

Tandle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12044 of 2018

Shri Dnyaneshwar @ Dnyanoba
Balkrishna Doke & Anr. ... Petitioners
Vs.
Shri Arun Balkrishna Doke & Ors. ... Respondents

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Mr. Yogesh S. Sankpal, Advocate for Petitioner.
Mr. Sanjeev J. Rairkar, Advocate for Respondent No.1
Mr. S. H. Kankal, A.G.P. for Respondent Nos. 2 to 6

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CORAM : S. S. SHINDE, J.
DATE : 5TH APRIL, 2019

P. C. :

1. Heard the learned counsel appearing for the petitioners, learned counsel appearing for respondent no.1 and also learned AGP appearing for the respondent Nos. 2 to 6. Pursuant to notice issued to the respondent no.1, respondent no. 1 has filed an affidavit-in-reply.

2. Learned counsel appearing for the petitioners invites attention of this Court to the judgment and decree passed in Special Civil Suit No. 1367 of 2008 and submits that the description of property in the plaint would make it abundantly clear that Gut No.

3561/2 was not subject matter of the said suit. However, the Talathi of village Talegaon while granting the mutation entry in the name of the respondent no.1 has mentioned even the Gut no. 3561/2. Therefore, the learned counsel appearing for the petitioners submits that on this ground alone, petition deserves to be allowed. He further submits that, it is true that the aforesaid suit is decreed in favour of the respondent no.1. However, the petitioners have preferred the First Appeal and said appeal is pending.

3. The learned counsel appearing for the petitioners invites attention of this Court to the order passed by the Deputy Collector in R.T.S. Appeal No. 21 of 2013 and also the order passed by the Additional Collector in Appela No.RTS/Second Appeal No.413/2016 and submits that, after appreciating rival contentions of the parties the Deputy Collector has cancelled the mutation entry no. 8149, principally on the ground that Gut no. 3561/2 was not subject matter of the aforesaid Special Civil Suit.

4. It is submitted that, there was no reason for the Additional Commissioner to cause interference in the concurrent findings recorded by the Deputy Collector and Additional Collector.

Therefore, learned counsel appearing for the petitioners submits that the petition may be allowed and respondent no.1 may be restrained from creating third party rights in the suit property till the disposal of the first appeal filed by the petitioners.

5. On the other hand, learned counsel appearing for respondent no.1 invites attention of this Court to the affidavit in reply and submits that the respondent no.2 filed Regular Civil Suit No. 254 of 2012, wherein the subject matter of the said suit was Gut no. 3561/2. The petitioners filed suit in respect of Gut no. 3561, however, the said suit was dismissed. Being aggrieved by the judgment and order of dismissal of the said suit, the petitioners preferred First Appeal. It is further submitted that, since the subject matter of the aforesaid suit was Gut no. 3561/2 and respondent no.1 is entitled for undivided share in both the properties which was the subject matter of aforesaid two suits, one filed by the respondent no.1, and another filed by the petitioners. Therefore, the learned counsel submits that there was no reason to cause interference in the mutation entry taken in the name of respondent no.1 in the appeal filed before the Deputy Collector and second appeal filed before the Additional Collector, by both the Authorities.

6. Therefore, he submits that the judgment and order passed by the Revisional Authority is taking into consideration the entire factual aspects of the matter. The Revisional Authority has rightly quashed and set aside the judgment and order passed by both the Appellate Authorities, thereby observing that the mutation entry in the name of respondent no.1 would be subject to the outcome of the First Appeals pending before the Court.

7. I have considered the rival contentions and also perused the copy of the plaint in Special Civil Suit No.1367/2008. It is abundantly clear that Gut no. 3555 to 3561/01 were subject matter of the aforesaid suit.

8. It is also not in dispute that the Gut no. 3561/2 was subject matter of the Regular Civil Suit No. 254 of 2012. Admittedly, the suit filed by the respondent no.1 was decreed and suit filed by the petitioner i.e. R.C.S. No. 254/2012 was dismissed. However, it is also not in dispute that being aggrieved by the outcome of aforesaid two suits, the petitioners have filed the appeals and same are pending. Upon independent consideration of the rival contentions, and the outcome of the aforesaid two suits and also

other documents placed on record, this Court is of the opinion that the view taken by the Additional Commissioner in Revision No. R.T.S./R/Pune/431/2017 appears to be inconsonance with the documents on record. The view taken by the Revisional Authority is plausible view and therefore, there is no reason to interfere in the impugned judgment and order.

9. The prayer of the petitioners that respondent no. 1 may be restrained from creating thirty party rights in the subject property cannot be considered in the present proceedings. The petitioners have already filed two appeals before the Court of Competent Jurisdiction being aggrieved by the outcome of the aforesaid two suits. Therefore, it may be possible for the petitioners to seek such reliefs in the pending First Appeals.

10. For the reasons stated aforesaid, the petition stands rejected. The observations made hereinabove are confined to the adjudication of this petition. Accordingly, the Writ Petition is disposed of without causing interference in the judgment and order passed by the Revisional Authority.

(S. S. SHINDE, J.)