

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2228 OF 2020

Ravi s/o. Bhaurao Shinde,
Age 35 years, Occu. Agriculture,
R/o. Warwanti, Taluka and District Latur. .. Petitioner

Versus

1. Arunadevi Vithalrao Bhosale,
Age 60 years, Occu. Household,
R/o. Savewadi, Taluka and District Latur
2. District Upper Collector, Latur
3. Upper Divisional Commissioner,
Aurangabad
4. The Minister for the State
Revenue Department,
Mantralaya, Fort Mumbai
5. Vaijinath Govindrao Shinde,
Age 65 years, Occu. Agriculture,
R/o. Waranti, Taluka and District Latur .. Respondents

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Dr. R. R. Deshpande, Advocate holding for Ms. Priyanka R.
Deshpande, Advocate for the Petitioner

Mrs. Surekha G. Chincholkar, Advocate for Respondent no.1

Mrs. V. S. Choudhari, AGP for Respondents no. 2 to 4

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 22-11-2021

JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally with the
consent of the parties.

2. This petition impugns order dated 9th July, 2015 passed by Additional Collector Latur in proceeding No. 2015/ROR-A-22; order dated 12th October, 2018 passed by Additional Divisional Commissioner, Aurangabad, in proceeding No.2015/ROR/REV/338 and the judgment and order dated 4th September, 2019 passed by the Hon'ble State Minister of Revenue in Appeal No. 2019/C. No.74/G-7A.

3. Respondent No. 1 filed Regular Civil Suit No. 561 of 1998 for the relief of partition and separate possession in the court of Civil Judge Senior Division, Latur against respondent No. 5 and deceased father of the petitioner in respect of agricultural lands in block No. 82 and 88, along with Gram Panchayat houses No. 52 and 53, situated at village Warvanti, Taluka and District – Latur. The said suit came to be decreed on 11th August, 2004.

On the basis of decree passed in Regular Civil Suit No. 561 of 1998, respondent No.1 – original plaintiff applied for sanction of mutation entry in her favour in respect of 46 *Are* land from eastern side in agricultural land in block No. 82. The mutation entry No. 493 was, therefore, certified on 25th April, 2006 and the name of respondent No. 1 was shown as owner for the area of 46 *Are* land.

4. The judgment and decree passed in Regular Civil Suit No. 561 of 1998 was challenged by filing Regular Civil Appeal No. 15 of 2010 before the District Judge, Latur. The Regular Civil Appeal came to be allowed and the judgment and decree passed by the trial court was set aside and the matter was remanded back to the trial court for consideration on merits.

5. After the remand, respondent No. 1 – original plaintiff filed application Exhibit-105 seeking permission for withdrawal of the plaint with liberty to file a fresh suit on the same cause of action. Vide order dated 29th December, 2014 passed by the trial court, respondent No. 1- original plaintiff was allowed to withdraw Regular Civil Suit No. 561 of 1998 with liberty to file a fresh suit. Thereafter, respondent No. 1 – original plaintiff filed Special Civil Suit No. 26 of 2015 in the court of Civil Judge, Senior Division, Latur, which is pending.

6. The petitioner and respondent No. 5 challenged the mutation entry No. 493, by filing an appeal bearing No. 2013/ROR/A-166 before the Sub Divisional Officer, Latur. The appeal came to be allowed by order dated 31st December, 2014 and mutation entry No. 493 was set aside.

7. Respondent No. 1 – original plaintiff, challenged the order passed by the Sub Divisional Officer, by filing appeal bearing No.

2015/ROR-A-22 before the Additional Collector. The appeal was partly allowed and the matter was remanded back for fresh consideration to the Sub Divisional Officer. The petitioner unsuccessfully challenged the order passed by the Additional Collector by filing revision before the Divisional Commissioner. The petitioner, thereafter, filed appeal before the Hon'ble Minister for Revenue, which also is dismissed, hence the present writ petition challenging the orders passed by the Additional Collector, Additional Divisional Commissioner and the Hon'ble Minister.

8. Heard learned advocates for the respective parties and learned AGP for the State.

9. It is not in dispute that mutation entry No. 493 was sanctioned on the basis of the decree passed in Regular Civil Suit No. 561 of 1998. The said decree was set aside by the appellate court in Regular Civil Appeal No. 15 of 2010 and the suit was remanded to the trial court for fresh consideration.

Admittedly, respondent No. 1 has withdrawn Regular Civil Suit No. 561 of 1998 with liberty to file fresh suit on the same cause of action. Respondent No.1, thereafter has filed Special Civil Suit No. 26 of 2015 on the same cause of action and it is pending before the trial court.

10. In view of the above facts, the Sub Divisional Officer has rightly set aside the mutation entry No. 493, taking into consideration the fact that the decree passed in Regular Civil Suit No. 561 of 1998 was set aside by the appellate court in Regular Civil Appeal No. 15 of 2010 and after the remand, Regular Civil Suit No. 561 of 1998 has been withdrawn by respondent No.1.

11. The Additional District Collector, in the impugned order, has observed that by order passed in Regular Civil Appeal No. 15 of 2010 the District Court set aside the judgment and decree in Regular Civil Suit No. 561 of 1998 and remanded the matter back for fresh consideration and the said suit is *subjudice*. The Additional Divisional Commissioner also has observed similarly that Regular Civil Suit No. 561 of 1998 is *subjudice*. Said observation of the Additional Collector and the Additional Divisional Commissioner is contrary to record. Regular Civil Suit No. 561 of 1998 has been withdrawn by respondent No.1 on 29th December, 2014. The impugned order passed by the Additional Collector is dated 9th July, 2015 and the impugned order passed by the Additional Divisional Commissioner is dated 12th October, 2018. The fact of withdrawal of the Regular Civil Suit No. 561 of 1998 is totally ignored by both the authorities i.e. the Additional Collector and the Additional Divisional Commissioner, while passing the impugned orders. On this ground alone the impugned orders

passed by them are vitiated and the same are liable to be quashed and set aside.

The Hon'ble Minister, in the impugned order has observed that though Regular Civil Suit No. 561 of 1998 is withdrawn, however, in the said proceedings there is no decision on merit and, therefore, it is observed that the findings of the Additional Divisional Commissioner, that there is no decision on merits after the remand of the matter by the appellant court, are proper.

The impugned order passed by the Hon'ble Minister also reflects total non application of mind and, therefore, the same is also unsustainable.

12. Learned advocate for the petitioner expressed an apprehension that respondent No.1, who is in possession of 46 *Are* land on the basis of the mutation entry No. 493, is likely to sale the said land. Learned advocate for respondent No. 1, on instructions, makes a statement that respondent No. 1 is not likely to sale the land till decision of Special Civil Suit No.26 of 2015.

13. For the aforesaid reasons, the writ petition deserves to be allowed and the same is accordingly allowed in terms of prayer clause "B". Impugned orders dated 9th July, 2015 passed by Additional Collector, Latur in Proceedings 2015/ROR/A-22; dated

12th October, 2018 passed by Additional Commissioner in proceedings No.2015/ROR/REV/338 and dated 4th September, 2019 passed by Hon'ble Minister in Appeal No. 2019/C.No.74/G-7A are hereby quashed and set aside. Rule is made absolute in above terms. No order as to costs.

(NITIN B. SURYAWANSHI)
JUDGE

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