

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

926 WRIT PETITION NO.11785 OF 2017

CHHAGAN NAMDEO JADHAV

VERSUS

RAMESH DAMU JADHAV AND OTHERS

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Advocate for Petitioner : Mr Narendra D. Sonavane
AGP for Respondent Nos. 3 to 5/State : Mrs G.L. Deshpande
Advocate for Respondent Nos. 1 and 2 : Mr A.P. Piratwad

CORAM : SANDEEP V. MARNE, J.

DATE : 10th NOVEMBER, 2022

PER COURT :

1. By the present petition, the petitioner challenges order dated 23.06.2017 passed by the Additional Divisional Commissioner, Aurangabad confirming the order passed by the Additional Collector, Aurangabad on 28.02.2013 as well as the order passed by the Sub Divisional Officer, Vaijapur on 15.12.2010.

2. I have perused the order passed by the Additional Divisional Commissioner, Aurangabad dated 23.06.2017. The only reason recorded by the Additional Divisional Commissioner for rejection of the appeal is that the mutation entry No. 2610 has been sanctioned on the basis of the decree dated 2nd April, 2009 passed by the Civil Court in R.C.S. No. 395/2008. As a matter of fact, the petitioner has instituted his own suit bearing R.C.S. No. 98/2010 for declaration that the decree dated 2nd April, 2009 passed in R.C.S. No. 395/2008 is null and void and not binding

on him. The petitioner's suit bearing R.C.S. No. 98/2010 came to be decreed by Judgment and order dated 30th March, 2016 declaring that the decree passed in R.C.S. No. 395/2008 dated 2nd April, 2009 is null and void.

3. Learned counsel appearing for the petitioner submits that the appeal filed challenging the decree dated 30.03.2016 in R.C.S. No. 98/2010 has also been dismissed by the District Judge, Vijapur by Judgment and order dated 6th April, 2022 passed in R.C.A. No. 34/2016.

4. Learned counsel for the petitioner further submits that the decree dated 30.03.2016 passed in R.C.S. No. 98/2010 was specifically brought to the notice of the Additional Commissioner at the time of hearing. However, perusal of the order dated 23.06.2017 passed by the Additional Divisional Commissioner indicates that he has completely ignored the said aspect and on the contrary has taken note of only Regular Civil Appeal No. 34/2016 filed before the District Judge, Vijapur. In absence of any stay granted to the decree dated 30.03.2016 passed in R.C.S. No. 98/2010, the Additional Divisional Commissioner ought to have taken into consideration the effect of the said decree. Since the earlier decree dated 2nd April, 2009 passed in R.C.S. No. 395/2008 was declared as null and void, the Additional Divisional Commissioner ought not to have taken into consideration the same. Be that as it may. Even R.C.A. No. 34/2016 has now been dismissed vide Judgment and order dated 06.04.2022.

5. Considering the position that now emerges, the order passed

by the Additional Divisional Commissioner cannot be sustained and the same deserves to be set aside. I accordingly proceed to pass the following order :-

ORDER

- (i) The order dated 23.06.2017 passed by the Additional Divisional Commissioner, Aurangabad is set aside and the revision is remanded to the Additional Divisional Commissioner, Aurangabad for a fresh decision considering the dismissal of the Regular Civil Appeal No. 34/2016 by the District Judge, Vijapur on 06.04.2022.
- (ii) The Additional Divisional Commissioner, Aurangabad shall decide the revision as expeditiously as possible and preferably, within a period of six (06) months from today.
- (iii) With these directions, the writ petition is partly allowed.
- (iv) No order as to costs.

[SANDEEP V. MARNE, J.]

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