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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 7953 OF 2016

Chandrakant Baburao Bhandwalkar & Ors. ... Petitioners
Vs.
Balaso Ishwanath Mokashi & Ors. ... Respondents

Mr. A. P. Kulkarni, for the Petitioners.

Mr. R. S. Kate, for Respondent No. 1.

Mr. P. P. Pujari, AGP for Respondent Nos. 2 and 3.

CORAM : C. V. BHADANG, J.

DATE : FEBRUARY 4, 2020

PC :

1. The challenge in this petition is to the order dated 18th July, 2013 passed by the Sub-Divisional Officer, Baramati in Revision Application No. 63 of 2012. By the impugned order, the SDO while allowing the revision application filed by the private respondent, has set aside the order passed by the Mamalatdar on 11th July, 2012, granting an application under S. 5 filed by the Petitioners.

2. I have heard the learned counsel for the parties and perused record.

3. A perusal of the order of the Mamalatdar Court shows that Mamalatdar conducted an inspection in presence of the parties on 6.1.2012 and on the basis of that, he passed the order allowing the

application filed by the Petitioners.

4. The learned Sub-Divisional Officer in the revision application has referred to the village map and has *inter alia* found that the Mamlatdar without referring to the village map and the respective locations of the property of the Petitioners and the land of the private respondents from where the access was claimed and without recording any oral evidence has granted the application. In that view of the matter, the learned Sub-Divisional Officer has allowed the revision application.

5. The learned counsel for the parties submitted that in all probability, the parties have settled their dispute. However, it was stated that they have no specific instructions about the terms of the settlement.

6. Mr. Kulkarni, the learned counsel for the Petitioners submitted that if at all the Sub-Divisional Officer has found that the order was passed without noticing the village map and recording the oral evidence, the SDO ought to have remitted the matter back to the Mamlatdar. I find that the contention, as raised on behalf of the Petitioners, is acceptable. If at all the Sub-Divisional Officer has found that a particular document was not considered and the order passed by the Mamlatdar was without recording any oral evidence, the

appropriate course for him was to send the application back to the Mamalatdar. In that view of the matter, following order is passed.

ORDER

- (i) The petition is partly allowed. The impugned order is hereby set aside.
- (ii) The Case No. रस्ता/एस. आर./ ३८ / २०११ is remitted back to the Mamalatdar for deciding it afresh, after affording the opportunity of hearing to the parties, on its own merits and in accordance with law.
- (iii) The parties shall appear before the Mamalatdar on 2nd March, 2020.
- (iv) Needless to mention that it will be open to the parties to produce the consent terms, if at all the dispute has been settled amicably. If the consent terms are filed by the parties, it will be open for the Mamalatdar to record the same.
- (v) Rival contentions of the parties, on merits, are left open.
- (vi) In the circumstances, there shall be no order as to costs.
- (vii) The petition is accordingly disposed of in the aforesaid terms, with no order as to costs.

Sd/-
C. V. BHADANG, J.

Vinayak
P.
Halemath

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by Vinayak P.
Halemath
Date: 2020.02.07
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