IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3446 OF 2013

Shaikh Khaja Shaikh Katthumiya
Age:40 Years, Occu. Agril.,
R/o. Gavrai, Tq. Gavrai,
Dist. Beed. **...Petitioner**

VERSUS

Pramodini w/o. Prakashrao Wasekar
Age: Major, Occu: Household
R/o. Hingoli, Tq. & Dist. Hingoli. **...Respondent**

Mr.Yashodeep Deshmukh a/w Mr.Anand Kawre and H. A. Joshi for Petitioner.
Mr. Swapnil S. Patankar a/w Ms. Sanika G. Muley and Ms. Sakshi S. Muley i/by I. P. Legal Associates for Respondent No.1.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 25th SEPTEMBER 2024
PRONOUNCED ON : 26th NOVEMBER 2024

PC :-

1. Heard the learned Counsel for the parties.

2. By way of the present petition, the petitioner has challenged the Judgment and Order dated 27th December, 2012 passed by the learned Additional Commissioner, Aurangabad Division, Aurangabad in Case No.ROR/Rev/223/2012. The learned Additional Divisional Commissioner by way of said judgment and order has rejected the Revision of the petitioner that was filed against an order passed by

the learned Additional Collector, Jalna in file No.2011/RB/Appeal/CR-139, dated 25th January 2012, thereby confirming the said order. The proceeding is arising out of mutation entry in respect of Gut No.16 (survey No.17) to the extent of 14 Hectors 56R situated at Village Shiradhon, Taluka Ambad, Dist. Jalna.

FACTS

3. The Facts in-short as appearing from the record are as below:

. The Respondent No.2-Shaikh Nazir was the owner and possessor of the land admeasuring 7 Acres and 28R. His mother Bismillabi, was the guardian of Respondent No.2. The petitioner agreed to purchase the said land from Respondent No.2. The Respondent No.2 applied to Talathi for deletion of name of his mother Bismillabi as a guardian. Pursuant to that, mutation entry No.80 was taken by the Talathi. It is thereafter the petitioner purchased the said land from Respondent No.2 by executing two different sale-deeds. One was executed on 2nd August 2010 and second was executed on 13th August 2010. Since the petitioner purchased the said land, he applied to the Talathi for taking entry in his name. However, Respondent No.1 filed a complaint before

Talathi in respect of the said transaction and had objected for taking entry in rervenue record in the name of the petitioner. The Talathi, Wadi Shiradhon forwarded the complaint to the Tahsildar, Ambad. The Tahsildar on hearing the parties, rejected the complaint of Respondent No.1. It is thereafter the mutation entry Nos.81 and 82 were carried in the name of petitioner. His name also appeared in extract of 8-A. On the basis of this mutation entries, the name of petitioner came to be recorded in 7/12 extract. It is the case of the Respondent No.1 that, in fact, she has purchased the land admeasuring 7 Acre and 28R from Respondent No.3 by way of registered sale-deed in the year 1983 itself. The Tahsildar had considered that entries in her name is not effected in the revenue record and, therefore, turned down her objection.

4. The Respondent No.1 thereafter approached the Sub-Divisional Officer (Revenue), Partur, by filing an appeal bearing ROR Appeal No.10 of 2011. It is the case of the petitioner that the Sub-Divisional Officer, Partur without service of notice on the petitioner, passed an order allowing the appeal of Respondent No.1 by its judgment and order dated 13th October 2011. This order was carried to the learned Collector by the petitioner. However, as

stated earlier, the learned Collector rejected the appeal of the petitioner. The learned Additional Commissioner also confirmed the order of the learned Collector. Thus, three authorities are against the petitioner.

5. Before this Court, it is the case of the petitioner that, after he become an owner of the said land, the Tahsildar has rightly taken the entry in his name. The objection of the Respondent No.1 was rightly turned down by the Tahsildar and the learned Sub-Divisional Officer. There was no reason for the Sub-Divisional Officer to set aside the order passed by the Tahsildar. The petitioner has become an absolute owner of the land and no entry in his name could have been cancelled by any authorities. He prays for allowing the writ petition.

6. This petition is vehemently opposed by the Respondent No.1. Petition is already dismissed against Respondent Nos.2 and 3 in view of order dated 13th July 2018. It is the case of the Respondent No.1 that the Respondent No.1 had purchased the land in the year 1983 and, therefore, she is rightful owner of the property and therefore, entries were directed to be taken in her name by the

learned Sub-Division Officer. Her title to the land is on the strength of registered sale-deed. Though, the revenue entries were not taken still the sale-deed would prevail upon the revenue entries. The Respondent No.1 has become an absolute owner on purchase of land from Respondent No.3. Respondent No.2 had already sold the land of 7 hectre and 28R to his brother long back. The Respondent No.2 had no authority thereafter to sell the land to the petitioner. It is the case that the authorities have rightly held in favour of the present Respondents and no interference is, therefore, called for in the impugned judgment and order.

SUBMISSIONS OF THE LEARNED COUNSELS

7. The learned Counsel for the petitioner vehemently argued that it is clear that he has become an absolute owner of the property as he has purchased the said property from Respondent No.2. The authorities failed to consider that in 7/12 extract name of Respondent No.2 was shown as the owner and possessor of the land to the extent of 7 hectre and 28R. No opportunity of hearing was given by the Additional Collector to the petitioner and thus, the order is without following the principle of natural justice. The

authorities have wrongly relied upon the theory of partition as put-forth by the Respondents. The authorities had no jurisdiction to decide the question of ownership while exercising the power under the Maharashtra Land Revenue Code, 1966 (for short "MLRC").

8. The learned Advocate for the Respondent No.1 vehemently argued that once the land was already sold to her by Respondent Nos.2 and 3, there was no question of petitioner purchasing land from Respondent No.2. It is well settled that the person cannot sell the property on which he does not have any right. The sale-deed of 1987, is not at all challenged. Before the Tahsildar, the partition deed dated 3rd December 1981 was on record. The sale-deed dated 8th November 1983 was also before the learned Tahsildar and still the learned Tahsildar failed to appreciate this fact. The Superior Authorities have rightly considered this aspect. He prays for rejection of the writ petition.

CONSIDERATION BY THE AUTHORITIES

9. The learned Sub-Divisional Officer in her judgment observed that the Respondent No.3 had sold the land to the extent of his 50% land on the north side to the petitioner. It is considered that there

is a mention that the possession is also handed over to Respondent No.1. The Tahsildar has turned down the objection only for the reason that no entry is taken on the basis of sale-deed of 1983. It is considered that the sale-deed in favour of Respondent No.1 is wrongly held to be not legal by the Tahsildar. The petitioner has not taken any steps to get the sale-deed cancelled or declared as null and void. The learned Collector has also considered this aspect. The Additional Collector further considered that in case of agricultural land, it is not compulsory to get the partition in the family registered. It is further considered that the question of legality and validity of the sale-deed of 1983, cannot be questioned in the revenue proceedings. The Additional Collector accepted the sale-deed as legal and valid as the same was not challenged before the civil Court. The learned Additional Commissioner has also considered that the Respondent No.2 had illegally sold the said land to the petitioner by way of registered sale-deed as he has no legal right to sell the said land.

DISCUSSION

10. Thus, the question that falls for consideration is as to whether

the authorities have rightly considered and decided in favour of Respondent No.1?. Learned Advocate for the petitioner relied upon the decisions in the case of ***Mangroo and Ors. Vs. Ram Sumer and Ors***.[1] and ***Hira Lal Vs. Gajjan***[2].

11. In the case of ***Mangroo and Ors.*** (supra), the Allahabad High Court has held that the revenue entries in respect of agricultural lands have got great value. In support of his submission is that, on the revenue record the name of respondent No.2 was still appearing when sale-deed in his favour was executed.

12. In the case of ***Hira Lal*** (supra), the Hon'ble Apex Court, in the facts of that case, held that, the question was of possession of the disputed land. The appellant in that case relied on the entries in the revenue record and the receipts of payment of rent to show his possession. In that view of the matter, the Court held that it was for the other side to show that the entries in the revenue record was taken surreptitiously out of ill-will or hostility. In absence of such proof, it was held that it has to be presumed and the entry needs to be accepted as evidence of the sub-tenancy in favour of the party.

1 2006 SCC OnLine ALL 1851
2 1990 (3) SCC 285

In the present case, it is not the question of the tenancy or the possession but it only of the revenue entry. The Hon'ble Apex Court to determine the question of tenancy and possession had relied upon the revenue entry, the said judgment would not be applicable in the facts of the present case.

13. The respondent No.1 has relied upon the judgment of the Apex Court in the case of ***Gurudassing Nawoosing Panjwani Vs. State of Maharashtra and Ors***.[3] Mainly in support of his argument that, there is an alternative remedy available to the petitioner to approach the State Government challenging the judgment of the learned Additional Commissioner. There is no dispute about the said fact.

14. This Court finds that substantial force in the submission of the respondent that while considering the question of mutation entry limited inquiry can be made into the matter. The revenue Court cannot go into the question of title.

15. Considering the above position and reasoning of the authorities, this Court finds that the respondent No.1 has purchased the land in the year 1983 and, there is no dispute about the said

3 2016 (5) Mh.L.J. 12

fact. The only case of the petitioner appears to be that when the sale-deed was executed in his favour, the name of the respondent No.2 was appearing in the revenue record. It is well settled that, mere entry in the revenue record does not confer any title on the person, neither the said entries can be taken as document of title. There is no challenge to the sale-deed in favour of Respondent No.1. Though her name was not appearing in revenue record, it will not take away the title of the respondent No.1. This Court finds that the learned Additional Commissioner has rightly decided the revision. The petition is argued in spite of objection on the ground of alternative remedy on merit, this Court finds that no purpose would be served by remanding the matter again by relegating the parties to State Government. This Court does not find any merit in the petition and the same is therefore, dismissed.

16. Writ Petition stands dismissed with no order as to costs.

17. Pending applications, if any, also stand disposed off.

[KISHORE C. SANT, J.]

D.A.Ethape