

PMB

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

WRIT PETITION NO.4482 OF 2018

Abdul Hamid Aboobaker Coatwala .. Petitioner

vs.

Asif Iqbal Memon and anr. .. Respondents

Mr. Yashodeep Deshmukh and Rayyan Nasir I/b. Mr. Vinod P.
Sangvikar or the Petitioner.

Mr. P.V. Nelson Rajan, AGP for the State-Respondent No.2.

CORAM : M.S.KARNIK, J.

DATE : AUGUST 27, 2021

P.C.

Heard learned counsel for the parties.

2. The Respondent No.1 is not present though he is duly served. Even the affidavit of service is filed. The Respondent No.1 has not appeared. Heard learned AGP in support of the impugned order.

3. The Petitioner submits that by a registered sale deed dated 12.06.2009 the Petitioner had purchased the suit property and Mutation Entry Nos.306 and 307 of 2009 came to be recorded in his favour.

4. An Appeal came to be filed by the Respondent No.1 before the Collector under Section 300(1) of the Maharashtra Land

Revenue Code, 1966 (hereinafter referred to as 'the Code' for short) praying that in the Revenue records the name of the Appellant be shown. This was a substantive prayer made by the Respondent No.1 in the Appeal filed before the Collector.

5. From the impugned order, it is seen that, pursuant to an unregistered agreement of sale, which the Respondent No.1 contends is prior to the Petitioner's sale deed, in Appeal the Respondent No.1 prays that his name be entered into the record of rights. Reliance is also placed by Respondent No.1 on a registered sale deed in his favour. It is however noted by the Collector that the original of the registered sale deed, as well as index II entry is not submitted by the Respondent No.1. Further it is recorded that even the Sub Registrar has informed that the said documents are not to be found in the office.

6. The Collector for the reasons recorded proceeded to dismiss the Appeal filed by the Respondent No.1. However, in the operative order, observing that the Petitioner has filed a Civil Suit for declaration that the sale deed relied upon by the Respondent No.1 is false and bogus, proceeds to pass an order that till the decision of the Competent Civil Court, Mutation Entry Nos.306 and 307 of 2009 shall remain stayed.

7. In my opinion, the impugned order is unsustainable. The Collector having dismissed the Appeal of the Respondent No.1

on merits, there was then no occasion for the Collector to have stayed the Mutation Entry Nos.306 and 307 of 2009 which are made in favour of the Petitioner. The impugned order, therefore, is set aside. The law is well settled that the Mutation Entries do not establish any right, title and interest in the suit property and it is only the Competent Civil Court which can adjudicate the issue of right, title and interest of the parties in the suit property. The mutation entries in favour of the Petitioner shall obviously abide by the decision of the Competent Civil Court. Consequently, the Petition succeeds. The impugned order passed by the Collector is set aside.

8. The Writ Petition is disposed of.

(M.S.KARNIK, J.)

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