Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3801 OF 2022

Rohidas Balasaheb Tupe & Ors … Petitioners

V/s.

Aruna Shamrao Tupe & Ors … Respondents

Mr. R. A. Thorat, Sr. Advoate i/by Mr. Shilesh D. Chavan i/by Narayan Dhakale & Ms. Pratibha Shelke, for Petitioner

Mr. Atul Damale, Sr. Advocate i/by Mr. Prashant P. Kulkarni, for Respondent No.1.

Mr. R. S. Pawar, AGP, for State/Respondent.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 21, 2024

P.C.:

1. **Rule.** Rule made returnable forthwith.

2. The writ petition arises out of proceedings under Section 149 of the Maharashtra Land Revenue Code, 1966. Based on registered Will deed, an entry was certified on 2 August 2004. Respondent No.1 filed Appeal No.43 of 2018 on 10 January 2018. The explanation for condonation of delay stated in the appeal was to the effect that the appellant had no knowledge of the order.

3. The Sub-Divisional Officer allowed the appeal by considering merits of the case. The order of Sub-Divisional Officer was confirmed by the Additional Collector.

4. Aggrieved thereby, the petitioner filed revision under Section 257 of the Code before the Commissioner. The Commissioner by order dated 8 January 2020 allowed the revision holding that the delay could not have been condoned by the Sub-Divisional Officer.

5. Aggrieved thereby, respondent No.1 filed second revision before the State Government. The State Government by the impugned order has considered merits of the matter without going into the aspect of delay in challenging the order. The order of State Government is subject matter of present writ petition.

6. Learned Senior Advocate on behalf of the petitioner submitted that, in absence of sufficient cause, application for condonation of delay and in absence of order of condonation of delay the Authorities below could not have considered the merits of the matter.

7. Learned Senior Advocate on behalf of respondent No.1 supported the order by stating that three Authorities have exercised power in respondent No1's favour. Therefore, no interference extraordinary constitutional jurisdiction of this Court is called for.

8. Having considered the submissions on behalf of both the sides. In my opinion, the approach adopted by the Authorities below suffers from legal infirmity.

9. On careful reading of the order of the Sub-Divisional Officer, the Additional Collector and the State Government, it appears that all three Authorities have considered merits of the matter without condoning delay nor have considered explanation for condonation of delay. Unless the delay was condoned, the Authorities below could not have entered into merits of the matter.

10. It is not in dispute that, the substantive suit between the parties in relation to the validity of registered Will dated 2 August 2004 is pending before the Civil Court. It is needless to state that rights of the parties in relation immovable property which is subject matter of the registered Will shall be governed by the decision of the Civil Court.

11. It is well settled that the entries in the revenue record are only for the fiscal purpose which do not confer or extinguish substantive rights of the parties over immovable property. Therefore, in my opinion, the order passed by the Minister cannot be sustained. Hence, following order:

i) Rule made absolute in terms of prayer clause (b).

ii) Consequential mutation entry dated 2 August 2004 is restored.

iii) It is made clear that the rights of the parties shall be governed by the decision of the Civil Court.

12. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)