Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6681 OF 2003

WITH
CIVIL APPLICATION NO.836 of 2005

Vilas Ganpati Katkar & Ors. … Petitioners
V/s.
Uttam Pandurang Katkar & Ors. … Respondents

Mr. L. S. Gaikwad for petitioners.
Mr. Vijay S. Gharat for respondents.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 14, 2025

P.C.:

1. The present petition arises as a direct challenge to the decision rendered by the Additional Commissioner, Pune Division, Pune, in Revision No. 34 of 1991, which confirmed the judgments and orders previously passed by the Additional Commissioner and the Sub-Divisional Officer. The petitioners contend that, as evidenced before the Tahsildar, one Balvant Katkar was established as the head of the family. It is further averred that the property identified as Gat No. 540, Survey No. 246 was acquired by Ganpati on 17 March 1949, through a transaction with Neelkanth Krishna Deshpande. In this context, it is noted that Ganpati, the purported purchaser, is one of three siblings—his brothers being Pandurang and Shripati.

2. The petitioners submit that a partition of the ancestral property took place in the year 1946, subsequent to which Ganpati procured the property now in dispute. On this basis, it is argued that the brothers, Pandurang and Shripati, do not possess any legal interest in the property acquired solely by Ganpati. Accordingly, the petitioners have sought the deletion of the names of the sons of Pandurang and Shripati from the revenue records. However, the Sub-Divisional Officer, relying on a certificate issued by the Assistant Consolidation Officer dated 1 July 1974 under Section 24 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, determined that the names in question could not be accepted in the subsistence certificate.

3. The reasoning advanced by the Sub-Divisional Officer, in conjunction with that of the Additional Collector and the Commissioner, appears to be grounded in sound and plausible material considerations. It is a well-settled principle that entries in the revenue records do not, ipso facto, create or extinguish substantive rights over immovable property. In light of this established doctrine, it is submitted that the appropriate and expedient remedy available to the petitioners is to institute a civil suit seeking a declaratory judgment or any other suitable relief that would definitively adjudicate the issue of exclusive ownership over the disputed property.

4. At this juncture, it is pertinent to note that respondent No.5 has already filed civil suit No. 46 of 1996, which is presently pending before the appropriate forum. This suit represents the proper judicial avenue for resolving any substantive disputes regarding the property in question.

5. Finally, it is expressly clarified that any observations or remarks made by the Authorities in the impugned judgment and orders, or in the present order, shall not in any manner influence or bind the Civil Court in its independent adjudication of the pending suit filed by respondent No.5. The Civil Court is at liberty to determine the merits of that suit without being constrained by the present findings or conclusions.

6. In view of the foregoing clarifications and the reasons stated herein, the writ petition is hereby disposed of in the terms articulated above. It is further ordered that no costs be levied against any party in this matter.

7. Consequent to the disposal of the writ petition, the pending civil application does not survive. Accordingly, the civil application is hereby disposed.

(AMIT BORKAR, J.)