

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12452 OF 2021

MEERABAI DHARMENDRA GAIKWAD
VERSUS
SHIVDAS YELJI BHIL AND OTHERS

Mr.Amol S.Sawant, Advocate for the petitioner.
Mrs.Charuta S.Deshmukh, Advocate for respondent No.1.

(CORAM : BHARATI H. DANGRE, J.)

DATE : JANUARY 31, 2022

PER COURT :

1. Heard the learned counsel for the petitioner and the learned counsel for respondent No.1, who is on caveat. The petitioner is the original defendant in a suit RCS No.241/2012 filed by the respondents seeking a declaration that the mutation entry No.828 is illegal and not binding upon the plaintiffs and the suit also claimed injunction against the defendants therein.

It is pertinent to note that this suit came to be instituted in the wake of the directions in WP No.5113/2012 filed by the respondents, wherein the petitioners were taking exception to the orders passed by the Revenue Authorities in respect of recording of mutation. The writ

petition was dismissed by keeping open the point of declaration to be sought in a Civil Court, since the dispute between the parties was capable of being determined by the Civil Court and with a declaration about right, title and entitlement in relation to the said property could have been conferred only through the Civil Court, the suit came to be instituted by the defendants.

2. In the said suit, opposing the pleadings and the relief, the petitioner claimed to be the owner of the suit property in partition and the learned Court framed the issues, which read as under :-

- "1. Do the P/F prove that they are in law full possession of the suit property by virtue of partition DT-26/11/1980 ?*
- 2. Do the P/F prove that they mutation entry No.828 in respect of filed block No.586/2 is illegal ?*
- 3. Do the P/F prove that the defendants is obstructing their possession to the suit property ?*
- 4. Whether the suit is bad for non joinder of the wife and daughter of deceased Ramdas Elji as necessary parties ?*
- 5. Whether the suit is within limitation ?*
- 6. Are the P/F entitled to declaration as sought ?*
- 7. Are the P/F entitled to perpetual injunction as sought ?*
- 8. What order and decree ?"*

3. The Trial Court settled issue No.5A, suo moto to the following effect, "Whether the suit is maintainable ?" This issue came to be settled in view of the claim in the plaint by the plaintiffs that they are the owners and that defendants are likely to sale the property on the basis of the mutation entry whereas the defendant claimed that she is the owner and is in possession of the suit property.

4. On the objection being raised by the plaintiff under Order XIV Rule 5(2), deletion of issue No.5A was sought for and this was specifically objected, by the present petitioner by stating that the issue of maintainability of the suit is necessary for the determination and the impugned order came to be passed on the said application filed vide Exh.111.

5. The learned Judge has recorded that the plaintiffs had filed the suit for declaration about the mutation entry and injunction and the suit came to be filed in view of the directions issued by the High Court in the writ petition. Recording that the plaintiff has filed the proceedings revolving around mutation entry No.828 and claimed it to be illegal and not binding upon the plaintiff and since the plaintiff has

chosen not to seek declaration as to the rights of the ownership of the suit property, the suit is perfectly maintainable. By relying upon Rule 5 of Order XIV, the said issue about maintainability of the suit framed vide issue No.5A came to be struck down.

6. Striking of this issue is assailed by the petitioner in the present writ petition.

On perusal of the sequence of events, which led to the institution of the suit by the defendant, it is quite clear that the plaintiff has chosen not to seek a declaration about the ownership of the suit property, since the plaintiffs came to be the heirs of Phulya Ziprya Bhil and they claimed that as his legal heirs, they are entitled for the said property. As against this, the present petitioner (the defendant) claimed that she is entitled for the said property on account of the partition being effected in the year 1991 and on the basis of this partition, a mutation entry was recorded in the name of the petitioner and this entry was subject matter of the proceeding before the Revenue Authorities., ultimately the respondent knocking the doors of this Court and the Court giving a resolution that the revenue entries are recorded for fiscal purpose only and cannot be construed as evidence of title. Despite this,

if the plaintiff do not choose to seek a declaration about ownership of the suit property, but only seek a declaration about the mutation entry recording the name of the defendant not binding upon the plaintiff, the plaintiff shall take the consequences, since by the principle of *dominus-litis*, he shall decide what relief he want to seek in the proceedings filed by him. In any case, the issue No.5A "Whether the suit is maintainable ?", in the wake of the issues already settled and arising for determination in the wake of the pleadings of the plaintiff and the defendants, is of no consequence, and has rightly being struck down.

Surely, the plaintiff is not entitled for something more than the plaintiff wants and the apprehension of the learned counsel Mr.Savant that the plaintiff will be conferred with something, which he has not sought for, is beyond comprehension since the Civil Court is strictly bound by the Law of pleading and is expected not to confer any right which is not sought for by the plaintiff.

7. In the wake of the above, upholding the impugned order, the writ petition is dismissed.

(BHARATI H. DANGRE, J.)