

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.963 OF 2018

Subhash Y. Sirsat

....Petitioner

Versus

Guru Omu Salelkar & 2 Ors.

....Respondents

Mr Sudin Usgaonkar, Senior Advocate with Mr Ashwin Ramani, Advocate for the Petitioner.

Mr A.D. Bhobe, Advocate for the Respondents.

CORAM : M. S. SONAK, J.

DATE : 15th JUNE 2023

ORDER :

1. Heard Mr Sudin Usgaonkar with Mr Ramani for the Petitioner, and Mr Ashwin Bhobe for the Respondents.

2. The Petitioner challenges the concurrent orders made by the Dy. Collector and Administrative Tribunal allowing the Respondents' application for partition based on a decree made by the competent Civil Courts after overruling Petitioner's objection that the revenue authorities should not have proceeded in the matter, given the title issue raised by the Petitioner, who was not made a party in the Civil Suit.

3. Mr Usgaonkar argues that in the appeal against the decree in Civil Suit No.70 of 1961, the Petitioner's mother, Lalita Sirsat was not brought on record after the demise of the defendant/respondent Shankar Bablo Bandekar. He, therefore, argues that the Petitioner, who claims through said Lalita, has every right to raise a title dispute without being bound by the decree in the Civil Suit. He argues that such a dispute was raised before the Dy. Collector in the partition proceedings, and the Dy. Collector exceeded jurisdiction in not upholding the same. He relied on the proviso to Section 61(2) of the Land Revenue Code in support of his argument.

4. Mr Bhobe defended the concurrent orders based on the detailed reasoning reflected therein. He pointed out that up to the Hon'ble Supreme Court, it was held that Shankar Bandekar had no right or title to the suit property.

5. The record discloses that the respondent applied to partition property surveyed under no.146/0 of village Bordem, Bicholim. In respect of this very property, the predecessor-in-title of the respondent instituted Civil Suit No.70 of 1961 against the predecessors-in-title of the Petitioner i.e. Shankar, which was initially dismissed by the trial Court. But the First and Second Appellate Courts decreed the suit. The Supreme Court dismissed the appeal against the same. All these decrees clearly held that Shankar had no right or title to the suit property surveyed under no. 146/0. Based upon this crucial

circumstance, the two authorities were fully justified in rejecting the Petitioner's arguments about any issue of title arising.

6. Upon the demise of Shankar, legal heirs were brought on record. His estate, if any, or his interests were more than adequately represented. The First Appellate Court's decree was never challenged because Lalita was not brought on record. Assuming the decree was challenged on this ground, the same failed right up to the Supreme Court. The Petitioner, who claims through Lalita, can, therefore, not stall the proceedings by invoking Section 61(2) proviso. Title disputes that are already settled cannot be again raised to resist partition.

7. There is no error, much less any jurisdictional error, in the concurrent orders of the Authorities.

8. If the Petitioner truly has any legitimate grievance, remedy would always be explored before the competent Civil Court. However, in the facts of the present case, concurrent orders cannot be questioned relying on Section 61(2) proviso. The Petition lacks merit and is accordingly dismissed without costs.

M. S. SONAK, J.

NITI K
HALDANKAR

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