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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 4933 OF 2019**

Shri. Bajrang Sahadu Shinde

.....Petitioner

V/s.

Shri. Yashwant Bhiva Shinde and others

.....Respondents

Mr. P. B. Shah i/b Mr. Kayval Shah for the Petitioner

Mr. Y. D. Patil AGP for the State

CORAM : NITIN W. SAMBRE, J.**DATE : JUNE 6 2019.****P.C.**

Heard.

2 District Superintendent of Land Records, Pune in exercise of powers under Section 31A of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ('the Act' for short) has passed an order in favour of respondent on 20th May, 2013 which was questioned by the petitioner before the State Government under Section 257 of the Maharashtra Land Revenue

Code. The State Government dismissed the said Revision by the order impugned dated 24/08/2014. As such, this petition.

3 The factual background for deciding the petition is as under:

(i) Land survey no. 96 at Mouje Rajpuri, Taluka Maval, District: Pune was recorded in the name of Bhiva Bahiru Shinde, which was given Gat No. 142 in Consolidation Scheme implemented under Section 19 of the Act. In the Consolidation Scheme, name of Bhiva Bahiru Shinde since was not recorded, son of Bhiva i.e. Yashwant-present respondent moved an application to Deputy Director of Land Records, Pune for correction. Deputy Superintendent of Land Records, Maval, whose report was called, conducted an enquiry in the matter and all the stake holders in said Gat No. 142 were intimated about the alleged correction to be carried out under Section 31A of the Act. As a consequence of the report, name of Bajrang Sahadu Shinde was recorded against Survey No. 96 Gat No. 142 and name of Bhiva Bahiru Shinde was mutated as against the area to the extent of 2 Anna 8 Paisa. Accordingly, District

Superintendent of Land Records vide order dated 20th May, 2013 in exercise of powers of the Settlement Commissioner vested in him, granted approval to aforesaid correction which was in the form of clerical error.

(ii) This very order of the District Superintendent of Land Records, Pune passed on 20th May, 2013 permitting correction in the Revenue Entry Gat No. 142 was challenged in the Revision before the State Government. State Government dismissed the same by order impugned dated 24th August, 2014. Hence, this petition.

4 The submission of the learned counsel for the petitioner is, petitioner purchased land Gat No. 142 which has fallen to the share of Kondu Bahiru Shinde in the year 1996, by a registered Sale Deed based on which mutation entry No. 276 was recorded. According to him, aforesaid registered Sale Deed was never challenged by Bhiva or his successor in title i.e. respondent to the petition namely Yashwant and others. The said land was standing in the name of Bhiva though in partition, part of the land has come to the share of

Kondu Bahiru Shinde. Since a clerical error committed by incorporating name of Bhiva which is written as Shivram, same is claimed to be corrected by Tahsildar Maval vide order dated 31st October 1996, which was basis for purchase of the land by the petitioner. According to him, way back in 1998, partition was effected between Kondu Bahiru Shinde and Bhiva Bahiru Shinde, real brothers which petitioner claimed to have witnessed and mutation entry based on partition was effected by adding name of Kondu Bahiru Shinde resulting in Mutation Entry No. 274 which land claimed to be purchased by the petitioner.

5 According to him, respondent no. 1 Yashwant and others started disturbing possession by initiating proceedings in question for correction. He would urge that correction as is ordered in exercise of powers under Section 31A of the Act is without any authority as according to him, Partition Deed of 1988 was ignored by both the Authorities. According to him, based on partition, property was purchased by the petitioner. A further contention is, respondent Yashwant has admitted the aforesaid partition. Yashwant having

disputed the Hissa of Kondu, Tahsildar, Maval after conducting an enquiry has submitted a report in favour of the petitioner which is ignored by both the Authorities. According to him, once the property was mutated in the name of Kondu Bahiru Shinde in 1996, as is reflected in 7/12 extract, status of the petitioner is, purchaser of the property in question without notice and that being so, orders impugned are not sustainable.

6 Mr. P. B. Shah, the learned counsel for the petitioner would rely upon the Sale Deed executed on 5th December, 1996 referred to herein above and other Revenue entries to substantiate his claim. He has also invited attention of this Court to Partition Deed of 09/09/1988 so as to claim that order impugned is not sustainable.

7 If the aforesaid submission of the learned counsel for the petitioner is appreciated, what is required to be noticed is, petitioner filed Regular Civil Suit No. 104 of 1999 on 3rd February, 2004 praying declaration, possession and injunction in relation to land Gat No. 142 admeasuring 7 Hectar 14.6R and land to the extent

23.6R which are purchased by him vide aforesaid Sale Deed from Kondu Bahiru Shinde. It appears that Suit preferred by the petitioner claimed to have been decreed on 3rd February, 2004. Respondent, feeling aggrieved, preferred Civil Appeal No. 169 of 2004 in which Judgment passed in R.C.S. No. 104 of 1999 which was preferred by the petitioner decreed on 3rd February 2004 came to be set aside and the Suit preferred by the petitioner came to be dismissed. The said Judgment was delivered in Civil Appeal No. 169 of 2004 by the Ad-hoc Additional District Judge, Pune which was confirmed in Second Appeal No. 948 of 2005 by this Court vide its Judgment and Order dated 13th September, 2005. The issues which were referred by the petitioner in its submissions as are reproduced herein above are all decided by Civil Court in the backdrop of documentary and oral evidence, in the aforesaid First Appellate Court Judgment, so also, to some extent by this Court in Second Appeal. The First Appellate Court has recorded a finding on the following issues:

POINTS

- (i) Does plaintiff/respondent prove that

suit land was allotted to share of deceased Kondu Bahiru Shinde in partition/memorandum of partition dated 9.9.1988?

- (ii) Does plaintiff/respondent prove that by virtue of sale deed dated 5-12-1996 he has become owner of suit property?
- (iii) Does plaintiff/respondent prove that he is in possession of suit land referable to valid title & that defendant/appellant without having any right, title or interest in suit property obstructed and interfered in his possession and enjoyment over suit land?
- (iv) Whether the plaintiff/respondent is entitled to injunction?
- (v) Whether the impugned judgment and decree passed in RCS no. 104 of 1999 dated 3-2-2004 is liable to be set aside?
- (vi) What order?

8 In the aforesaid background, since the findings are confirmed up to this Court against the petitioner, in my opinion, if the contentions canvassed by the petitioner are appreciated and dealt with in Supervisory Jurisdiction under Article 227 of the Constitution of India, same will be amounting to upsetting findings

recorded by the Second Appellate Court in Second Appeal No. 948 of 2005 decided by this Court on 13th September, 2005.

9 Position of law as it exists that findings of Civil Court are binding on Revenue Authorities is well settled and that being so, the correction as ordered by the Authorities in exercise of powers under Section 31A of the Act by the orders impugned, in my opinion is just and proper.

10 No case for interference is made out. Petition fails, stands dismissed.

[NITIN W. SAMBRE, J.]