

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

WRIT PETITION NO.11771 OF 2019

MADHUKAR TATYA KHALATE AND OTHERS
VERSUS
SHALAN MALHARI KHALATE

...

Advocate for the Petitioner : Shri Jagtap Amol T.

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CORAM: RAVINDRA V. GHUGE, J.
DATE :- 24th September, 2019

Per Court:

1 The petitioners, who are the original defendants in RCS No.10/2013, are aggrieved by the order passed by the Trial Court dated 20.07.2019 by which, the application exhibit 73 filed by these petitioners seeking framing of additional issues, has been rejected.

2 The petitioners proposed the following issues :-

- (a) Whether, Mutation Entry No.7046 dated 30.10.2005 is validly sanctioned as per the provisions of the Maharashtra Land Revenue Code, 1966?
- (b) Whether, the plaintiff is having legal civil right to institute the suit on the basis of Mutation Entry No.7046 dated 30.10.2005?
- (c) Whether, the act of the plaintiff is punishable under the penal law?

3 The strenuous contention of the learned advocate for the petitioners is that the suit has been preferred by the plaintiff on the basis of the mutation entry. It is the contention of the petitioners/ defendants that the mutation entry is illegal. Therefore, the issue as to whether, the mutation entry is validly sanctioned, needs to be framed and it also needs to be investigated as to whether, the plaintiff has a legal right to institute the suit on the basis of the said mutation entry.

4 I find that the suit preferred by the plaintiff is for seeking injunction. She has claimed that her peaceful possession over the suit property should not be interfered with by the defendants and permanent injunction needs to be clamped on the defendants.

5 The Trial Court has framed the following five issues on 05.11.2014 :-

- "1) Does the plaintiff prove that she is the owner of the suit property?
- 2) Does the plaintiff prove that she is in possession of the suit property?
- 3) Whether the suit property has been properly described?
- 4) Does the plaintiff prove that the defendants without having any concern with the suit property, are interfering with the plaintiff's possession over the suit property?
- 5) What order and decree?"

6 Though the suit is for injunction, the Trial Court has cast

burden upon the plaintiff to prove that she is the owner of the suit property and is in possession of the suit property and whether, she could prove that the defendants have no connection with the said property. The plaintiff does not appear to have challenged these issues, though the suit is only for mandatory injunction.

7 This Court has settled the law in the matter of *Shrikant R. Sankarwar and others vs. Krishna Balu Naukudkar, 2003 (3) Bom. C.R. 54*, that the mutation entries are purely for taxation purposes and they do not decide the rights or title over the suit property. The best evidence available at the time of carrying out the mutation entry has to be seen by the revenue authorities. Once the civil court decides the right and title of a person over the suit property, the mutation entry will have to be altered so as to be in tune with the verdict of the civil court.

8 The proposed issues are not required to be framed in view of the fact that the onus and burden has been cast upon the plaintiff to prove that she is the owner of the suit property and if she succeeds in proving the said aspect and the suit is decreed in her favour, the mutation entry standing in her name would be crystallized.

9 In view of the above, this writ petition being devoid of merit is, therefore, dismissed.