2025:BHC-AUG:9139

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11765 OF 2024

SHOBHABAI PRAKASH VIBHUTE
VERSUS
HARIBHAU JAGANNATH AJALKAR AND OTHERS

Mr. S. P. Shah, Advocate for the petitioner
Mr. N. D. Raje, AGP for the respondent/State
Mr. Suniket Kulkarni, Advocate for respondent No.2

CORAM : R. M. JOSHI, J.
RESERVED ON : 12th MARCH, 2025
PRONOUNCED ON : 27th MARCH, 2025

PER COURT :-

1. This petition takes exception to order dated 28/01/2015 passed by the Tahsildar, Dhule confirming Mutation Entry No. 70680 and order passed by the Collector, Dhule in RTS Appeal No. 27/2017, dated 30/04/2019 and confirmation of the order passed by Tahasildar by Divisional Commissioner, Nashik in RTS Revision Application No. 537/2019, dated 05/07/2021.

2. The petitioner is real sister of respondent Nos.1 and 2. It is the case of the petitioner that their mother Gangubai had subject plots standing in her name. She claimed to have equal share in the said plots after demise of Gangubai. Respondent No.1 Haribhau claimed in the year 2014 that Gangubaii executed Will dated 10/06/2006 bequeathing the

subject plots to Haribhau excluding petitioner Shobabai and respondent No.2 Ashok. Gangubai died on 22/11/2006. It is after eight years thereof, Haribhau applied for mutating his name in respect of the subject plots on the basis of Will allegedly executed by Gangubai on 10/06/2006. It is her grievance that within four days of the application Mutation Entry No. 70680 was recorded by Talathi. The petitioner objected the said mutation before Tahasildar by contending that she has equal share in the subject plots and that the Will relied upon by Haribhau is bogus and fabricated. The Tahasildar rejected the objection and confirmed Mutation Entry No. 70680 by order dated 28/01/2015. Being aggrieved by the said order, petitioner as well as respondent No.2 Ashok preferred appeals under Section 247 of the The Maharashtra Land Revenue Code (for short 'the Code') being RTS Appeal Nos.127 of 2015 and 30/2015 respectively. The Sub Divisional Officer allowed these appeals by order dated 24/03/2017 and set aside Mutation Entry No. 70680. Respondent Haribhau preferred RTS Appeal bearing No. 27/2017 before Collector against the order passed by the Sub Divisional Officer in RTS Appeal Nos. 30/2015 and 127/2015. The Collector passed order dated 30/04/2019 allowing the appeal of Haribhau and restoring Mutation Entry No. 70680. This order came to be challenged by Ashok before Divisional Commissioner, Nashik in Revision No. 537/2019, wherein petitioner was joined as respondent. The Divisional Commissioner rejected revision, hence this petition.

3. At the outset learned counsel for the petitioner submits that it was not open for the Revenue Authority to effect the mutation entry on the basis of a Will. According to him the document of Will is not included in the provision of Sections 149 of the Code to enable the Authority to accept the application of Haribhau. It is his further contention that even otherwise once the Will is disputed, the Revenue Authorities cannot determine the validity and correctness thereof and consequently no mutation could have been effected on the basis of such document. It is his submission that it is only Civil Court which can decide the issue of the validity of will and rights of parties in subject plots. It is his submission his submission that the Will is suspicious since the same has been brought to the light after lapse of award eight years of death of Gangubai. It is further argued that unless one of attesting witness is examined as contemplated by Section 63 of the Evidence Act, the Will cannot be said to have been proved and hence, cannot be relied upon. In order to support his submission he placed reliance on the judgment of Hon'ble Supreme Case in case of ***Jitendra Singh Versus State of Madhya Pradesh and others, 2021 SCC OnLine 802*** in order to canvass that it was necessary for respondent No.1 to get the probate in respect of the Will before the same could have been relied upon by the Revenue Authority.

He also placed reliance on the judgment of Co-ordinate Bench of this Court in case of ***Nalini w/o Onkar Patil Vs. Girdhar Kashinath Patil and Others, 2002(4) Mh.L.J., 728***.

4. Learned counsel for respondent No.2 supported the impugned orders.

5. At the outset it would be relevant to take note of Section 149 of the Code, which reads thus:

> *149. Acquisition of rights to be reported.— Any person acquiring by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any rights as holder, occupant, owner, mortgagee, landlord, Government lessee or tenant of the land situated in any part of the State or*
> *assignee of the rent or revenue thereof, shall report orally or in writing his acquisition of such right to the Talathi within three months from the date of such acquisition, and the said Talathi shall at once give a written acknowledgment of the receipt of such report to the person making it :*
> *Provided that, where the person acquiring the right is minor or otherwise disqualified, his guardian or other person having charge of his property shall make the report to the Talathi :*
> *Provided further that, any person acquiring a right with the permission of the Collector or by virtue of a registered document shall be exempted from the obligation to report to the Talathi :*
> *Provided also that, where a person claims to have acquired a right with the permission of the Collector where such permission is required under the provisions of this Code or any law for the time being in force, such person shall on being required by the Talathi so to produce such evidence of the order by which such permission is given as may be required by rules made*

under this Code.
Explanation I.— The rights mentioned above include a mortgage without possession, but do not include an easement or a charge not amounting to a mortgage of the kind specified in section 100 of the Transfer of Property Act, 1882 (IV of 1882).
Explanation II.— A person in whose favour a mortgage is discharged or extinguished or lease determined, acquires a right within the meaning of this section.
Explanation III.— For the purpose of this Chapter, the term "Talathi" includes any person appointed by the Collector to perform the duties of a Talathi under this Chapter.

6. This provision clearly indicates that the Revenue Authorities are empowered to cause mutation of record when any person acquires by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any rights as holder, occupant, owner etc. of the land. This provision, therefore, indicates that the document on the basis of which the property can be said to have been validly transferred, can become a basis for effecting the mutation entry. The term otherwise referred in the above provision clearly covers the Will executed by the person who owns the subject property, since the right in the immovable property can be acquired on the basis of will. Herein this case there is no dispute about the fact that the subject plots were owned by Gangubai. At least there is no dispute about the said plots standing in her name. Respondent Haribhau has filed application before the Talathi for mutating his name in respect of the subject plots on the basis of Will executed by Gangubai on 10/06/2006. The objection of the petitioner and respondent

No.2 in respect of the said will is about its genuineness and validity.

7. It is settled law that the Revenue Authorities do not have any jurisdiction to entertain and decide the issue of validity of any document and which could only be subject matter of decision before the Civil Court. Herein this case admittedly till date the petitioner or respondent Ashok has not filed any proceeding before the Civil Court for declaration of the said will to be not valid. Question of proving the said will would arise only when an objection is raised to that effect before the Civil Court. No doubt in such case it would be for the propounder of the will to substantiate the execution of the will as contemplated by Section 63 of the Evidence Act. This exercise is not permissible to be undertaken before Revenue Authorities.

8. It is further settled position of law that the revenue records are for the fiscal purpose and do not confer any title in favour of any person. Thus in absence of any determination of title, no injury is likely to cause to any party by mutation of revenue record under the provisions of Section 149 of the Code. It is only before the Civil Court, wherein the rights of the parties qua the property could be decided. As observed herein above in spite of the knowledge of the will at least in year 2014, the petitioner or respondent Ashok have thought it not necessary to challenge the said will before Court of Competent jurisdiction over a

period of 10 years now.

9. Section 14 of Hindu Succession Act provides that any property possessed by Hindu female, whether acquired before or after commencement of the Act becomes exclusive/ full owner thereof. Thus, on the basis of admitted facts it can be *prima facie* said that Gangubai was within her right to bequeath the her property as per own will.

10. Coming to the case law relied upon by the petitioner, in the case of ***Jitendra Singh Versus State of Madhya Pradesh and others*** (supra), the Revenue Authority accepted the will even before death of the bequeather. Similarly in case of ***Nalini w/o Onkar Patil Vs. Girdhar Kashinath Patil and Others*** (supra) it is held that to effect the mutation under Section 149 of the code there has to be appropriate document and not otherwise. It is further observed therein that it is only in the case of a document which is not required to be registered in accordance with the Indian Registration Act that the Talathi can act for the purpose of mutation entry under Section 149 of the Code on application or oral intimation without being accompanied by the document in support of claim of acquisition of right. Herein this case the subject plots do not fall within the jurisdiction of presidency town such as Mumbai, in order to mandate any party to obtain the probate in respect of the will before acting upon the same. The will does not require any registration nor

obtainment of probate is mandatory in respect of subject plots. In such circumstances, the said judgment does not help the petitioner in any manner. In so far as the judgment in case of ***Rajiv Surendra Doddanavar Versus Madhuri Veerdhaval Chalukya and others in Writ Petition No. 7194 of 2021, dated 03/04/2024***, this Court was faced with the situation that the will is not probated and that the substantive suit was also pending before the Civil Court. In the light of the facts involved in the said case, this Court found it appropriate to keep mutation entry in abeyance pending adjudication of rights in Civil Court. As noted above, none of the parties hereto have filed any proceedings before the Civil Court and the subject matter is not sub judice before such Court. This Court therefore finds no reason to follow the same course as done in judgment of ***Rajiv Surendra Doddanavar Versus Madhuri Veerdhaval Chalukya and others*** (supra).

11. Mutation entries since not do not create any title in favour of any person and it is only for fiscal purposes, the Revenue Authorities are permitted to act upon documents or succession as indicated in Section 149 of the Code for mutation of the revenue record. If the contention of the petitioner is accepted that once there is objection raised with regard to the document on the basis of which mutation is sought, no mutation can be effected, such interpretation would lead to make the said

provision redundant. There could be case of simple formal objection raised just to stall mutation. Hypothetically even in case of registered sale deed, if any objection is raised with regard to the said sale deed, the Revenue Authorities would not be able to effect the mutation entry, when as per proviso no document is also required to be provided. This can never be said to the purpose of legislation in enacting Section 149 of the Code. The interpretation of statute can never be done in the manner to make the provision redundant. This Court, therefore, finds no hesitation to reject the contention of the learned counsel for the petitioner in this regard.

12. Perusal of the orders impugned indicate that the Authorities below have rightly taken into consideration facts and circumstances of the case and in absence of any challenge to the will by the aggrieved parties i.e. petitioner and respondent Ashok, no interference is required in those orders. As a result of this, petition stands dismissed.

(R. M. JOSHI, J.)

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