

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3869 OF 2019

Sou Satyabhama Dada Vagare ... **Petitioner.**
Vs.
Ramchandra Neminath Mohite
& Ors. .. **Respondents.**

Mr.Mahadeo A. Choudhari, Advocate for petitioner.
Mr.Surel S. Shah for Respondent no.1.
Smt. M.S. Bane, AGP for Respondent no.4.

...
CORAM : NITIN W. SAMBRE, J.

DATED : 3rd AUGUST, 2022

P.C.:

1. The petitioner purchased the suit property vide a registered Sale Deed dated 30 August 2007 from Shobha who is daughter of Ramchandra i.e. respondent no.1 herein. Before execution of the said Sale Deed, in a partition suit a decree was passed on 19 August 2005 which led to execution of the aforesaid Sale Deed.
2. Said partition decree was set aside and the suit for partition is informed to be still pending.
3. The suit property initially stood in the name of Shobha and as a sequel

to the aforesaid Sale Deed, a mutation entry was sought to be incorporated in favour of the petitioner which was allowed by Talathi on 27.8.2009 and affirmed by the Additional Collector on 25.10.2017.

4. The respondent feeling aggrieved, preferred a revision u/s 257 of the The Maharashtra Land Revenue Code, 1966 which is allowed by the impugned order passed by the Additional Commissioner, Pune on 27.6.2018.

5. As such this petition.

6. Contention of Mr.Choudhary, the learned Counsel for the petitioner is, the fact that Shobha had a share in the suit property and has an undivided share can be inferred from the available documents on record. The relation between Shobha, the earstwhile owner and that of respondent herein being Shobha's father is not in dispute. According to him, even if a Decree for partition is set aside, the fact remains that Shobha has an undivided share in the suit property, which is a registered Sale Deed in favour of the petitioner which is still holding the field.

7. According to him, as such, the order impugned passed by the

Additional Commissioner, Pune, is liable to be set aside.

8. Mr. Shah, learned Counsel for the respondent submitted that there is an alternate remedy of second revision before the State Government. He further submitted that once a decree of partition was set aside, the decree of partition being the foundation for aforesaid Sale Deed, the Additional Commissioner is justified in recording the finding that mutation entry in favour of the petitioner is liable to be set aside subject to outcome of the final decree in the suit.

9. I have appreciated the aforesaid submissions.

10. Admittedly, it is an undisputed proposition of law that the co-sharer has a right to sell his undivided share.

11. In that view of the matter, Shobha appears to have transferred the suit property, by virtue of Sale deed dated 30.8.2007 which is still holding the field.

12. Merely because the suit for partition in relation to property is pending,

in regard to which the impugned order about mutation is passed by itself will not operate as an embargo of the rights of the petitioner to claim mutation.

13. This fact has prevailed before both the authorities i.e. the Tahsildar and the Additional Collector while passing order in favour of the petitioner.

14. The impugned order has failed to appreciate the aforesaid principles of law as regards to the right of the co-sharer in his/her undivided share. As such, the order impugned passed by the Commissioner on 27.6.2018 is hereby quashed and set aside.

15. The petition is allowed in above terms.

16. However, the petitioner is put to a condition of not to creating third party interest in the suit property till the suit for partition is decided.

17. The witness to clarify regarding the bequeathed rights of either of the parties.

(NITIN W. SAMBRE, J.)