

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6359 OF 2018

Smt.Bhimabai Uttam Balak ..Petitioner
V/s.
Sau.Nirmala w/o Prabhakar Golesar & Ors. ..Respondents

Mr.Amit A. Gharate for the Petitioner.

Ms.Sayli Swant i/b Mr.Arvind Kundekar for Respondent No.1.

Mr.Sachin Gite for Respondent Nos.2A and 2B.

Ms.G.P. Sonawane, AAGP for Respondent No.6-State.

CORAM : C.V. BHADANG, J.

DATE : 16th JANUARY 2020

P.C.

1. The challenge in this petition is to the order dated 09th March 2018 passed by the Hon'ble Minister (Revenue), Maharashtra State, allowing the Revision Application filed by the respondent No.1 and thereby setting aside the concurrent orders passed by the Sub Divisional Officer, Sinnar and the Additional Commissioner, Nashik and restoring the order passed by the Additional Collector dated 15th April 2011. The net result is that the Mutation Entry No.756 and 758 recorded in favour of the petitioners have been cancelled.

2. The only contention raised on behalf of the petitioner is that the Civil Court by a judgment and order dated 05th March 2016 in Regular Civil Suit No.188 of 2010 has observed that the Entry Nos.84 and 87 which were challenged by the petitioner were illegal and were not recorded on the basis of the legal documents. The learned Minister has referred to the decision of the Civil Court in RCS No.188 of 2010. However, has observed that it was a suit simplicitor for injunction and not for declaration of a title. Hon'ble Minister has further noted that there is another Civil Suit No. RCS No.187 of 2008 filed by the petitioner for partition of the suit properties and the orders passed in the present Mutation proceedings shall be subject to the outcome of the RCS No.187 of 2008.

3. It transpires during the course of the arguments that the judgment and decree dated 05th March 2016 passed in RCS No.188 of 2010 on which the petitioner is placing reliance, has been set aside in appeal and the suit has been remanded back to the Trial Court. The learned counsel for the parties also point out that both the suits namely RCS No.187 of 2008 and 188 of 2010 are clubbed together and are pending before the learned Trial Court and are at the stage of recording of evidence. Be that as it may having

regard to the fact that the judgment and decree passed in RCS No.188 of 2010 has already been set aside, in my considered view the petitioner cannot justifiably place reliance on the same. The Hon'ble Minster has rightly observed that the order passed in the Mutation Entry would subject to the outcome of the substantive suit for partition which is filed by the petitioner in RCS No.187 of 2008. In such circumstances no case is made out for interference. The petition is dismissed, with no order as to costs.

4. At this stage the learned counsel for the petitioner submits that he will file an application for injunction in the Civil Suit No.187 of 2008. Without expressing any opinion on merits of the matter, if any such application is filed, it will open to the Civil Court to decide the same on its own merits and in accordance with law.

5. Rival contentions of all parties are left open.

6. In the circumstances there shall be no order as to costs.

C.V. BHADANG, J.

**Nilam
Kamble**

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Nilam Kamble
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