

(2008) 02 GUJ CK 0093

In the Gujarat High Court

Case No : Special Civil Application No. 1232 of 2008

Ashwinkumar Kantilal Shah

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 13-02-2008

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 135D
Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227

Citation : (2008) 02 GUJ CK 0093

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Shital R. Patel, for the Appellant; J.K. Shah, AGP for Respondents 1 - 5, for the Respondent

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J.—Leave to amend the cause-title of the writ petition is granted. The learned Counsel for the petitioner may carry out the amendment in the cause-title of the petition in respect of the respondent No. 6 forthwith.

2. This petition, under Articles 226 and 227 of the Constitution of India, has been filed by the petitioner with the following prayers:

(A) This Hon'ble Court may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction quashing and setting aside impugned order dated 02.11.2007/30.10.2007 (Annexure-F) and consequently allow the RTS Appeal No. 128/05 in to which was filed before the Deputy Collector and direct the parties to maintain status quo till the final disposal of the Special Civil Suit No. 518/05 pending before the civil court at A"bad [Rural] Mirzapur.

(B) Pending admission, hearing and final disposal of this petition, this Hon'ble Court may be pleased to stay the implementation, operation and execution of the impugned order dated 02.11.2007/30.10.2007 at Annexure-F; and consequently

direct the Respondents to maintain the status quo with regard to land in question and Respondents may also be restrain from creating any third party rights qua land in question till disposal of Special Civil Application and Pending admission, hearing and final disposal of this petition, this Hon''ble Court may also be pleased to direct the Revenue authority to enter the specific entry regarding serious civil dispute pending in the civil Court and in the high court with regard to land in question.

(C) Be pleased to grant any other and further relief/s in the interest of justice;

3. Briefly stated, the facts of the case, as emerging from the averments made in the petition as well as the documents annexed thereto are, that the petitioner and one Pramodrai Atmaram Gajjar (now deceased) jointly purchased land bearing Survey Nos. 953/1, 953/2, 953/3 and 953/4, situated in Village Oganaj, Taluka: Dascroi, District: Ahmedabad, vide two registered Sale Deeds dated 10.7.1984. Pursuant to the first sale-deed, mutation entry was entered on 24.8.1985 being Mutation Entry No. 2578, which was certified on 19.11.1985 after following the due procedure. Similarly, in respect of the second sale-deed as well, Entry No. 2579 was entered on 24.8.1985, and certified on 19.11.1985. The relevant copies of the said documents have been annexed as Annexure-A collectively. As per the averments made in the petition, the petitioner is suffering from serious cardiac problems for which he has been taking medical treatment. It is averred that the son and one daughter of the petitioner have settled in U.S.A. and the other daughter is a house-wife, who is living with her family. According to the petitioner, in view of the fact that he is old and ailing, the responsibilities of taking care of the land in question were being handled by Mr. Pramodrai Atmaram Gajjar, the joint owner of the land. It is stated in the petition that the petitioner as well as said Mr. Pramodrai Atmaram Gajjar, who jointly purchased the property, are not related to each other but were merely colleagues. The said Pramodrai Atmaram Gajjar expired, as stated by the learned Counsel for the petitioner, sometime in the year 1997. It is stated in the petition that thereafter, the petitioner decided to sell the land in question sometime in 2004 and came to know that the land in question is alleged to have been relinquished by him in 1994. It is the case of the petitioner that it was only when he made efforts to sell the land in question, that he was informed about the Mutation Entry No. 3818 dated 10.6.1994, certified on 13.7.1994, regarding the relinquishment of the land by the petitioner. The petitioner, therefore, filed R.T.S. Appeal No. 128 of 2004 before the Deputy Collector, Viramgam Prant, who partly allowed the appeal of the petitioner in respect of Revenue Survey No. 953/4 and the entry in respect to this survey number was cancelled in respect of the Relinquishment Deed. With regard to the entries qua Revenue Survey Nos. 953/1, 953/2 and 953/3, the entries made pursuant to the Relinquishment Deed were confirmed vide order dated 16.6.2005 of the Deputy Collector, annexed as Annexure-D to the petition. The record reveals that thereafter, the aforesaid order of the Deputy Collector was challenged by the petitioner by filing a Revision Application No. 99 of 2005 before the Collector, Ahmedabad. The predecessor-in-

title of the present respondent No. 6, i.e., Pramodrai Atmaram Gajjar also filed Revision Application No. 90 of 2005 against the order dated 16.6.2005. Both these revision applications were heard and decided together. Revision Application No. 90 of 2005 filed by Pramodrai Atmaram Gajjar was allowed whereas Revision Application No. 99 of 2005 filed by the petitioner was rejected, by a common order dated 29.10.2005, annexed as Annexure-E to the petition. The petitioner thereafter filed Revision Application No. 122 of 2005 before the respondent No. 1, which has been rejected by an order dated 30.10.2007 (date of communication 2.11.2007), annexed to the petition as Annexure-F. Being aggrieved by the order dated 30.10.2007, the petitioner has filed the present writ petition.

4. Mr. Shital R. Patel, learned Counsel for the petitioner has submitted as under:

It is submitted by the learned Counsel for the petitioner that the impugned order of the State Government dated 30.8.2007 deserves to be quashed and set aside, inasmuch as the Relinquishment Deed on the basis of which the rights of the petitioner are sought to be nullified, is a fraudulent one. Mr. Patel has submitted that the petitioner has never executed such a Relinquishment Deed and the same has been challenged by way of instituting a Civil Suit, which is pending.

5. It has been submitted by the learned Counsel for the petitioner that the Mutation Entry in respect of the Relinquishment Deed does not confer a right upon the other co-owner to acquire the land and create third party rights over it. Moreover, immovable property having the value of above Rs. 100/-cannot be relinquished without following the procedure prescribed under the Registration Act and the Transfer of Property Act. According to the learned Counsel for the petitioner, no notice u/s 135D of the Bombay Land Revenue Code, 1879, was issued upon the petitioner before making the disputed entry regrading relinquishment.

6. Mr. Shital R. Patel has further emphasized that the Special Civil Suit No. 518 of 2005 is pending before the appropriate Court, wherein the genuineness of the Relinquishment Deed, purported to have been made by the petitioner is under challenge. He has submitted that the application under Ex.5 whereby an injunction had been sought by the petitioner regarding the property in question has been dismissed and no stay was granted by the Civil Court, vide order dated 16.5.2006. Against this order, the petitioner preferred an appeal before the District Judge and Presiding Officer, Fast Track Court No. 5, Ahmedabad, which was rejected on 9.3.2007. The petitioner, thereafter, preferred Special Civil Application No. 16594 of 2007 before this Court, which has been rejected vide order dated 2.7.2007, annexed as Annexure-G to the petition. According to the learned Counsel for the petitioner, the trial Court has not properly appreciated the grounds put forth by the petitioner regarding the delay which has occasioned in filing the Special Civil Suit. He has submitted that the said order is only a tentative one since, the Civil Suit is pending and this Court may direct status-quo to be maintained till the final decision of the Suit. It has further been contended

by Mr. Patel that the delay in filing R.T.S. Proceedings has not been considered in proper perspective by the revenue authorities as well as the State Government in the impugned order and sufficient reasons which have been given by the petitioner have not been considered by the respondent No. 1. Therefore, the delay ought to have been condoned and the revision filed by the petitioner ought to have been allowed by the respondent No. 1.

7. At this stage, Mr. Shital R. Patel submits that he would like to cite two judgments, which may be taken into consideration by the Court. The permission to cite the judgments having been accorded to the learned Counsel for the petitioner, reliance has been placed on L.R.s of Popat Khima Ramani and Ors. v. Collector, Rajkot and Ors. 2003(1) GLH 30 and Kantibhai Ishwarbhai Patel through his heirs and Legal Representatives Vs. Chandrakant Ishwarbhai Patel, The learned Counsel for the petitioner has submitted that in L.R.s of Popat Khima Ramani and Ors. v. Collector, Rajkot and Ors. (supra), this Court had issued certain directions and this Court should also issue a direction to the effect that an entry should be posted in the revenue records regarding the pendency of Civil Suit between the petitioner and the respondent No. 6 in this case. Regarding the judgment in Kantibhai Ishwarbhai Patel v. Chandrakant Ishwarbhai Patel and Ors. (supra), the learned Counsel for the petitioner has relied on Head Note 'D' thereof wherein it has been held that mutation entry has no evidenciary value in deciding the title to property and the Civil Court has to decide the question of title de-hors mutation entry.

8. I have heard the learned Counsel for the petitioner at length and in great detail and have gone through the averments made in the petition as well as the documents annexed thereto.

9. The undisputed facts of the case, as emerging from the record are, that the petitioner and Pramodrai Atmaram Gajjar, who is the predecessor-in-interest of the present respondent No. 6, jointly purchased two parcels of land vide two separate registered sale-deeds dated 10.7.1984 and 12.7.1984, regarding which mutation entries Nos. 2578 and 2579 were recorded in the revenue records. Thereafter, the petitioner, by making a declaration and an application to this effect, relinquished his claim from the land in question, being Revenue Survey Nos. 953/1, 953/2, 953/3 and 953/4 of Village Oganaj, Taluka: Dascroi, District: Ahmedabad. Pursuant to the said relinquishment by the petitioner, the entry to this effect was mutated on 10.6.1994, which is mutation entry No. 3818. A perusal of the impugned order dated 30.10.2007 of the respondent No. 1 makes it clear that the declaration and the application made by the petitioner for the relinquishment of his ownership of the land in question was subjected to verification and inquiry and pursuant to the same, mutation entry No. 3818 has been certified on 13.7.1994. Thereafter, land bearing Revenue Survey Nos. 953/1, 953/2, 953/3 and 953/4 was sold by the Power of Attorney of the respondent No. 6 to the present respondents Nos. 7 to 16. The mutation entry No. 4205 in regard to the sale of the said land has also been certified. The

revenue records disclose that the petitioner had relinquished his rights over the land in question in the year 1994, by filing a declaration as well as an application for this purpose and pursuant to the same, the mutation entry No. 3818 had been mutated in the revenue records which was certified thereafter. As has been stated by Mr. Shital R. Patel, learned Counsel for the petitioner, Mr. Pramodrai Atmaram Gajjar, who had jointly purchased the land with the petitioner, expired in the year 1997. It is only in the year 2004 that the petitioner filed R.T.S. Appeal before the Deputy Collector challenging the mutation entry No. 3818. During the lifetime of Mr. Pramodrai Atmaram Gajjar, the co-owner of the lands in question, the petitioner had neither raised any dispute nor had challenged the entry in question, which had already been posted on 13.7.1994, i.e., before the death of said Mr. Pramodrai Atmaram Gajjar, predecessor-in-interest of the present respondent No. 6.

10. It is also not in dispute that the petitioner has filed Special Civil Suit No. 158 of 2005 wherein the Relinquishment Deed has been challenged by him. The application under Ex.5 in the said Special Civil Suit has been rejected and no stay has been granted by the trial Court. The appellate Court has also upheld the order of the trial Court on the application below Ex.5. The petitioner has carried the matter upto this Court where, vide order dated 2.7.2007 passed in Special Civil Application No. 16594 of 2007, the writ petition of the petitioner has been dismissed by this Court (Coram: D.N. Patel, J.) in the following terms:

5. It is also pointed out by the Courts below that looking to the memo of RTS Appeal No. 128 of 2004 and the plaint of the Suit, the original plaintiff has taken contradictory stand as to the sickness of the plaintiff. Originally, it was the stand of the original plaintiff that his brother was sick and he took treatment. This fact is changed in the memo of the Suit and stated that he was sick and he took treatment and this is pointed out in the memo of the Suit so that time gap in filing the Suit can be explained. But this explanation given after one decade has rightly been brushed aside by the Courts below. No error has been committed by both the Courts below. There is no substance in this application and, therefore, the same is hereby dismissed.

11. The first contention of the learned Counsel for the petitioner is that the petitioner has never executed a Relinquishment Deed and the document on which the revenue authorities have entered the mutation entry No. 3818, is a fraudulent one. This contention of the learned Counsel for the petitioner cannot be accepted, since it involves disputed questions of fact which cannot be adjudicated upon by this Court in writ jurisdiction. The petitioner has already filed Special Civil Suit No. 518 of 2005, challenging the Deed of Relinquishment on the basis of which the said entry has been made. Even otherwise, the order dated 30.10.2007 of the respondent No. 1 makes it clear that the entry in question has been mutated on the basis of a declaration and the application filed by the petitioner which have been subjected to verification before making the mutation entry to this effect.

12. This Court, in proceedings under Articles 226 and 227 of the Constitution of India, cannot go into disputed questions of fact, such as the genuineness or otherwise of the declaration of relinquishment, as well as the application filed by the petitioner on the basis of which mutation entries have been effected in the revenue records.

13. It is an admitted position that after the petitioner relinquished his right in the land in question, and pursuant to the entry in that regard being certified, the land in question has been further sold by the respondent No. 6 to the respondents Nos. 7 to 16 herein, and the entry in this regard being mutation entry No. 4205, has also been certified. The prayer for the grant of injunction in respect of the land in question has been rejected by the trial Court vide order dated 16.5.2006 and the said order has been confirmed upto the High Court. The petitioner has raised the dispute regarding the entry in question only in the year 2004 and has filed Special Civil Suit in the year 2005, admittedly, long after the death of the predecessor-in-interest of the present respondent No. 6, in the year 1997.

14. Regarding the second contention of the learned Counsel for the petitioner to the effect that this Court may direct the respondents to maintain status-quo regarding the land in question and restrain them from creating the third party rights qua the land in question, the said submission is also without substance and cannot be accepted. After the relinquishment of his rights in the land by the petitioner, the said land was sold by the predecessor-in-interest of the present respondent No. 6 to respondents Nos. 7 to 16 herein and the mutation entry No. 4205 in this regard, has also been certified. Third party rights have come into existence in favour of the respondents No. 7 to 16 from the date of their purchase of the land in question. The application for grant of stay filed by the petitioner has been rejected by the trial Court. The order of rejection has been upheld in appeal and, as has already been stated hereinabove, this Court, vide order dated 2.7.2007, has dismissed the Special Civil Application of the petitioner filed against the rejection of the Ex.5 application, as confirmed by the appellate Court. The petitioner has not been granted an interim order as prayed for in the civil proceedings filed by him, and the orders of the Civil Court have been upheld by the High Court. This Court, therefore, is not inclined to accept the prayers made by the petitioner in this petition. The submission of the learned Counsel for the petitioner that this Court may direct status-quo to be maintained, till the final decision of Special Civil Suit No. 518 of 2005, therefore, cannot be accepted for the aforesaid reasons. This Court is not sitting as a Court of appeal over the order of the Civil Court, and the order of this Court dated 2.7.2007, has attained finality in this regard.

15. Even otherwise, the order dated 30.10.2007 of the respondent No. 1 makes it clear that the mutation entry regarding relinquishment of the land in question by the petitioner, will be subject to the final decision of the Civil Suit. In view of the fact that the Civil Suit, wherein the Relinquishment Deed has been

challenged by the petitioner is still pending, the submissions of the learned Counsel for the petitioner to the effect that no notice u/s 135D of the Bombay Land Revenue Code was issued and the provisions of the Registration Act and the Transfer of Property Act have not been followed, are not relevant to the issues raised in this petition.

16. Regarding the delay in filing the application for cancellation of mutation entry, the respondent No. 1 has clearly stipulated in the order dated 30.10.2007, that the proceedings were initiated after a lapse of ten years, during which period, the land in question has been sold to the respondents No. 7 to 16. This fact is evident from the documents on record, therefore, this Court is not inclined to interfere in the impugned order.

17. As stated above, Mr. Shital R. Patel, learned Counsel for the petitioner, has placed reliance on the two, decisions, viz. L.R.s of Popat Khima Ramani and Ors. v. Collector, Rajkot and Ors. (supra), and Kantibhai Ishwarbhai Patel v. Chandrakant Ishwarbhai Patel and Ors. (supra), in support of the contentions made by him. As regards L.R.s of Popat Khima Ramani and Ors. v. Collector, Rajkot and Ors. (supra), learned Counsel for the petitioner has submitted that the directions, as issued by the Court in that matter should be issued by this Court as well, in the present case. In that case, the petitioners had relied upon the Registered Will and Registered Adoption Deed and the revisional authorities therein went into the legality of those registered documents. The direction No. 4 issued by the Court in that case was in the context of the peculiar facts and circumstances obtaining therein. Admittedly, the facts of the present case are totally different and a direction issued by the Court in the context of the facts of another case, cannot be made relevant to the facts of the present case.

18. In Kantibhai Ishwarbhai Patel v. Chandrakant Ishwarbhai Patel and Ors. (supra), the Court had held that the mutation entry had no evidenciary value in deciding the title of the property. There is no dispute regarding this proposition of law. In the present case, the challenge to the Relinquishment Deed by way of Civil Suit has still not culminated into a final decision. This judgment is, therefore, not helpful to the petitioner. The point in issue in that case is different from the question raised in the present petition. As has already been stated hereinabove, the impugned order makes it clear that the entry in question will be subject to the final outcome of the Civil Suit, which is pending.

19. This petition has been filed under Articles 226 and 227 of the Constitution of India. The scope of the Court, while deciding a writ petition under Articles 226 and 227, has been circumscribed by the Supreme Court in Surya Dev Rai Vs. Ram Chander Rai and Others, . The relevant paragraphs are reproduced as under:

38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:

(1) Amendment by Act No. 46 of 1999 with effect from 01.07.2002 in Section

115 of CPC cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by the CPC Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction-by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is

such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

20. In view of the facts and circumstances of the case, as discussed herein before and in view of the principles of law enunciated by the Supreme Court in *Surya Dev Rai v. Ram Chander and Ors.* (supra), this Court does not find any reason to interfere with the order dated 30.10.2007.

21. The writ petition is devoid of any merit and deserves to be dismissed. It is, accordingly, dismissed. It is made clear that nothing in this order be construed as having any bearing upon the Civil Suit No. 518 of 2005 which is pending.