

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

WRIT PETITION NO.119 OF 2021

Shri.Narayan Damodar Nirgude

...Petitioner

Vs.

Sou. Kumudini Narayan Nirgude & Ors.

...Respondents

Mr.Ashok. B. Tajane for the Petitioner.

Mr.P.P. Pujari, AGP for the Respondent-State.

Mr.Atul S. Tungare for Respondent Nos.1 and 2.

CORAM : C.V. BHADANG, J.

DATE : 20 SEPTEMBER 2022

P.C.

. By this Petition, the Petitioner is challenging the order dated 21 February 2019 passed by the Hon'ble Revenue Minister and the order dated 18 March 2019 passed by the Deputy Director of Land Records (DDLRL), the order dated 25 January 2005 passed by the Superintendent of Land Record (SLR) and finally the order dated 20 February 2004 passed by the City Survey Officer, Solapur in City Survey Case No.817 of 2003.

2. The brief facts are that the first Respondent is the estranged wife of the Petitioner and the second Respondent is their son. The marriage between the Petitioner and the first Respondent has been dissolved by a decree of divorce.

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3. The present Petition involves a dispute about a Mutation Entry in respect of the disputed properties which were taken by the City Survey Officer on 29 April 1987, on the basis of an alleged Will dated 27 October 1979 executed by late Bakulabai wife of Damodar Nirgude who happens to be the mother of the Petitioner.

4. The Petitioner feeling aggrieved by the said entry approached the City Survey Officer in the year 2003 challenging the said Mutation Entry, *inter alia* on the ground that there was no Will executed by Bakulabai and thus the Mutation Entry recorded on the basis of the said Will is illegal and incorrect. The City Survey Officer by an order dated 20 February 2004 had refused to allow the Application, which order has ultimately been confirmed by the Hon'ble Revenue Minister.

5. I have heard the learned counsel for the parties. With the assistance of the learned counsel for the parties I have gone through the record.

6. Mr.Tajane, the learned counsel for the Petitioner has submitted that there is no Will executed by Late Bakulabai. It is submitted that the First Respondent has left the company of the Petitioner more than 20 years back and now their marriage has also been dissolved by a decree of divorce. It is submitted that although the Superintendent of Land Records in his order dated 25 January

2005 has recorded that the impugned Mutation Entry was recorded on the basis of the Application made by the Petitioner, no such Application was made by the Petitioner. The learned counsel submitted that the Petitioner is disputing the signature on any such Application for Mutation.

7. It is submitted that even otherwise, Bakulabai was not competent to execute the Will as the subject properties were not her self-acquired properties. He submitted that a suit filed by the Respondents against the Petitioner and one Mr.Shah has been dismissed and that matter is not carried any further being RCS No.193 of 2022 decided on 8 October 2012. It is submitted that taking undue advantage of the said Mutation Entry the Petitioner and his second wife has been thrown out of the residential house.

8. The learned counsel for Respondents has submitted that RCS No.193 of 2002 was filed only for the limited purpose of challenging an earlier decree in RCS No.1025 of 2001. It is submitted that after RCS No.193 of 2002 was dismissed Mr.Shah who had obtained a collusive decree with the Petitioner (Defendant No.1) in RCS No.1025 of 2001 had not claimed any further right and it is in these circumstances, that the Petitioner did not challenge the judgment and decree in RCS No.193 of 2022.

9. In the submission of the learned counsel for the Respondents that suit has no concern with the Will and the

Mutation Entry. The learned counsel submitted that the Petitioner has admitted an oral partition between himself and his mother Bakulabai in a Sale Deed dated 29 March 2011 executed in favour of Mr.Harish Ramchandani and Mr.Rajkumar Panjwani. It is submitted that the Petitioner has disposed of the property which had fallen to his share in the oral partition.

10. It is pointed out that the certain properties are bequeathed in favour of the Petitioner by the Will. He submitted that the disputed questions about signature of the Applicant cannot be gone into in this Petition.

11. I have considered the rival circumstances and the submissions made.

12. It is necessary to note that the challenge in this Petition is to the Mutation Entry recorded on 29 April 1987. Therefore, the scope of the examination in this Petition is limited. It is well settled that the Mutation Entries, by themselves, do not confer or take away rights. Such entries are essentially for fiscal purpose. That apart the entry which was taken in 1987 was sought to be challenged, by the Petitioner, for the first time, in the year 2003.

13. The Superintendent of Land Records, Solapur, in his order dated 25 January 2005 has recorded that the Mutation Entry of the year 1987, was taken on the basis of the Application filed by

the Petitioner. Although, the Petitioner is now challenging his signature on the said Application, it is necessary to emphasise, that the challenge to the Mutation Entry was itself made after a period of more than 15 years.

14. It is trite that disputed questions as to whether the said Application was made by the Petitioner and was bearing his signature or whether the Application was bearing a forged signature, as claimed, by the Petitioner cannot be gone into in a Petition under Article 227 of the Constitution of India. There are concurrent findings by at least four authorities below after considering the issue limited to the Mutation Entries of the year 1987 and have refused to grant any relief to the Petitioner.

15. The Sale Deed dated 29 March 2011 which is executed by the Petitioner in favour of Mr.Harish Ramchandani and Mr.Rajkumar Panjwani recites that there was an oral partition between the Petitioner and his mother Late Bakulbai. Thus the contention that Bakulabai had no authority to execute the Will also cannot be accepted at this stage.

16. Considering the overall circumstances, I do not find that any case for interference is made out, in exercise of the supervisory jurisdiction of this Court. In the result the Petition is dismissed, with no order as to costs. Interim relief stands vacated.

17. It is made clear that the observations and the findings herein are for the limited purpose of examining the challenge to the Mutation Entry. Thus, if any of the parties decide to take recourse to remedy before the Competent Civil Court including seeking interim relief therein, the observations and findings herein shall not come in the way of such party and the Civil Court shall decide the matter independently on its own merits.

C.V. BHADANG, J.