

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

Writ Petition No. 3975/2021

Ganesh s/o Devidas Yadav
..VS..
State of Maharashtra and ors.

Office Notes, Office Memoranda of
 Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.R. Tiwari, Advocate for the petitioner
 Ms. Nivedita Mehta, AGP for respondent nos. 1 to 2/State
 Shri S.C. Joshi, Advocate for respondent nos. 4 to 6

CORAM : AVINASH G. GHAROTE, J.

DATED : 22/12/2021

Heard Shri Tiwari, learned Counsel for the petitioner, Ms. Mehta, learned AGP for respondent nos. 1 and 2 and Shri Joshi, learned Counsel for respondent nos. 4 to 6.

2. Shri M.G. Sarda, learned Counsel for respondent nos. 7 to 11, is absent.

3. It is an admitted position on record, that in a suit for partition and separate possession in which the father of the petitioner was defendant no. 2 in Special Civil Suit No. 195/1990, decree for partition came to be passed on 27.02.1991, in respect of two houses and land of Survey No. 27, Gat No. 63, admeasuring 5.32 H.R. Mauza Yavalkhed, Tq. and Dist. Akola. The judgment was challenged in Regular Civil Appeal No. 23/2012, by the

father of the petitioner (Shri Devidas and ors.), which was dismissed on 25.07.2017, Second Appeal No. 749/2017 challenging the same came to be dismissed on 04.05.2018, Special Leave Petition against which also came to be dismissed on 14.12.2018. Thus, decree for partition became final and binding upon the parties. In final decree proceeding which was registered as M.J.C. No. 20/2017, precept under Section 54 of the Code of Civil Procedure, 1908 (C.P.C.) was sent to the Revenue Authority for partition of the agricultural land, in which the present petitioner claiming to be a grand-son of Mahadev, the father of Devidas, raised the claim that there was Gift Deed executed in his favour by one Dujabai Mahadev Yadav in respect of the said agricultural land and, therefore, filed an objection before the Revenue Authority, which according to him, was not considered and therefore, an Appeal was filed before the learned Sub -Divisional Officer (S.D.O.) under Section 247 of Maharashtra Land Revenue Code, in which, an application for stay came to be rejected by the order dated 18.08.2021, which is the subject matter of challenge in the present petition.

4. Shri Tiwari, learned Counsel for the petitioner, submits that since there was a registered Gift Deed in favour of the petitioner dated 14.10.1986, the Tahasildar, acting upon the precept under Section 54 of the C.P.C., ought to have considered the same and decided

the right of the petitioner emanating from the said Gift Deed. According to him, failure to do so, amounts to non-exercise of the jurisdiction vested in the learned Tahasildar. It is further submitted that without considering this aspect, the learned S.D.O. has refused the application for stay merely on the statement of the non-applicant, which could not have been done by him.

5. Shri Joshi, learned Counsel for respondent nos. 4 to 6, submits that the appeal before the learned S.D.O., itself was not maintainable in law for the reason that any claim made by the petitioner on the basis of any gift will have to be placed before the Civil Court in the final decree proceeding, and the Tahasildar or for that matter the learned S.D.O. had no jurisdiction to entertain such a plea. Inviting my attention, to the alleged Gift Deed set up by the petitioner, he submits that the Gift Deed is in respect of House no. 22 as described in para 1 thereof and not in respect of agricultural land.

6. Heard learned Counsel for the parties. In my considered opinion, any claim or objection which the petitioner may have, regarding the property which is the subject matter of the decree passed in Special Civil Suit No. 195/1990 decided on 27.02.1991, can only be raised, before the Civil Court before whom the final decree proceedings are pending and not before the Revenue Authority, as the Revenue Authority has no jurisdiction whatsoever, to entertain and decide such a plea,

considering which, refusal of stay, by the learned S.D.O., by the impugned order dated 18.08.2021 cannot be faulted with. I, therefore, do not see any merit in the petition. Writ petition is accordingly dismissed. No costs.

JUDGE

SANDIP
MAHADEV
GATE

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