

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12560 OF 2022

Prabhavati Pandurang Palande & Anr. ... Petitioners

V/s.

Vikas Baburao Palande & Anr. ... Respondents

Mr. Ketan A. Dhavle for the petitioner.

Mr. Onkar Warange for respondent No.1.

Mr. S.D. Rayrikar, AGP for respondent No.2/State.

CORAM : AMIT BORKAR, J.

DATED : MARCH 12, 2024

RC.:

1. The writ petition arises out of an order passed by respondent No.2 in a proceeding under Section 149 of the Maharashtra Land Revenue Code, 1966 on an application filed by respondent No.1 to enter his name in the revenue record based on registered Will.

2. The Circle Officer by order dated 29 December 2014 effected mutation entry. The petitioners challenged the entry by filing appeal. The Appellate Authority dismissed the appeal. Aggrieved thereby, the petitioners filed appeal before the Collector. The Collector by the judgment and order dated 27 June 2017 allowed petitioners' appeal, against which respondent No.1 filed revision before the Commissioner which was allowed. The petitioners'

second revision under Section 257 of the Maharashtra Land Revenue Code, 1966 has been dismissed by the Revenue Minister. Hence, present writ petition.

3. According to the petitioners, the order by the Circle Officer was without giving opportunity of hearing to the petitioners and, therefore, there is breach of principles of natural justice. According to him, the Will was disputed by the petitioners and, therefore, only Civil Court can adjudicate on the validity of the Will.

4. Per contra, learned advocate for respondent No.1 submitted that he applied before the revenue authority based on registered Will which prima facie is a document of title and the person disputing such will need to approach Civil Court to challenge the validity of such Will. Therefore, according to him, the orders passed by the authorities below have rightly been passed.

5. Having considered the submissions on both sides, it needs to be noted that the petitioners were present before the Circle Officer. He filed his affidavit. At the most, the order passed by the Civil Court was without giving adequate opportunity of hearing to the petitioners. However, it cannot be equated with the order passed without giving opportunity of hearing.

6. The law on the point of breach of principles of natural justice is well settled. Unless the petitioners proves legal prejudice, the order passed by the subordinate authorities need not be interfered in writ jurisdiction merely on the ground of breach of principles of natural justice. Prima facie it appears that the authorities relied on registered Will. Whether there are any suspicious circumstances or

whether such Will was not properly executed, all these questions need to be decided by the Civil Court in a proceeding validly instituted by the person disputing such Will.

7. The power of revenue authority under Section 149 of the Maharashtra Land Revenue Code, 1966 is well settled. The authorities need to enter names of a person based on prima facie reading of document of title. In the facts of the case, the document is registered Will. Therefore, the authorities within their rights to enter name of respondent No.1 in relation to the property in dispute. However, entry of such right in the mutation entry would neither create or extinguish right, title or interest in the immovable property. These entries are only for fiscal purposes. Therefore, the person disputing Will need to approach Civil Court for establishing his right in the immovable property.

8. Therefore, by granting liberty to the petitioner to institute Civil Suit challenging the Will, no interference in the impugned order is called for.

9. The writ petition accordingly stands dismissed. No costs.

10. It is made clear that the rights of the parties including validity and legality of the registered Will shall be decided by the Civil Court if the suit is instituted by an aggrieved person.

(AMIT BORKAR, J.)