

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10915 OF 2022

Jagannath Pandharinath Chavan .. Petitioner
Versus
Anna Ramhari Chavan and Ors. .. Respondents

WITH
WRIT PETITION NO.10918 OF 2022

Jagannath Pandharinath Chavan .. Petitioner
Versus
Sharda Satish Deshmukh and Ors. .. Respondents

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- Mr. Mahindra Deshmukh for Petitioner
 - Mrs. V. S. Nimbalkar, AGP for State
 - Mr. V. R. Mankapure a/w. Ms. Rati Sinhasane for Respondent Nos.1 to 5 in W.P. No.10918 of 2022
 - Mr. Bhooshan R. Mandlik for Respondent Nos.6 to 9 in W.P. No.10918 of 2022 and Respondent No.1 in W.P. No.10915 of 2022

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 17, 2023

P.C.:

1. Heard Mr. Deshmukh, learned Advocate for Petitioner; Mrs. Nimbalkar, learned AGP for State; Mr. Mankapure for Respondent Nos.1 to 5 in W.P. No.10918 of 2022 and Mr. Mandlik for Respondent Nos.6 to 9 in W.P. No.10918 of 2022 and Respondent No.1 in W.P. No.10915 of 2022.

2. On 13.01.2023 this Court after hearing learned Advocates has passed following Order:-

“1. Heard learned Advocates for the respective parties.

2. This matter was heard yesterday. Today Mr. Deshmukh, learned Advocate for Petitioner has sought to re-argue and reopen the issue by stating that the Petitioner is having serious apprehension about going back to the Mamlatdar Court for a fresh enquiry. Admittedly, the two Writ Petitions filed before the Court emanate from the original enquiry conducted by the Mamlatdars Court wherein it is an admitted position that cross examination of Respondents was not conducted. In that view of the matter after deliberation, both the parties were informed to consider the legal position whether the Mamlatdars Court is a Court itself under the Mamlatdar Courts Act, 1906 and all proceedings instituted therein are original proceedings. That apart, under the provisions of Sections 5 to 7 of the 1906 Act, parties will be entitled to lead evidence in respect of their possession/entitlement to the subject lands.

3. Considering the apprehension expressed by Mr. Deshmukh, prima facie it is not possible for this Court to entertain the present Petition which emanates from the order dated 23.08.2022 passed by the Mamlatdar Court. I find an inherent jurisdictional error since parties have challenged the said order before the Civil Court.

4. Mr. Deshmukh prays for some accommodation and time to consider the legal position and apprise the Court on the next date.

5. Stand over to 17th January, 2023 for orders.”

3. Admittedly, the present dispute between the parties begins with the passing of order dated 23.08.2019 by the Mamlatdar Court.

4. As seen, the proceedings before the Mamlatdar Court are under provisions of the Mamlatdar Court Act, 1906 and it is a Court in itself. The provisions of Sections 5 to 7 of the said Code entitle the parties to lead evidence in respect of possession and entitlement to the subject lands. That apart, there is also a provision for revision under Section 23.

5. In that view of the matter, challenge to the order dated 23.08.2019 in the Civil Court proceedings and more specifically in

view of the fact that cross-examination of the Respondents having not been offered before passing of the said Order in the Mamlatdar Court, I find it necessary to pass the following order after hearing the parties:

- i. The order dated 28.06.2021 granting status quo by the learned Trial Court shall continue till the disposal of the proceedings between the parties in the Mamlatdar Court which are indicated hereunder;
- ii. The original proceedings Rasta Case No.1 of 2019 before the Mamlatdar Court Act shall be tried afresh between the parties by the Mamlatdar Court under the provisions of the said Act and strictly in accordance with the law. That apart, parties shall be at liberty to file additional material / documentary evidence in support of their respective case and shall also be entitled to lead evidence;
- iii. Parties shall be entitled to refer to and rely upon all such material and evidence in support of their case, namely spot panchnama dated 06.03.2019 and statements related thereto. Petitioner will be at liberty to amend the Petition and implead proper and necessary parties by filing appropriate application therein;

- iv. It is directed that learned Mamlatdar / Tahsildar shall dispose of the proceedings in Rasta Case No.1 of 2019 within a period of two months from today;
- v. All contentions of the parties are kept expressly open;
- vi. Parties shall appear before learned Mamlatdar on 19.01.2023 at 12.00 noon for fixing the schedule of hearing. Parties shall not be granted unnecessary adjournment unless absolutely necessary.

6. Parties shall act upon an authenticated copy of this Order.

7. Writ Petition No.10915 of 2022 and Writ Petition No.10918 of 2022 stand disposed of with the above directions.

8. In view of disposal of Writ Petition Nos.10915 of 2022 and 10918 of 2022, proceedings between the parties i.e. two suits Regular Civil Suit No.96 of 2020 and Regular Civil Suit No.97 of 2020 and two Appeals i.e. Miscellaneous Civil Appeal No.166 of 2021 and Miscellaneous Civil Appeal No.172 of 2021 also stand disposed of.

[MILIND N. JADHAV, J.]