2023:BHC-NAG:16685

IN THE HIGH COURT OF JUDICTURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 7573 OF 2023

Smt. Yashodabai Wd/o Anandrao Hede
..VS..
The Additional Commissioner, Amravati Division, Amravati and others

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. K.S. Narwade, Advocate for petitioner.
Mr. I.J. Damle, A.G.P. for respondent Nos.1 to 6.
Mr. H.V. Dhage, Advocate for respondent No.7.

CORAM : AVINASH G. GHAROTE, J.
DATED : 01st DECEMBER, 2023

Heard Mr. Narwade learned Counsel for the petitioner and Mr. Dhage, learned Counsel for the respondent No.7.

2. The petition challenges the mutation entry No.1472 (page 38) and the subsequent order dated 06.12.2021 passed by the Additional Collector (page 89) and the one dated 27.10.2023 passed by the Additional Commissioner dismissing the Appeals (page 121).

3. Mr. Narwade, learned Counsel for the petitioner contends that the mutation entry No.1472 has been incorrectly recorded as the basis for the same is an unregistered Gift-deed which is impermissible in law, which position has rightly been considered by the Sub Divisional Officer in his order dated 27.07.2021, by which, the appeal of the petitioner was allowed and the mutation entry No.1472 dated 23.01.2019 has been cancelled. The respondent Nos. 1 and 2, according to

him, in setting aside the order dated 27.07.2021 have erred in law.

4. Mr. Dhage, learned Counsel for respondent No.7 supports the impugned orders and contends that there is an earlier Will-deed executed by the petitioner in favour of respondent No.7 and therefore, the execution of the Will-deed is also required to be accepted.

5. Mr. Damle, learned AGP supports the impugned orders.

6. In view of the provision of Section 49 (a) and (c) of the Indian Registration Act, 1908 it is apparent that an unregistered Gift-deed of immovable property of the value of more than 100 rupees cannot affect the immovable property which is its subject matter and therefore, could not be a document relied upon by the Revenue Authority to carry out the mutation on this basis. That being the settled position of law, the order dated 06.12.2021 passed by the Additional Collector, Yavatmal and the order dated 27.10.2023 passed by the Additional Commissioner, Amaravati cannot be sustained as they do not take this legal position in account, and are hereby set aside.

7. The writ petition is, therefore, allowed in the above terms. No costs.

JUDGE

Kirtak