IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4563 OF 2016

Smt.Usha Kathod Patil ... **Petitioner**
V/s.
Kanha Patil (Since deceased)
Through LRs. & Ors. ... **Respondents**

Mr.S.M. Oak i/b. Mr.Sagar Joshi for Petitioner.
Mr.Vishal Patil for Respondents.

CORAM : A.S. GADKARI, J.

DATE : 23rd July 2019.

P.C. :

1] By the present petition under Article 227 of the Constitution of India, the petitioner has taken exception to the concurrent findings recorded by the Revenue Authorities below.

2] Heard Mr.Oak, the learned counsel for the petitioner and Mr.Patil, the learned counsel for the respondents. Perused the record annexed to the petition.

3] The petitioner is daughter of Kathod Hendrya Patil (deceased) and the respondent No.1-Kanha Patil (deceased) claims to be brother of Kathod Hendrya Patil. The record indicates that the names of Baliram Kanha Patil and others was recorded as heirs of Kathod Hendrya Patil in the suit land by effecting Mutation Entry No.808. The petitioner objected to the said mutation entry. The Tahsildar Bhiwandi by its Order dated 26/10/2007 has rejected the objection of the petitioner and confirmed Mutation Entry No.808 pertaining to the suit land.

In Appeal No. 84 of 2007 preferred by the petitioner under Section 247 of the Maharashtra Land Revenue Code, 1966 (for short, “M.L.R. Code”), the Sub-Divisional Officer, Bhiwandi Division Bhiwandi, rejected the same by its order dated 31/08/2009. It was observed by the said Authority that, the petitioner may seek declaration and/or 'Heirship Certificate' from the Civil Court, establishing her claim that, she is legal heir of Kathod Hendrya Patil.

The Second Appeal No.218 of 2010 preferred by the petitioner under Section 247 of the M.L.R. Code was partly allowed by the Deputy Collector (Appeals), Thane, by its Order dated 26/07/2011 and the said Authority remanded the case for conducting fresh enquiry before the Tahsildar.

Feeling aggrieved by the said Order dated 26/07/2011 passed by the Deputy Collector (Appeals), Thane, the respondents herein preferred Revision Application No.499 of 2011 before the Additional Commissioner, Konkan Division, Mumbai, under Section 257 of the Maharashtra Land Revenue Code. The Additional Commissioner by its Judgment and Order dated 24/05/2013, was pleased to partly allow the said Revision and set aside the Order dated 26/07/2011 passed by the Deputy Collector (Appeals) Thane. The Additional Commissioner however confirmed the Orders passed by the Sub-Divisional Officer, Bhiwandi in RTS Appeal No.84 of 2007 dated 31/08/2009 and Order dated 26/10/2007 passed by the Tahsildar, Bhiwandi. The Additional Commissioner has further directed the Tahsildar to effect an endorsement in the column of other rights of the revenue records that "the Application No.18 of 2008 and Civil Suit bearing RCS No.569 of 2006 are pending before the Civil Court at Bhiwandi".

The petitioner thereafter preferred revision under Section 257 of the M.L.R.Code before the Hon'ble Minister of Revenue, Maharashtra State, Mumbai, bearing RTS No.2714/P.K.-147/J-4, which has resulted into rejection of the same by its Judgment and Order dated

10/08/2014. The Hon'ble Minister after scrutinizing and re-appreciating the entire evidence on record has rejected the Revision Application preferred by the applicant. By the impugned Order, the Hon'ble Minister has confirmed the Order dated 24/05/2013 passed by the Additional Commissioner, Konkan Division, Mumbai in RTS Revision No.499 of 2011.

4] Mr.Oak, the learned counsel for the petitioner submitted that the criteria which has been applied by the Sub Divisional Officer, Bhiwandi Division, Bhiwandi in its Order dated 31/08/2009 thereby directing the petitioner to get either 'Heirship Certificate' and/or a declaration from the Civil Court that she is heir of Kathod Hendrya Patil, also ought to have been applied to the respondents, if they are claiming succession of Kathod Hendrya Patil. He submitted that all these authorities have not considered the said vital aspect of the matter and therefore, the Orders passed by the authorities below may be set-aside.

5] As noted earlier, there is concurrent findings recorded by three authorities below. Even if the petitioner subsequently succeeds in getting heirship certificate and/or declaration from Civil Court that, she is legal heir of Kathod Hendrya Patil, the concerned revenue authority will take into consideration the said aspect. The material available on record indicates that, however, as of today, the petitioner has not established the basic fact that, she is legal heir of Kathod Hendrya Patil.

6] The Constitution Bench of the Supreme Court in the case of *Syed Yakoob Vs. K.S. Radhakrishnan & Ors., reported in AIR 1964 SC 477,* while enumerating the nature and limits of the jurisdiction of the High Court in issuing a writ of certiorari has held that, the jurisdiction of the High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that the findings of fact reached by the inferior court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. That, an error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be.

In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

A finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding.

7] The Supreme Court in the case of *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil, reported in (2010) 8 SCC 329* has enumerated the principles in the exercise of High Court's jurisdiction under Article 227 of the Constitution of India. It is held that, the High Courts cannot, at the drop of a hat, in exercise of its power under Article 227 of the Constitution, interfere with the Orders of tribunals or courts interior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases, where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court. That, the High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

It is further held that, in exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised. That, the power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

The afore-stated view expressed in the case of *Shalini S. Shetty (Supra)* has been further affirmed by the larger Bench of the Supreme Court in the case of *Radhey Shyam & Anr. Vs. Chhabi Nath and Ors. Reported in (2015) 5 SCC 423*.

8] The pleadings in the petition and the arguments advanced amounts to re-appreciation of evidence. After taking into consideration the entire material available on record, this Court is of the view that, the revenue authorities below have not committed any error either in law or on facts while passing the impugned orders.

I find no merits in the Petition. Petition is accordingly rejected.

9] It is needless to mention that the Civil Judge, Senior Division, seized of the case bearing Regular Civil Suit No. 569 of 2006 and Application No.18 of 2008 shall not get influenced by the observations made by this Court, while deciding the said proceedings. The observations made hereinabove by this Court are in context of deciding the present petition impugning the Orders herein.

[A.S. GADKARI, J.]