(2006) 06 GUJ CK 0019

In the Gujarat High Court

Case No : Special Civil Application No. 2956 of 2006

Chhimiben and Others APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 21-06-2006

Acts Referred:

Citation : (2006) 06 GUJ CK 0019

Hon'ble Judges : Jayant Patel, J

Bench : Single Bench

Advocate : RS Sanjanwala, for Petitioners 1 to 7, for the Appellant; AD Desai and Hardik B SHAH, for Respondent(s) 5, for the Respondent

Judgement

Jayant Patel, J.—The short facts of the case is that entry No. 344 was mutated in the revenue record on 16.11.1957 for recording the name of one Hirabhai Gopalbhai on the basis of the Will of Limbabhai Bhanabhai Patel dated 09.02.1948 for the land situated at village Bamroli bearing Survey No. 65/3. It appears that thereafter, on 27.09.1990, entry No. 701 was mutated for entering the names of the legal heirs of the deceased Hirabhai Gopalbhai. An application was made by the respondent No. 5 to the Deputy Collector and the matter was taken in revision. The Deputy Collector dismissed the proceedings by relegating the parties to approach before the Civil Court for getting appropriate relief. The matter was carried before the District Collector and the District Collector confirmed the order passed by the Deputy Collector and dismissed the appeal. It appears that the respondent No. 5 herein has preferred the revision before the State Government and the State Government found that the entry was mutated without probate and the procedure was not followed and therefore the action of entering the mutation is nullity and ultimately, the revision was allowed and the entry No. 344 and the subsequent entry thereafter were set aside. It is under these circumstances, the petitioners have approached to this Court by preferring the present petition.

2. Heard Mr. Sanjanwala, learned Counsel appearing for the petitioners and Mr.

Mengdey, learned AGP for the State Authorities and Mr. Desai for respondent No. 5 herein.

3. Upon hearing the learned Counsel appearing for the parties, it appears that there is no dispute on the point that after a period of about more than 45 years, the grievance came to be raised for the entry which was mutated in the year 1957. The Deputy Collector as well as the District Collector, found that there is sufficient delay and if the party is aggrieved, he/she should approach to the Civil Court for getting proper relief. There is also no dispute on the point that thereafter, the Regular Civil Suit No. 664 of 2005 is preferred by respondent No. 5 in the Court of Civil Judge, Surat and the said suit is pending. There is also no dispute on the point that in the said Suit various contentions are raised including that of legality and validity of the Will. Inspite of the above position, the State Government in exercise of the reivisional powers has given a declaration that the entry is a nullity and the State Government has also directed for cancellation of the subsequent entry,than Entry Nos. 344 & 701, which was not even the subject matter of the proceedings before the lower authority viz. the Deputy Collector and the District Collector.

4. It is by now well settled that the entry in the revenue record neither confers any additional right over the property nor takes away or alters the rights in the property, which otherwise exist as per the provisions of the Transfer of Properties Act or other law and such entries are having value for fiscal purposes. It appears that there is delay on the part of the respondent No. 5 in challenging the decision of the authority mutating the entry. However, the contentions on the part of respondent No. 5 are two fold; one is that the mandatory procedure is not followed and another is that the Will is a fraud. Whether the mandatory procedure is followed or not and whether the Will is genuine or not is an aspect, which can conveniently be examined in the proceedings of the Civil Suit which has been filed by the petitioners being Civil Suit No. 664/05. Therefore, until such finding is arrived at in the Suit that the mandatory procedure is not followed or that the Will is not genuine, the entry can be allowed to be continued on revenue record subject to the outcome of the proceedings of Regular Civil Suit No. 664/05. In the event, the respondent No. 5 succeeds in the Suit, appropriate recording will have to be made in the revenue record and the rights of the parties may prevail accordingly. Until such declaration is given by the Civil Court that the Will is not genuine or that the mandatory procedure is not followed, it was not required for the State Government to give a declaration that the entry was a nullity and even the subsequent entry which was not subject matter of the proceedings of the revision could not be cancelled. No further discussion is required in this regard since the position of the law is settled. The reference may be given to the decision of this Court in the case of Jhaverbhai Savjibhai Patel through P.A.O. Holder Ashok J. Jhaverbhai Savjibhai Patel through P.O.A. Holder Vs. Kanchanben Nathubhai Patel, . Of course, it was a case of a Registered Sale Deed, but in the present case, since the entry was based on the Will and it is continued on record for a long time and the Civil Court may also be required to

examine as to whether probate was a mandatory requirement in a Will executed by Hindu when the property is not situated in Bombay, Madras or Calcutta, the same analogy as it was observed in case of Jhaverbhai Savjibhai Patel(Supra) can be made applicable even in the facts of the present case.

5. Therefore, considering the facts and circumstances and in view of the aforesaid observation, I find that the order of the State Government dated 17.01.2006 which is impugned in this petition, deserves to be quashed and set aside with observations and directions that the entry Nos. 344 & 701 shall continue in the revenue record subject to the outcome of the proceedings of the Civil Suit No. 664 of 2005 and after the decision of the Civil Court in the aforesaid Suit pertaining to the property in question, rights of the parties shall stand governed accordingly.

6. The petition is partly allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

