IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12173 OF 2017

Pandurang Baburao Surve And Ors. ...Petitioners
Versus
Chimaji Baburao Surve And Anr. ...Respondents

Adv. Rakesh Bhatkar a/w Mohan Devkule, Mohit Dalvi & Smita Samel for the Petitioners.
Adv. Priyanka B. Chavan, AGP for the State.
Adv. Shashank Mangale for Respondent No. 1.

Coram : Sharmila U. Deshmukh, J.
Date : October 1, 2024.

P. C. :

1. By this Petition, the challenge is to the order dated 25th September, 2017 passed by the Principal Secretary for Revenue and Forest in RTS Revision No. 253 of 2016 by which the Principal Secretary reinstated Mutation Entry No. 808 and cancelled Mutation Entry No. 1039.

2. The facts of the case are that the Petitioner and the Respondent No. 1 are brothers and upon the death of the original owner, i.e. Subadrabai, Mutation Entry No. 807 came to be certified in the name of the Petitioners and Respondent No.1. The said Mutation Entry No. 807 was challenged by Respondent No.1 claiming sole right in the said property. The challenge up to the Divisional Commissioner failed and thereafter there was no further challenge to the Mutation Entry giving finality to Mutation Entry No.807.

3. It appears that Subadrabai had filed Regular Civil Suit No. 2 of 1974 for declaration of ownership and for recovery of possession of the suit properties. The original owner Subadrabai had no sons daughters and during the pendency of the suit, Subadrabai bequeathed the property to the Petitioners and his brother as claimed in the Petition. Subsequently, the suit came to be decreed in favour of Subadrabai. Respondent No. 1 filed Execution Application No.7 of 1983 which came to be allowed and the Executing Court handed over the subject property to the Respondent No. 1. Based on the said Will and the handing over of the possession, an Application came to be filed by Respondent No.1 before the Tahsildar on 26th September, 1984 for certifying his name in the revenue records and for deletion of the names of the Petitioners. Vide Mutation Entry No. 808, the name of the Petitioners came to be deleted. Subsequently, on 10th January, 2006, Mutation Entry No. 1039 was certified noting that by Mutation Entry No. 808, the names of the Petitioners came to be wrongly deleted and the names of the Petitioners came to be reinstated by Mutation Entry No.1039. In the said Entry, it was noted that the Mutation has been effected pursuant to an order dated 28th December, 2005 passed by the Tahsildar.

4. Mutation Entry No. 1039 came to be challenged by the Respondent No.1 before the SDO who rejected the Application vide order dated 31st October, 2007. As against which, Appeal before the Additional Collector also came to be rejected. RTS Appeal No.677 of 2010 was filed before the Additional Commissioner which rejected the Appeal and confirmed the Mutation Entry No. 1039. Second revision came to be filed before the Principal Secretary who allowed the Revision and reinstated Mutation Entry No. 808 and cancelled Mutation Entry No. 1039.

5. Heard Mr. Bhatkar, learned counsel for the Petitioner, Mr. Mangale, learned counsel for Respondents No. 1 and learned AGP for the State.

6. Learned counsel for the Petitioner would submit that by virtue of the Will of Subadrabai, Mutation Entry No. 807 was certified to which the challenge by Respondent No. 1 failed and therefore, the Mutation Entry attained finality. He would further submit that based on the possession received from the Executing Court and on the basis of Will, Mutation Entry No. 808 was certified. He submits that as the Mutation Entry No. 808 was wrongly recorded, in the year 2006, Mutation Entry No. 1039 reinstated the names of the Petitioners by canceling the Mutation Entry No. 808. He submits that the challenge up to the Additional Commissioner failed and the Principal Secretary on the basis of the handing over of the possession in the execution proceedings has allowed the Revision Application. He points out the findings of the Principal Secretary that Civil Court has accepted the title of Respondent No. 1 and submits that on the basis of an erroneous finding, the impugned order is passed.

7. *Per contra,* learned counsel for Respondent No. 1 submits that the Will which was executed by Subadrabai was in favour of Respondent No. 1 and therefore, an Application was made in the execution proceedings for handing over possession which came to be allowed. He submits that subsequent thereto, an Application came to be filed for mutating his name in the revenue records based on the possession given by the Executing Court as also the Will of Subhadrabai executed on 26th September, 1984 and Mutation Entry No. 808 was properly certified. He would submit that after a period of 11 the Tahsildar revisited the Mutation Entry by order dated 28th December, 2005 and Mutation Entry No. 1039 came to be certified. He submits that there is no reason for canceling the Mutation Entry No. 808. He submits that the authorities failed to consider the relevant facts and therefore, the Principal Secretary has rightly passed the impugned order.

8. Considered the submissions in detail and perused the records.

9. As far as the Mutation Entry No. 807 is concerned, which is annexed at page 24 of the Petition, the same would indicate that it has been certified on the basis of the registered Will executed by Subadrabai on 18th July, 1978 and on the basis of the said Will after her death, the Mutation Entry No.807 was effected in favour of the Petitioners and Respondent No.1.

10. Despite thereof, in the execution proceedings taken out by the Respondent No. 1, as the legal heir of deceased Subadrabai for execution of the decree passed in Regular Civil Suit No. 2 of 1974 between Subadrabai and a third party for recovery of possession of the properties, the possession was handed over to Respondent No.1. It is on the basis of the Will and the possession receipt, the Mutation Entry No.808 came to be certified. Subsequently, after a period of almost 11 years, the Mutation Entry was revisited by the Tahsildar and based on the order dated 28th December, 2005, the Mutation Entry No. 1039 came to be certified.

11. The Impugned order dated 25th September, 2017proceeds on the basis that, after the decree passed in Regular Civil Suit No. 2 of 1974 in favour of Subadrabai, the Respondent No. 1 had filed Regular Darkhast No. 7 of 1983 and the Respondent No.1 was declared as the owner of the property and the possession was handed over. The fallacy of the said observation is that as far as the Regular Civil Suit No. 2 of 1974 is concerned, the same was filed by Subadrabai against a third party for declaration and for recovery of possession of the suit lands. In that proceeding the Defendant was directed to hand over possession of the suit land to the Plaintiff. Considering the decree passed, the Executing Court has merely executed the decree and directed the handing over of the possession. In the execution proceedings, there could not be any declaration of title in respect of the suit lands and therefore the finding that the Respondent No. 1 has been declared as owner in Civil Court is factually incorrect.

12. Perusal of the impugned order would indicate that the Principal Secretary proceeded on the erroneous factual finding and held that as the Civil Court has already accepted the title of Respondent No. 1, the Revenue Authorities cannot go into the said issue.

13. It is well settled that the Revenue Authorities cannot deal into the aspect of title and in case any dispute as regards the title to the subject property is raised, the parties have to approach the Civil Court to settle the title dispute. In the present case, perusal of Mutation Entry No. 808 indicates that the Respondent No. 1 claims to be the sole legal heir under the Will of late Subadrabai, whereas, Mutation Entry No. 807 which mutates the name of the Petitioners and the Respondent No.1 is based on the same Will dated 18th July, 1978. It therefore appears that there is dispute as regards the right, title and interest based on the Will of Subadrabai which is required to be determined by the Civil Court. The Revenue Authorities do not have the jurisdiction under the MLRC to go into issue of title to property. The impugned order proceeds on the basis of that there is an order of the Civil Court in favour of Respondent No. 1 settling the issue of title and therefore has reinstated Mutation Entry No. 808 and has cancelled the Mutation Entry No. 1039.

14. Though it is a settled position in law that the Mutation Entry does not confer or extinguish any title in the suit property, the fact remains that the Mutation Entry has certain probative value *vis a vis* the ownership rights of the property and while dealing with the property, one of the aspects which is always taken into consideration is whether the revenue records reflect the names of the concerned persons. In that respect, although the Mutation Entry cannot be said to create or extinguish any right, in event where there is any dispute as regards the title of the properties, it would be prudent to keep the Mutation Entry in abeyance until the issue is determined by the Civil Court.

15. In light of the above, the impugned order dated 25th September, 2017 is modified to read as under :

(i) The Revision Application of Respondent No. 1 is partly allowed.

(ii) The Mutation Entry No. 808 and 1039 are kept in abeyance.

(iii) Parties to adopt appropriate proceedings in the Civil Court for determination of the right, title and interest in the subject properties.

(iv) Upon such rights being crystallized by the Civil Court, appropriate Applications be made to the Revenue Authorities for mutating the names.

16. Writ Petition is disposed of in the above terms.

[Sharmila U. Deshmukh, J.]