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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4345 OF 2019

Bhagwan Narayan Sutar & Ors. ..Petitioners.
V/s.
Baburao Dyanu Sutar & Ors. ..Respondents.

Mr.Rishikesh Mohite I/b. Kedar Lad for the petitioners.

Mr.Rushikesh G.Patil for respondent Nos.1 to 6, 11, 12(a), 12(c). & 17.

Mr.S.H.Kankal, AGP for respondent No. Nos.20 to 24.

CORAM: NITIN W.SAMBRE, J.

DATE : JUNE 17, 2019

P.C.:-

Heard respective counsel.

2. The petition can be conveniently disposed of at the stage of admission by consent of the parties.

3. The petitioners preferred a revision. However, by mistake, the file shows as Appeal under section 247 of the Maharashtra Land Revenue Code, 1966 ('the Code' for short).

3. The Additional Commissioner dismissed the same as

not maintainable as the Code does not provide for a third appeal.

4. Since the appeal is a creation of statute, the fact remains that the order cannot be faulted with to the extent of the observations that the third appeal as described by the petitioners is not maintainable. However, in spite of resistance shown by the respondents, in the interest of justice, it will be appropriate in my opinion, to permit the petitioners to convert the said appeal No. RTS/A/KO/141/2018 into a revision under section 257 of the Code as prayed for by the petitioners. Hence the following order :-

i) The petition stands partly allowed;

ii) The order impugned dated January 17, 2019 passed by the Additional Commissioner, Pune Division, Pune is hereby quashed and set aside;

iii) The proceedings in appeal No.RTS/A/KO/141/2018 is permitted to be converted to a revision, provided the petitioner prefers an application seeking amendment to that effect;

iv) If such application is preferred, same be treated to have been granted. The petitioner is permitted to carry out appropriate amendment before the Additional Commissioner, Pune;

v) The Additional Commissioner shall then decide the said proceedings, provided the same is in the form of revision under section 247 of the Maharashtra Land Revenue Code, 1966;

vi) It shall be open to the petitioners to deal with the contentions, if any, raised by the respondents on the issue of maintainability;

5. With the above observations, the petition stands disposed of.

(NITIN W.SAMBRE, J.)