

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4882 OF 2022**

Suvarna Ramesh Mudhale ... Petitioner
versus
Amol Ajit Rangole and Ors ... Respondent

Mr. Swaroop M. Karade for Petitioner.
Mrs. V.S.Nimbalkar, AGP for State.

CORAM: N.J.JAMADAR, J.

DATE : 20 MARCH 2023

P.C.

1. Rule. Rule made returnable forthwith. With the consent of the learned Counsel for the parties, heard finally at the stage of admission.
2. By this Petition under Article 227 of the Constitution of India, the Petitioner takes exception to the orders dated 29 September 2021 and 17 December 2021 whereby the Deputy Director, Land Records, Pune Division, Pune, was persuaded to allow the Appeal preferred by the Respondent No.1 and dismiss the Application preferred by the Petitioner for review of the said order, respectively.
3. Shorn of superfluities, the background facts can be stated as under :
 - 3.1 Late Bapusaheb Mudhale was the holder of property bearing CTS No.683 admeasuring 4645 sq. mtrs., situated at Shahapuri, Kolhapur. Bapusaheb Mudhale divided the said property in four equal parts and kept one for himself and allotted three parts to each of his sons namely Ramesh, Sudhakar and Mahavir.

Bapusaheb bequeathed his $\frac{1}{4}$ share in the said property to his wife Smt. Shridevi (the subject property).

3.2 Smt. Shridevi executed a Registered Will on 18 June 2010 and bequeathed the said property to her son Ramesh, husband of the Petitioner. Smt. Shridevi passed away on 26 March 2012.

3.3 Mr. Ramesh executed a Registered Will and bequeathed the said property to the Petitioner on 22 May 2013. Mr. Ramesh passed away on 16 January 2015. Initially, after the demise of Ramesh, the name of the Petitioner came to be mutated to the property card of the suit property vide Mutation Entry No.27765 dated 21 February 2015.

3.4 In the meanwhile, Respondent No.1 who is the nephew of late Ramesh, by suppressing the fact of demise of Ramesh, got his name entered into the property card on the strength of allegedly forged and fabricated Will of Shridevi dated 10 September 2011. A mutation entry No.27349 dated 7 March 2015 was entered deleting the name of late Ramesh. Consequently, mutation entry No.27765 recording the name of the Petitioner was cancelled by the City Survey Officer on 2 May 2015.

3.5 Being aggrieved, the Petitioner preferred an Appeal before the District Superintendent of Land Records, being First Appeal No.SR 47 of 2015. By a judgment and order dated 13 July 2018, the Superintendent of Land Records, Kolhapur, partly allowed the said Appeal and the decision of the City Survey Officer to

mutate the name of Respondent No.1 vide Mutation Entry No.27349 dated 7 March 2015 was set aside and the said Mutation Entry No.27349 was cancelled. Mutation Entry No.23040 dated 9 June 2012 recording the name of the deceased Ramesh was directed to be retained in a “cancelled state”. Mutation Entry No.2020 dated 9 April 2001 in the name of Smt. Shridevi, the mother of Ramesh, was directed to be revived.

3.6 Being still aggrieved, the Petitioner preferred an Appeal before the Deputy Director of Land Records, Pune, being Appeal SR No.4519 of 2018. By a judgment and order dated 29 September 2021, the Deputy Director of Land Records, was persuaded to allow the Appeal by setting aside the judgment and order dated 13 July 2018 passed by the Superintendent of Land Records, Kolhapur. The Deputy Director of Land Records, by way of consequential order, restored the decision of City Survey Officer dated 16 February 2015 to mutate the name of Respondent No.1 to the property card of the subject property.

3.7 The Petitioner sought to review the said order by filing a Review Application. The Petitioner also prayed for stay to the execution and operation of the order, especially the direction to restore the name of Respondent No.1 to the property card of the subject property. By an order dated 17 December 2021, the Deputy Director of Land Records, rejected the Review Petition and the Application for stay opining, inter alia, that in view of the provisions contained in Sections 257 and 259 of the Maharashtra Land Revenue Code, 1966, the order passed by the Deputy Director

in Second Appeal, was not amenable to review. Thus, advising the aggrieved parties to either approach the Government or the Court, the Petition came to be disposed while continuing the stay to the execution and operation of the judgment and order dated 29 September 2021 in Appeal SR No.4519 of 2018 for the period provided for an appeal under Section 256 of the Code, 1966.

3.8 Being further aggrieved, the Petitioner has invoked the Writ jurisdiction of this Court.

4. Mr. Karade, the learned Counsel for the Petitioner, strenuously submitted that the Petitioner is aggrieved by the direction to restore the name of Respondent No.1 to the property card. In the face of the rival Wills propounded by the Petitioner and Respondent No.1, the name of Respondent No.1 could not have been directed to be mutated to the subject property, especially when the Mutation Entry in favour of Ramesh, deceased husband of the Petitioner was set aside without notice on account of suppression of the factum of the death of Ramesh by Respondent No.1. It was for these reasons, the Petitioner had sought review of the order passed by the Deputy Director, Land Records dated 29 September 2021. The latter committed a grave error firstly in allowing the Appeal and directing restoration of the name of the Respondent No.1 and, secondly, in rejecting the Application for review as untenable, urged Mr. Karade.

5. Respondent No.1 did not appear despite service of notice.
6. The learned AGP for Respondent Nos.2 and 3 submitted that the Petitioner has an efficacious remedy under Section 257 of the Code, 1966 and, thus, this Court may not exercise the writ jurisdiction.
7. I have carefully perused the material on record. Essentially the controversy revolves around the genuineness of the conflicting Wills of Smt. Shridevi propounded by late Ramesh, during his lifetime, and after his demise, the Petitioner, on the one part, and the Respondent No.1, on the other part. The Petitioner claimed that Smt. Shridevi had executed a Registered Will in favour of Ramesh on 18 June 2010. Whereas, Respondent No.1 asserted that Smt. Shridevi had executed a Will on 10 September 2011 bequeathing the subject property to him.
8. It would be contextually relevant to note that on the strength of the Will dated 18 June 2010, the name of Ramesh came to be mutated to the subject property vide Mutation Entry No.23040 dated 9 June 2012. The Petitioner claimed that Ramesh, in turn, bequeathed the subject property to her by executing the Registered Will dated 22 May 2013. There is material to show that the Petitioner instituted a Suit being Regular Civil Suit No.344 of 2015 seeking declaration about the validity of the Will dated 18 June, 2010 executed by Smt. Shridevi in favour of Ramesh and the Will dated 22 May 2013 executed by Ramesh in favour of the Petitioner and that the alleged Will dated 10 September 2011 (of deceased Shridevi) propounded by Respondent No.1

is fabricated, sham and bogus.

9. In the backdrop of the aforesaid facts, it is imperative to note that the Superintendent of Land Records had allowed the Appeal preferred by the Petitioner on the ground that the proceedings conducted before the City Survey Officer were vitiated for the reason that late Ramesh passed away on 16 January 2015. The said fact was suppressed from the City Survey Officer and the notice about hearing was not given to either late Ramesh or his legal representatives. Since late Ramesh had passed away on 16 January 2015, the hearing conducted by the City Survey Officer on 31 January 2015 and the decision rendered on the ground that late Ramesh was absent, were infirm.

10. In contrast, the Deputy Director of Land Records, after noting the submissions of the parties, was persuaded to allow the Appeal purportedly for the reason that two Wills dated 18 June 2010 and 16 September 2011 of deceased Shridevi were propounded and it was the last of the Wills (in favour of Respondent No.1) commanded the primacy. Thus, Superintendent of Land Records could not have interfered with the order of the City Survey Officer.

11. In my view, the Deputy Director of Land Records fell in error in not giving due weight to the fundamental reason which weighed with the Superintendent of Land Records in setting aside the order passed by the City Survey Officer directing mutation of the name of the Respondent No.1 to the property card of the subject

property, namely, serious infirmities in the procedure. The Superintendent of Land Records had noted that on 31 January 2015, the day City Survey Officer conducted hearing on the Application of Respondent No.1, late Ramesh, whose name was already mutated to the property card vide Mutation Entry No.23040 dated 9 June 2012, had passed away. His legal representatives were not brought on record. Moreover, the City Survey Officer proceeded to decide the Application of Respondent No.1 for the reason that late Ramesh did not appear.

12. Prima facie, the proceedings before the City Survey Officer were conducted in breach of the fundamental principles of judicial process. It is also imperative to note that the Superintendent of Land Records, in order to obviate the possibility of third party rights being created on the basis of the mutation of the name of late Ramesh, had directed that the said entry be retained in a “cancelled state” and also revived the mutation entry No.2020 dated 9 April 2010 in favour of deceased Shridevi. Respondent No.1’s claim is based on the purported Will executed by the deceased Shridevi.

13. In the circumstances, the Deputy Director of Land Records could not have directed the restoration of the decision of the City Survey Officer, despite being alive to the fact that dispute about the validity of the rival Wills was subjudice before the Civil Court. Since the Deputy Director of Land Records did not consider the aspect of serious procedural defect in the proceedings of the City Survey Officer and

proceeded to set aside the order passed by the Superintendent of Land Records, in my view, it is necessary to remit Second Appeal to the Deputy Director of Land Records for afresh decision by setting aside the order dated 29 September 2021 as well as the order passed in Review Application dated 17 December 2021.

14. Since I am persuaded to hold that, prima facie, there was breach of fundamental principles of judicial process and natural justice as well, in the sense that the City Survey Officer passed an order without impleading the legal representatives of late Ramesh, who had passed away on the day the hearing was conducted, the existence of an alternate remedy under Section 257 of the Code does not operate as a bar for the exercise of writ jurisdiction by this Court.

15. Hence, the following order :

ORDER

- (i) The Writ Petition stands allowed.
- (ii) The impugned orders dated 29 September 2021 and 17 December 2021 in Appeal RS No.4519 of 2018 and the application for the Review, respectively, stand quashed and set aside.
- (iii) Appeal SR No.4519 of 2018 is restored to the file of the Deputy Director of Land Records, for afresh decision.
- (iv) The Deputy Director of Land Records shall decide the Appeal after providing an effective opportunity of hearing to the parties on its own merits and

in accordance with law, without being influenced by the aforesaid observations which were confined to test the legality and correctness of the impugned orders.

(v) No costs.

(vi) Rule is made absolute in the aforesaid terms.

(N.J.JAMADAR, J.)