IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.7907/2017

Smt. Sushila Pandharinath Khobragade and others
..V/s..
Additional Commissioner, Nagpur Division, Nagpur and others

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Shri M.P. Khajanchi, Advocate for the petitioners.
Ms K.R. Deshpande, A.G.P. for respondent Nos.1 to 4.
Shri Rohit Joshi, Advocate for respondent No.6.

CORAM : RAVINDRA V. GHUGE, J.
DATED : 14.1.2020.

1] The petitioners have put-forth prayer clauses (a) and (b) which read as under:

> *"(a) Issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other suitable Writ, order or a direction to quash and set aside the impugned order dated 6th September, 2017 (Annexure P-12) passed by respondent No.1 - Additional Commissioner, Nagpur Division, Nagpur in Revision Application No.28/RTS-64/2016-17 (Sanjay V/s. Collector, Gadchiroli & others);*
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> *(b) Confirm and maintain the order dated 24th May, 2016 (Annexure P-10) passed by the respondent No.3 - Sub-Divisional Officer, Gadchiroli, in Appeal No.5/RTS-64/2015-16 as well as the order dated 31st December, 2016 (Annexure P-11) passed by the respondent No.2 - Additional Collector, Gadchiroli, in Appeal No.15(RTS-64/2016)."*

2] I have extensively heard the learned Advocates for the respective sides. Considering that S.C.S. No.13/2003 has been decided and R.C.A. No.56/2008 having been dismissed and considering the pendency of R.C.S. No.9/2017, I am not adverting to the entire submissions of the learned Advocates for the respective sides.

3] These litigating parties were before this Court in Writ Petition No.963/2014 and this Court (Coram : A.S. Chandurkar, J.) has delivered an order dated 19.6.2015 which reads as under:

> *"By the present writ petition, order passed by the Additional Commissioner, Nagpur exercising revisional jurisdiction under Section-57 of the Maharashtra Land Revenue Code 1966 (for short, the said Code) is under challenge. By said order, the revisional authority has set aside the orders passed by the appellate authority and has restored the order passed by the Tahsildar dated 09/02/2010.*
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> *Proceedings that were initiated under provisions of the said Code in relation to mutation entry No.204 came to be terminated by order dated 15/02/2008 passed by the Additional Commissioner wherein it was held that the revenue authorities were not empowered to adjudicate upon the validity of partition deed dated 28/08/1985. It was held in said proceedings that the validity of the partition deed could not be examined in said proceedings and hence the revision filed by the present petitioners came to be dismissed. Subsequently, fresh proceedings were initiated by filing an application before the Tahsildar and on 10/02/2010 it was held*

that considering the provisions of Section-50 of the Code as well as the earlier orders passed by the Additional Commissioner, no further action was warranted. This order however came to be set aside by the Sub-Divisional Officer and it was declared that necessary mutation entry be taken in terms of the partition deed. This order in turn was confirmed by the Additional Collector. In the revision application, after considering the earlier adjudication vide order dated 15/02/2008, it was observed by the Additional Commissioner that the present petitioner should have obtained necessary declaration regarding genuineness of the partition deed from the Civil Court. After observing that in view of the earlier adjudication between the parties, no different order could be passed, the revision application came to be dismissed.

Shri S. P. Bhandarkar, learned counsel for the petitioners submitted that the Additional Commissioner was not justified in reversing the order passed by the Sub-Divisional Officer directing the mutation entries to be taken as per the partition deed. He submitted that the earlier adjudication could not be held against the petitioners for the purposes of holding that they were required to approach the Civil Court. It is submitted that the contesting respondents had in fact approached the Civil Court but had withdrawn the civil suit filed them. He therefore submitted that the order passed by the Additional Collector was required to be restored.

Shri M. P. Khajanchi, learned counsel appearing for respondent Nos.5 to 10 supported the impugned order. According to him, the findings recorded in the earlier round had attained finality and hence the Additional Commissioner was justified in setting aside the order passed by the Additional Collector. He further submitted *that under Section-150 of the Code, jurisdiction in the matter vested with the Talathi.*

I have heard the respective counsel. After having perused earlier adjudication between the same parties, it is clear that by order dated 15/02/2008, the Additional Commissioner had held that the question of validity of partition deed was beyond the jurisdiction of the revenue authorities and hence any dispute in that regard was required to be resolved by approaching the Civil Court. Merely because the civil suit filed by the contesting respondents had been withdrawn, that would not confer jurisdiction on the revenue authorities to adjudicate upon the correctness of the partition deed. In view of the observations made by the Additional Commissioner in the order dated 15/02/2008, the present petitioners could have approached the Civil Court for appropriate reliefs. However, present proceedings were initiated before the Tahsildar when in fact such jurisdiction was vested with the Talathi under Section-150 of the Code. In view of this, the conclusion arrived at by the Additional Commissioner in the impugned order cannot be said to be suffering from any jurisdictional error. There is therefore no case made out to interfere in writ jurisdiction. Writ petition is therefore dismissed with no order as to costs."

4] The petitioner, in the above stated petition, filed a Review Application No.855/2015 before the same Court informing the Court that the said applicant had failed to point out that S.C.S. No.13/2003 was preferred by Pandharinath Fakiraji Khobragade in which he had sought a declaration that the will dated 14.6.1984 executed by his mother Sakubai in favour of Vasantrao Fakiraji Khobragade, is sham and bogus and the sale deed dated 19.5.2000 executed by Vasantrao Fakiraji in favour of Vasantrao Wasudeo Dudhbhale be declared as void and illegal and it be further declared that Pandharinath has a preferential right to purchase the land for Rs.1,00,000/-. Had this verdict of the Civil Court been brought to the notice of this Court on 19.6.2015, it was contended, that this Court would have set aside the order of the Additional Commissioner under Section 256 of the MLR Code.

5] Considering the above submission, the said Court then passed an order on 9.10.2015 in the review petition concluding that the applicants are not pressing their prayers and if they approach the Talathi under Section 150 of the MLR Code 1966, the proceedings should be decided expeditiously.

6] The learned Advocate for the petitioner makes a serious grievance that instead of approaching the Talathi, Sanjay Anandrao approached the Tahsildar. The learned Advocate for the respondent Sanjay submits that he had approached the Talathi and since there was a dispute between the parties, the matter was referred to the Tahsildar, Gadchiroli.

7] Section 150 of the MLR Code pertains to the register of mutations and the register of disputed cases.

Under this provision, the Registrar of Entries makes entries in the register of mutations. The litigation between the parties commences from such entry. It is in this backdrop that the initial order was passed by the Tahsildar dated 21.3.2016. The order dated 24.5.2016 passed by the SDO was in favour of Smt. Sushilabai Pandharinath Khobragade and others who are the petitioners herein. The said order was sustained by the Additional Collector vide order dated 31.12.2016 which was upset by the impugned order dated 6.9.2017 passed by the Additional Commissioner.

8] This Court has delivered an extensive judgment on the issue of mutation entries in the matter of Shrikant R. Sankanwar and others Vs. Krishna Balu Naukudkar [**2003(3) Bom.C.R.45**]. It was held that an enquiry under Section 150 does not empower the Authorities to decide the right, title and interest of the parties with regard to an immovable property. Mutation entries are purely for fiscal purposes. The best evidence is to be placed before the concerned Authority for recording the mutation entries. If the dispute reaches a Civil Court, a decision by the Civil Court will crystallize the rights and shares of the parties and such a decision would then bind the revenue Authorities. Mutation entries shall then be carried out on the basis of the judgment by a Civil Court and the revenue Authorities have no option but to abide by such a decision.

9] In the instant case, Pandharinath had been before the Civil Court in S.C.S. No.13/2003. The prayer for setting aside the sale-deed dated 19.5.2000 and declaration that the will dated 14.6.1984 is a sham an bogus, has been rejected. His claim for preferential right to purchase the land for Rs.1,00,000/- and further injunction, has also been rejected vide the judgment dated 6.8.2008. After Pandharinath passed away, his legal heirs Smt. Sushila and others preferred R.C.A. No.56/2008 and by judgment dated 5.3.2014, the appeal has been dismissed. There has been no further litigation from the suit of 2003 and, therefore, the claim of Pandharinath was rejected.

10] It is now informed that R.C.S. No.9/2017 has been initiated by the legal heirs of Pandharinath seeking a declaration that there was no partition earlier, any partition, is not binding on the parties and the suit properties may be partitioned between the parties and their rights be crystallized.

11] Considering the above, I find it appropriate to place reliance upon Shrikant R. Sankanwar and others Vs. Krishna Balu Naukudkar (supra).

12] This petition is, therefore, **disposed off** by observing that the status as regards the mutation entries as existing today shall be maintained by the parties. Third party interest or encumbrances shall not be created by any of the parties without the leave of the Court in R.C.S. No.9/2017.

13] After the said suit is decided, such decision of the Civil Court shall bind the revenue Authorities and the mutation entries as existing today shall be maintained or altered strictly as per the verdict of the Civil Court. The mutation entries as existing today shall not create equities in favour of any of the litigating sides. Needless to state, the decision of the Civil Court in R.C.S. No.9/2017 shall be subject to further litigation between the parties.

(RAVINDRA V. GHUGE, J.)

Tambaskar.