

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2525 OF 2023

Lukman Hafizuddin Khan and Ors.

.. Petitioners

Versus

The State of Maharashtra and Ors.

.. Respondents

.....

- Mr. Amey Deshpande a/w. Mr. Harsh Nishar and Ms. Vandana Bait, Advocates for Petitioner.
- Mr. S. H. Kankal, AGP for State – Respondent No.1.
- Mr. Suresh M. Kamble, Advocate for Respondent No.7.

.....

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 01, 2023

P.C.:

1. Heard Mr. Deshpande, learned Advocate for Petitioner, Mr. S. H. Kankal, learned AGP for State – Respondent No.1 and Mr. Kamble, learned Advocate for Respondent No.7.

2. The present Writ Petition takes exception to the order dated 26.10.2018 passed by the State in Second Revision proceedings arising out of cancellation of Mutation Entry No.2929. Mutation Entry was in favour of the Petitioner. Respondent No.2 challenged the same before the Sub-Divisional Officer (for short ‘SDO’) and the First Appeal came to be allowed. Mutation Entry stood cancelled. Being aggrieved Petitioner approached the Collector in Second Appeal. Collector rejected the challenge to the SDO’s order and upheld the order passed by the SDO. Being aggrieved Petitioner approached the Divisional

Commissioner in First Revision proceedings which came to be allowed thereby setting aside the orders passed by SDO and Collector. Respondent No.2 filed Second Revision proceedings as permitted under Section 257 of the Maharashtra Land Revenue Code, 1966. Mr. Deshpande would submit that this Second Revision Application was in fact allowed by the State by the impugned order without notice to the Petitioner. He would submit that Petitioner has filed a substantive Civil Suit being Special Civil Suit No.172 of 2023 before the learned Civil Court i.e Civil Judge Senior Division, Pune seeking declaration and injunction in respect of the suit property which is subject matter of Mutation Entry No.2929. He would submit that Application below Exh.5 has been also filed by the Petitioner and same is pending hearing and disposal before the learned Trial Court.

3. Considering the settled position in the law that the parties cannot derive and claim title on basis of Mutation Entry, it would be trite if the dispute between the parties is agitated in the Civil Court rather than the parties be allowed to agitate the same in Revenue proceedings. In view of the aforementioned facts and orders passed by the statutory Authorities, and more specifically in view of the fact that Petitioner has now approached the Civil Court, no purpose would be served in entertaining the present writ Petition and testing the impugned order dated 26.10.2018. It would be in the interest of

justice if the learned Civil Court hears the Application filed below Exh.5 on its own merits, in accordance with law and certainly after hearing all concerned parties. Record shows that Respondent No.2 who, the principal contesting Respondent is arrayed as Defendant No.3 in Civil Suit No.172 of 2023 before the Civil Court. Mr. Deshpande would submit that Respondent No.2 being Defendant No.3 therein has been served with the Application below Exh.5 and is represented by Advocate before the learned Civil Court.

4. In view of the above, and at the joint request of both the learned Advocates, the learned Civil Judge Senior Division, Pune is directed to dispose of Application below Exh.5 after hearing all concerned parties and more specifically Defendant No.3 therein who is the principal contesting Respondent in the present Writ Petition on its own merits and strictly in accordance with law. This Court refrains from passing any order or dealing with the impugned order dated 26.10.2018, but however makes it clear that the learned Civil Court shall not be influenced by any of the observations and findings in the impugned order dated 26.10.2018 as also earlier orders passed by the SDO, Collector and Divisional Commissioner with respect to the subject Mutation Entry.

5. Mr. Deshpande would submit that Respondent No.2 has created further third party rights / interest in the suit property who are also

added as defendants in the pending Civil suit. Whatever is applicable to Respondent No.2 shall therefore be applicable to the said Defendants also who derive their title from Respondent No.2.

6. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

SONALI
SATISH
KILAJE

Digitally signed
by SONALI
SATISH KILAJE
Date:
2023.03.02
17:45:15 +0530