

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.**

914 WRIT PETITION NO.9388 OF 2018

Ashok Haridasrao Bhise

... Petitioner

Versus

Subhash Sriram Yadav

Through LRs

Prabhavati Subhash Yadav & Others

... Respondents

...

Advocate for Petitioner : Shri E.P. Sawant h/f. Shri Mahesh P. Kale

Advocate for Respondent Nos.1A to 1E : Shri S.S. Thombre

Respondent No.2 – deleted.

Advocate for Respondent No.3 : Shri M.M. Patil Beedkar

AGP for Respondent No.4 : Ms P.V. Diggikar

....

WITH

WRIT PETITION NO.9908 OF 2018

Balasaheb s/o Vaijinath Bhise

.. Petitioner

Versus

Subhash s/o Sriram Yadav

Died through his LRs

Smt Prabhavati w/o Subhash Yadav

& Others

.. Respondents

....

Advocate for the Petitioner : Shri Milind M. Patil (Beedkar)

Advocate for Respondent Nos.1A to 1E : Shri S.S. Thombre

Respondent No.2 – deleted

AGP for Respondent No.3 – Ms P.V. Diggikar

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CORAM : PR. BORA, J.

Dated: July 24, 2019

PER COURT :-

1. In both these petitions, the challenge is to the order passed by the learned Additional Divisional Commissioner, Aurangabad on 21.11.2017 in Revision No.1992/ROR/IV/19.

2. The grievance raised by the petitioners in both these writ petitions is common that, while deciding the matter the subsequent developments which had occurred in respect of the suit properties were not brought to the notice of the learned Additional Divisional Commissioner. It is submitted that, during pendency of the aforesaid revision application before the Divisional Commissioner, a compromise was arrived at between the parties and a compromise decree was passed in Regular Civil Suit No.1027 of 1983. The suit was decreed in terms of the compromise on 23.06.1997. It is also pointed out that, the defendants in the said suit namely Subhash Sidram Yadav and Prabhavati Subhash Yadav, though filed another suit for cancellation of the consent decree, the said suit also came to be dismissed on 15.12.1999. The learned counsel appearing for the petitioners in both these writ petitions concurrently submitted that, had this fact been before the learned Additional Divisional Commissioner, perhaps the decision would have been different. The learned counsel, in the circumstances, have prayed for setting aside the impugned order and to remit the matter back to the learned Additional Divisional Commissioner to decide it on merits by allowing the parties to place on record the subsequent events and the documents in that regard.

3. Shri Thombre the learned counsel appearing for the respondent nos.1A to 1E in both these matters opposed the submissions made on behalf of the learned counsel appearing for the petitioners. His first objection is that, the petitions were not maintainable since the efficacious alternate remedy is available of filing second revision or appeal before the State Government and without availing the said remedy, the writ petition could not have been filed by the petitioners. The second objection of the learned counsel is that, the petitioners in Writ Petition No.9908 of 2018 were also party to the proceeding before the learned Additional Divisional Commissioner and as such, it was possible for them to bring the subsequent events to the notice of the learned Additional Divisional Commissioner. In the circumstances, according to Shri Thombre, now it may not lie in the mouth of the petitioner in the present petition to say that, the subsequent events were not before the Additional Divisional Commissioner. The learned counsel further submitted that, subsequently in the year 1997, the partition had again taken place. The learned counsel tendered across the bar the photo copy of the said memorandum of partition.

4. After having considered the submissions as aforesaid, it appears to me that, the subsequent events which occurred in the

meanwhile period during pendency of revision application before the learned Additional Divisional Commissioner must have been brought to his notice for the effective adjudication of the dispute raised in the said matter. From the documents, there is reason to believe that, Regular Civil Suit No.1027 of 1983 was settled and the decree was passed in terms of compromise therein.

5. The documents on record also reveal that, the suit filed for cancellation of the consent decree was also dismissed on 15.12.1999. These facts were certainly necessary for adjudication of the dispute which was raised in the revision before the learned Additional Divisional Commissioner.

6. As has been submitted by Shri Sawant the learned counsel appearing for the petitioners in Writ Petition No.9388 of 2018, the petitioners in the said writ petition were not party to the proceeding before the Additional Divisional Commissioner or in any previous proceeding. The petitioners in Writ Petition No.9388 of 2018 are claiming certain rights in respect of the suit properties based on the transactions which they have entered into with Balasaheb Vajjanath Bhise. In the circumstances, without going into the merits of the contentions raised by the parties in the present petition, it

appears to me that, to remit back the matter to the Additional Divisional Commissioner to decide it afresh by giving opportunity to all the parties to put forth their respective submissions would be in the interest of all the parties. In the circumstances, the following order is passed.

ORDER

(i) The order passed by Additional Divisional Commissioner, Aurangabad in Revision No.1992/ROR/IV-19 on 21.11.2017 is quashed and set aside.

(ii) The matter is remitted to the learned Additional Divisional Commissioner, Aurangabad to decide it afresh by giving opportunity to the petitioners in Writ petition No.4308/18 to intervene in the matter and to put forth their contentions in the said matter by considering subsequent events and documents, which may be placed on record before it, as expeditiously as possible, preferably within the period of 12 weeks from the date of this order. Till then the parties to maintain status quo as on today in respect of the properties involved in the matter.

(iii) Writ Petitions stand disposed of in the aforesaid terms.

(PR. BORA, J.)