

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 13140 OF 2017

Shri. Ashok Kumar Krishna
Kumar Shukla

...Petitioner

Versus

State Of Maharashtra
and others

...Respondents

....

Ms. Kamana Kapoor, Advocate for the Petitioner.

Mr. C.D. Mali, A.G.P. for Respondents No.1 to 4 and 6.

Ms. Dhvani Jain I/b. C.K. Legal, for Respondent No.7.

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CORAM : R. G. KETKAR, J.

DATE : 05th DECEMBER, 2018

P.C.

1. Heard Ms. Kamana Kapoor, learned counsel for the petitioner, Mr. C.D. Mali, learned A.G.P. for respondents No.1 to 4 & 6 and Ms. Dhvani Jain, learned counsel for respondent No.7, at length.

2. This Petition takes exception to the judgment and order dated 29.6.2017 passed by the Hon'ble Minister (Revenue), Maharashtra State in Review Application No.2617/562/Pr. No.09/J-3 of 2016. By that order, the Hon'ble Minister dismissed the petition instituted by the petitioner under Section 258 of the Maharashtra Land Revenue Code, 1966 (for short, 'Code') seeking review of the order dated 25.2.2016 passed by the Hon'ble Minister (Revenue) in Revision Application

preferred by the petitioner.

3. Respondent No.7 filed application before the City Survey Officer, Andheri (for short, 'Officer') for mutating its name in City Survey No.210, 210/1 to 49 enclosing therewith

- (1) certified copy of the Power of Attorney executed by Jaydeo Ramratan Tripathi in favour of Mohsin Ibrahim Kadiwala which was registered with the office of the Joint Sub-Registrar, Andheri No.1, Mumbai Sub-Urban District bearing No.BADAR-1/3531/2007 dated 23.4.2007;
- (2) certified copy of the Deed of Transfer registered with the office of Joint Sub-Registrar, Andheri on 25.3.2009;
- (3) certified copy of the Deed of Transfer executed by Devendra Shivgopal Shukla through Power of Attorney Mohsin Ibrahim Kadiwala which was registered with the office of the Joint Sub-Registrar, Andheri No.1, Mumbai Sub-Urban District bearing No.BADAR-1/3532/2007 dated 23.4.2007 along with extract of Index-II.
- (4) certified copy of the Deed of Transfer executed by Krishnakumar Shivgopal Shukla through Power of Attorney Mohsin Ibrahim Kadiwala which was registered with the office of the Joint Sub-Registrar, Andheri No.1, Mumbai Sub-Urban District bearing

No.BADAR-1/2533/2007 dated 23.4.2007 along with extract of Index-II.

- (5) certified copy of the Deed of Transfer executed by Girijashankar Shivgopal Shukla which was registered with the office of the Joint Sub-Registrar, Andheri No.4, Mumbai Sub-Urban District dated 15.2.1992 along with extract of Index-II.
- (6) certified copy of Deed of Transfer executed by Ramakant Shivgopal Shukla which was registered with the office of the Joint Sub-Registrar, Andheri No.4, Mumbai Sub-Urban District dated 15.2.1992 along with extract of Index-II, amongst other things.

4. By order dated 24.5.2011, after considering the objections raised by Suresh Tripathi, the Officer rejected the application. Aggrieved by that decision, respondent No.7 preferred appeal under Section 247 of the Code before the District Superintendent of Land Records. By order dated 14.8.2012, the appeal preferred by the 7th respondent was allowed and the order dated 24.5.2011 passed by the Officer was set aside. The Officer was directed to make entries on the basis of the sale deed submitted by respondent No.7. It was also made clear that the respondents are at liberty to establish their title and seek relief for declaration that the sale deed of the 7th respondent is illegal by

approaching appropriate civil Court.

5. Aggrieved by this decision, the petitioner preferred appeal before the Deputy Director of Land Records. By order dated 20.8.2013, the appeal preferred by the petitioner was dismissed by the Deputy Director of Land Records. Aggrieved by this decision, the petitioner preferred Revision under Section 257 of the Code before the Hon'ble Minister. By order dated 25.2.2016, the Hon'ble Minister rejected the Revision Application. Aggrieved by this decision, the petitioner preferred Review under Section 257 of the Code which was dismissed by the impugned order dated 29.6.2017. It is against this order, the petitioner has instituted present petition.

6. In support of this petition, Ms. Kapoor strenuously contended that the Deed of Conveyance dated 21.4.2007 on the strength of which respondent No.7 claims title over the suit property was executed by Mohsin Kadiwala on the basis of the Power of Attorney dated 25.3.2001 purportedly executed by Krishnakumar Shukla in favour of Mohsin Kadiwala. She submitted that basically the Power of Attorney itself is bogus, forged and fabricated document. On the strength of this Power of Attorney Mohsin Kadiwala could not have executed the conveyance deed in favour of the 7th respondent on 21.4.2007. She further

submitted that on 25.3.1999 purported agreement for sale was executed in respect of the suit property. The total consideration under that agreement was Rs.20 Lakhs. Out of Rs.20 Lakhs, respondent No.7 paid Rs.2 Lakhs and did not pay balance amount of Rs.18 Lakhs till date. She submitted that basically the authorities below were not justified in mutating the name of the 7th respondent on the basis of Deed of Conveyance dated 21.4.2007 and no right, title or interest is created in favour of the 7th respondent herein.

7. Ms. Kapoor relied upon the decision of this Court in **Shrikant R. Sankanwar Vs. Krishna Balu Nanukudkar, 2003(2) Mh.L.J. 276** and in particular paragraph-11 thereof. She also relied upon the decision of this Court in **Sambappa Babappa Teli Vs. The State of Maharashtra, 2003(4) Bom. C.R. 374** and in particular paragraph-17 thereof. She, therefore, submitted that the Petition requires consideration.

8. On the other hand, the learned counsel for the respondents supported the impugned orders. They submitted that while effecting mutation entries the Revenue Officer cannot decide the question of title as also cannot decide the validity or otherwise of the documents. If at all the petitioner contends that the Deed of Conveyance is illegal and

does not confer any right, title or interest in favour of the 7th respondent, the remedy is to approach civil Court for obtaining declaration to that effect. If the contentions advanced by the petitioner are accepted, it will confer powers on revenue officers which otherwise the Code has not conferred. It was, therefore, submitted that no case is made out for interfering with the impugned orders.

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. The thrust of the argument of the petitioner is that the Power of Attorney executed by Krishnakumar Shukla in favour of Mohsin Kadiwala is a forged and fabricated document and on the strength of that Power of Attorney Mohsin Kadiwala could not have executed the Deed of Conveyance on 21.4.2007 in favour of the 7th respondent. In my opinion, the said issue cannot be gone into by the Revenue Officers while exercising the powers under the Code. Section 149 deals with the acquisition of rights to be reported and lays down that any person acquiring by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as holder, occupant, owner, mortgagee, landlord, Government lessee or tenant of the land situated in any part of the State or assignee of the rent or revenue thereof has to report orally or in writing his acquisition of

such right to the Talathi within three months from the date of such acquisition. Second proviso provided further that any person acquiring a right with the permission of the Collector **or by virtue of a registered document shall be exempted from the obligation to report to the Talathi.** Section 150 provides for maintaining the registers of mutations and registers of disputed cases. Section 154 thereof lays down that when any document purporting to create, assign or extinguish any title to, or any charge on, land used for agricultural purposes, or in respect of which a record of rights has been prepared is registered under the Indian Registration Act, 1908, the officer registering the document shall send intimation to the Talathi of the village in which the land is situate and to the Tahsildar of the taluka, in such form and at such times as may be prescribed by rules made under the Code.

(emphasis supplied)

10. The moot question is whether while exercising powers under Sections 149 and 150 of the Code, the Revenue Officer can decide the validity of the document. Ms. Kapoor relied upon paragraph-11 of the decision in **Shrikant R. Sankanwar** (supra), which reads thus ;

“11. Undoubtedly in case of difficulty in ascertaining the right of the parties based on the document produced or on account of failure to produce documents, the revenue officers acting under Section 150 of the said Code can certainly decide

about the issue of possession of the property and modify the entries accordingly in the register of mutations. However, in cases where the person discloses the title better than the other, from the documents produced by him, certainly such person will have edge over the other in relation to the decision pertaining to the possession of property. Every such decision would be also final subject to the adjudication about the same by the civil court. Nevertheless, while considering the issue of actual possession, the revenue authorities under Section 150 of the said Code cannot decide about title to the property or other right to the property of the parties to such dispute. In fact, Rule 17 of the said Rules deals with and clearly speak of certification of entries in the register of mutation and deciding disputes relating to the mutation in the entries, and not of decision relating to the rights of the parties in or to the properties. It further speaks of fixing the matter for hearing consequent to the objections raised to the entries, in order to decide the dispute for the purpose of certifying the entries and not to decide the rights of parties to the properties. Only other issue which can be dealt with by the revenue authorities under the said provisions of law is the issue of actual possession of the properties. In that respect also, the Revenue Officer acting under Sections 149 and 150 of the said Code while deciding the issue of possession has to give due credence to the documentary evidence and the person having documentary proof of title to the property either in the form of valid and lawful registered deed or a decree of the court, then such person shall be held to be in actual possession. This conclusion is inevitable in view of the provisions of law contained in part D of the said rules and particularly Rule 17 thereof which provides that "The certifying officer shall then hold a summary enquiry and decide each dispute entered in the register of disputed cases on the basis of possession" and further "if a person actually holds properties under a claim of title, he

shall be recorded as occupant" and then that "if there is a doubt as to the actual possession, the persons with the strongest title shall be so recorded."

11. She also relied upon paragraph-17 of **Sambappa Babappa Teli's** case (supra), which reads thus :

"17. Feeling aggrieved by the judgment and order dated 20.2.1991 by the Revisional authority, the revision petitioners approached the State Government invoking the jurisdiction U/s 257 by filing Second revision. The second revision was heard by the Officer on Special Duty and he allowed the revision by the order dated 20th October 1991. While reversing the order passed by the three authorities below, he found fault with the Addl. Collector and Addl. Commissioner by observing that they have unnecessarily based their judgments on the affidavit filed by the parties. He also recorded a finding that the partition deed is not a partition deed at all. With these observations he allowed the revision application by recording the following finding :

"I have gone through the record of the case and find that the order passed by the Addl. Collector and Additional Commissioner are very cryptic. They have unnecessarily based their judgment on this affidavit of the revision applicants. The partition deed is not a partition deed at all. It does not state the shares of each brother. Secondly, this so called partition on fertility basis has already been rejected by tahsildar in 1964, and tahsildar's order becomes final as it had not been challenged by other party. The sub

Divisional Officer has gone beyond this jurisdiction to delete the name of the applicant from Kabjedar column and to record the name of the present opponent in his place. The overwhelming documentary evidence is in favour of revision applicants. The order passed by the lower authorities are not based on sound judgment."

12. In my opinion these decisions do not advance the case of the petitioner as basically the question arose in this petition is not dealt by these orders.

13. Ms. Kapoor invited my attention to the order dated 2.2.2012 passed by this Court (Coram: S.A. Bobde,J. as His Lordship then was and R.D.Dhanuka,J.) in Writ Petition No.689/2011 [**Ashok Kumar Shukla and others Vs. Municipal Corporation of Greater Mumbai and others**]. That petition was instituted by the petitioner herein and others challenging the order of the Chief Engineer of the M.C.G.M. dated 24.2.2011 observing on the basis of the registered conveyance that the properties in question claimed by the petitioners are in fact conveyed to M/s. Minar Enterprises. In other words, the Chief Engineer held that respondent No.7 is the owner of the property in question.

14. After considering the contentions raised by the parties, in paragraph-3, while setting aside the observations to the extent that the petitioners do not have any right or title in the land and the land has

been absolutely conveyed to the respondents, the Division Bench observed that indeed the petitioners are agitating a question of title and for which the petitioners have no remedy other than to approach the Civil Court for adjudication of the title which they may do so. In paragraph-4, the Division Bench observed that the order to the extent it holds that the conveyances in favour of M/s. Minar Enterprises are illegal or invalid suffers from an error of law apparent on the face of the record since that issue will have to be decided by the appropriate civil Court.

15. Ms. Kapoor invited my attention to the order dated 8.7.2015 passed by the learned Judge of the City Civil Court in S.C. Suit No.1431/2012 instituted by the petitioner and others. By that order, the learned Judge of the City Civil Court held that the City Civil Court has no pecuniary jurisdiction to entertain and try the suit filed by the plaintiff and returned the plaint to the plaintiffs for filing it in appropriate Court. Ms. Kapoor submitted that the petitioner has neither challenged that order nor complied that order by presenting plaint before the appropriate court.

16. Ms. Kapoor also relied upon the decision of this Court (Coram: A.S. Oka & P.N. Deshmukh, JJ.) in Writ Petition No.268/2014

with Chamber Summons No.55/2015 [**Ashok Kumar Shukla and others Vs. The State of Maharashtra and others**] where the Division Bench in paragraph-8 observed that no relief can be granted to the petitioners as they have not established their title to the acquired land and the petition was summarily rejected.

17. In view thereof, I do not find that the Authority below committed any error in passing the impugned order. Hence the petition fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)