 to 12 /defendant Nos. 7 to 12 has submitted that the application below exhibit 106 was moved by the plaintiffs on 22nd March, 2009 for production of the documents and production summons for the said witness. The said application was rejected by the trial Court. Thereafter, the plaintiffs have moved similar application under the pretext of rebuttal. He has pointed out that in the plaint itself, the plaintiffs have stated about mutation entry, which on the basis of the registered Sale Deed was carried out in the revenue record by the concerned Tahsildar. He has further submitted that there was no question of an enquiry, as the registered Sale Deed was produced and, therefore, it is the duty of the Tahsildar to enter mutation accordingly.

6. Heard submissions. Perused impugned order and relevant documents relied by both the sides. In view of the Sections 149 and 150 of the Maharashtra Land Revenue Code 1966, the purchaser is required to report about transaction to Revenue Authority. Pursuant to the said intimation, the Revenue Officer is under obligation to make necessary entry in the revenue record when the registered Sale Deed is produced before the Revenue

Officer, and the Tahsildar is not supposed to challenge such registered Sale Deed. In view of this legal position, I do not find any substance in the application below exhibit 147 which is moved by the plaintiffs. As observed by this Court in the order dated 3rd February 2015 in Writ Petition No. 2003 of 2014, the plaintiffs may cross-examine defendant Nos. 7 to 12 and may lead any evidence by way of rebuttal. The suit is pending since 2005. The trial Court to expedite the matter, hear and conclude the suit till 30th November, 2018. Parties to co-operate the trial Court.

7. Writ Petition is dismissed. Rule is discharged.

(MRIDULA BHATKAR, J.)