

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 13023 OF 2022

Mir Safiyoddin Karimoddin Jahagirdar
and others .. Petitioners

Versus

The City Survey Officer and another .. Respondents

Shri Shaikh Tarek Mobin H., Advocate for the Petitioners.
Mrs. G. L. Deshpande, A.G.P. for the Respondent No. 1.

**CORAM : SANDEEP V. MARNE, J.
DATE : 19TH DECEMBER, 2022.**

FINAL ORDER :

. By this petition, petitioners challenge judgment and order dated 13.12.2022 passed by the Additional Sessions Judge, Ahmednagar dismissing Misc. Civil Appeal No. 162 of 2022 filed by the petitioners and confirming the order dated 09th November, 2022 passed by the Civil Judge Senior Division, Ahmednagar rejecting petitioners' application for temporary injunction.

2. Suit has been filed by petitioners seeking injunction to restrain the City Survey Officer, Ahmednagar from effecting any change in the record of rights of the suit property.

3. It appears that in another suit bearing R.C.S. No. 748 of 2000 seeking partition of suit property therein, the respondent No. 2 filed an impleadment application and after observing that the respondent No. 2 is the daughter of Sharifoddin, the Court allowed her application and impleaded her as party to the suit.

4. Armed with the observation of the Trial Court vide order dated 09.09.2019 passed in R.C.S. No. 748 of 2000, respondent filed an application before the City Survey Officer on 18.05.2022 for mutating her name to the record of rights of the property. Apprehending that the city survey officer would allow the application of the respondent No. 2, the petitioner filed suit bearing R.C.S. No. 563 of 2022 seeking perpetual injunction against the city survey officer from making any change in the record of rights of the suit property on the basis of the order dated 09.09.2019. Application for temporary injunction to restrain the city survey officer from approving mutation entry has been rejected by the Trial Court by order dated 09.11.2022. Misc. Civil Appeal No. 162 of 2022 filed before the District Court challenging order of the Trial Court has been rejected by judgment and order dated 13.12.2022.

5. Appearing for petitioner, learned counsel would submit that the issue of partition of the suit property is already subject matter in two suits pending before the Civil Court. In the light of pendency of such suits, the city survey officer cannot decide the issue and hold the respondent No. 2 as a daughter and record her name to the record of rights of the suit property. He would further submit that mere allowing of impleadment application by the Trial Court in R.C.S. No. 748 of 2000 cannot be construed to mean a valid finding of fact that respondent No. 2 is the daughter of Sharifoddin. He would advance a proposition that since the civil suit is pending for determining rights of the respondent No. 2 in the suit property, the revenue authorities cannot decide that issue by making changes in the names in

record of rights. In support of his contention learned counsel would rely upon the judgment of the Full Bench of this Court in the case of **Gopinath Ganpatrao Pensalwar Vs. State of Maharashtra and others** reported in ***MANU/MH/0832/2006***.

6. Per contra Mrs. Deshpande, learned Assistant Government Pleader for the respondent No. 1 would oppose the petition and support the order passed by the trial Court and the lower Appellate Court.

7. Having heard learned counsel appearing for the petitioners, I am unable to accept the proposition advanced by the learned counsel for the petitioner that mere pendency of a civil suit would prevent revenue authorities from exercising jurisdiction conferred upon them by the statute. It is trite that the entries in the revenue record do not establish title. As against this, the issue of title is involved in the pending civil suits. The Civil Court therefore cannot injunct the revenue authorities from exercising statutory powers vested in them.

8. Reliance of learned counsel for petitioners on the judgment of Full Bench of this Court in the case of **Gopinath Ganpatrao Pensalwar Vs. State of Maharashtra and others** (supra) is of no avail. The issue involved in that case was entirely different. In that case, the plaintiff therein had challenged the decision of collecting non agricultural charges and had sought injunction from increasing the non agricultural charges. The issue was whether in the light of Civil Court already seized with the issue of exact amount to be charged towards non agricultural charges, whether the revenue authorities could still proceed to determine

the same. Reliance was placed on Section 11 of the Bombay Revenue Jurisdiction Act, 1876 which contains a bar on jurisdiction of the Civil Court to entertain any suit against the Government. In the light of the above factual background, the Full Bench of this Court held in para No. 16 of the judgment as under :

"**16.** The issue already having been raised by the trial Court as to whether the order of Tahsildar, Latur about the enhancement of the non-agricultural charges is without jurisdiction, by no stretch of imagination, can it be said that the Civil Court has no jurisdiction. In this fact situation, Section 11 cannot be said to be a bar in entertaining the suit filed by the plaintiff before the Civil Court."

9. In the present case, the issue involved before the Civil Court and before the Revenue Authorities cannot be termed as exactly identical. The revenue authorities are not deciding issue of entitlement of particular share of respondent No. 2 in the suit properties, which is issue before the Civil Court. Even otherwise, judgment of the Full Bench of this Court in the case of **Gopinath Ganpatrao Pensalwar Vs. State of Maharashtra and others** (supra) cannot be relied upon in support of petitioner's proposition that pendency of civil suit would act as a bar on revenue authorities exercising their statutory jurisdiction.

10. I am concerned with the issue whether the Trial Court and the lower Appellate Court could have passed an order of interim injunction restraining City Survey Officer from entertaining application filed by the respondent No. 2. In my view, the Trial Court and the lower Appellate Court have not committed any error in refusing interim injunction in favour of the petitioner.

11. The learned counsel for the petitioner has also submitted that the interim injunction is necessary so as to prevent multiplicity of litigation. This submission is referable to the availability of statutory remedy against the decision that may be taken by the city survey officer. He would submit that since the issue is already subjudice before the Civil Court, the petitioner cannot be made to initiate multiple proceedings against the orders passed by the city survey officer. In my view, it is the petitioner who has created multiplicity of litigation by filing R.C.S. No. 563 of 2022 seeking injunction against the city survey officer from taking any decision. Therefore, the submission is of little assistance to the case of the petitioner and actually militates against him.

12. In the result I do not find any merit in the petition. Same is dismissed without any orders as to costs. City survey officer shall decide application of the respondent No. 2 on its own merits without being influenced by any of the observations made in this order. So also the suit shall be decided by the Trial Court without being influenced by any of the observations made hereinabove. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]