(2011) 07 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No. 1517 of 2011

Madhukar Natthuji Dharmare, Sindhu Dharmare and Others	APPELLANT
Vs	
Parmod Junghare, Additional Commissioner and The Collector	RESPONDENT

Date of Decision : 20-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Maharashtra Land Revenue Code, 1966 — Section 247, 257

Citation : (2011) 07 BOM CK 0021

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : O.D. Kakade, for the Appellant; C.N. Adgokar, Addl. Govt. Pleader, for the Respondent

Judgement

R.M. Savant, J.—Rule, with the consent of the parties, made returnable forthwith and heard.

2. The above petition filed under Articles 226 and 227 of the Constitution of India takes exception to the order dated 7/3/2011 passed by the Additional Commissioner, Nagpur, by which order the revision application filed by the Respondent No. 1 herein vide Revision Petition No. 15/RTS64/

20082009 came to be allowed and the order of the Additional Collector dated 16/1/2009 came to be set aside.

3. The facts in a nut shell can be stated thus The Petitioners are the heirs of one Madhukar Natthuji Dharmare, who was the son of one Natthuji Dharmare. The Respondent No. 1 is the son of the sister of the said Madhukar Dharmare. The said Natthuji Dharmare died on 8/6/1949 leaving behind him Madhukar Dharmare, Anusayabai Junghare, who is the mother of Respondent No. 1, and Shakuntala Kadwe- another daughter. The brother of Natthuji i.e. Ganpati was unmarried and died on 21/10/1990.

4. The issue which is the subject matter of the proceedings before the Revenue

Authorities, was the mutation entry in respect of the land Survey No. 23/1 area admeasuring 4.30 hectares being land belonging to occupant Class.The said land stood in the name of Natthuji Dharmare during his life time and after his death on 8/6/1949 the same was mutated in the name of said Madhukar i.e. the father of the Petitioner herein and Girija i.e. Natthuji''s wife.Pursuant to the application made by Smt. Anusayabai Junghare, mutation came to be effected in her name in the year 1998 by the Tahsildar. Thereafter on the death of Smt. Anusayabai in the year 2007 an application was made by the Respondent No. 1 i.e. her son for mutating his name relying on the Will deed executed by Smt. Anusababai in his favor. The Tahsildar accordingly carried out mutation in the name of Respondent No. 1. This resulted in the Petitioner herein filing an Appeal u/s 247 of the Maharashtra Land Revenue Code, 1966. The said Appeal came to be rejected by the Sub Divisional Officer by his order dated 9/9/2008 inter alias on the ground that the entry made in favor of the Respondent No. 1 in the revenue record on the basis of the deed is just and proper.

5. The matter was thereafter carried in Appeal by the Petitioner before the Additional Collector, Nagpur. The Additional Collector, Nagpur set aside the said order dated 9/9/2008 of the Sub Divisional Officer inter alias on two grounds. Firstly; that the procedure prior to making revenue entry in the name of the Respondent No. 1 was not followed and secondly; on the ground that the Tahsildar has not considered the aspect as to whether the name of Smt. Anusayabai could have been entered in the revenue record as a woman could not be a coparcener at the time when the father of Smt. Anusayabai i.e. Natthu died in the year 1949. The Additional Collector held that when Smt. Anusayabai had no right to get her name entered in the revenue record, the entry made by the Respondent No. 1 on the basis of the Will could not stand. The Additional Collector, therefore, by his order dated 16/1/2009 set aside the said order passed by the Sub Divisional Officer.

6. Aggrieved by the order dated 16/1/2009 passed by the Additional Collector, Nagpur, the Respondent No. 1 filed a Revision Application u/s 257 of the Maharashtra Land Revenue Code,1966 before the Additional Commissioner. The said revision application came to be allowed by the impugned order dated 7/3/2011. The gist of the reasoning of the Additional Commissioner was that father of said Smt. Anusayabai might have gifted the property to said Anusayabai and therefore, her name was entered in the revenue record, and that the Petitioner herein having not challenged the entry made in favor of Anusayabai could not challenge the entry made on the basis of the Will Deed in favor of her son i.e. the Respondent No. 1 herein. The Additional Commissioner, therefore, quashed and set aside the said order dated 7/3/2011 passed by the Additional Collector.

7. Having heard the learned Counsel for the parties, in my view the issue as regards the entry in favor of the Respondent No. 1 would have to be relegated back to the Additional Commissioner for a de novo consideration. In the course

of the hearing of the above petition, the learned Counsel for the Petitioner has drawn my attention to the judgment and decree dated 8/7/2011 passed by the Civil Judge (Jr. Dn.), Hingna, Nagpur. In the operative part of the said judgment in Reg.C.S. No. 331 of 2008 filed for declaration and permanent injunction, a declaration has been issued that the Will dated 1/10/2007 executed by Smt. Anusayabai Junghare is void. The said judgment having been delivered by the Civil Court after the matter was decided by the Additional Commissioner on 7/3/2011, would therefore have to be considered whilst deciding whether the name of the Respondent No. 1 could be entered in the revenue record. In so far as the mutation entry in respect of Smt. Anusayabai is concerned, Additional Commissioner in the impugned order dated 7/3/2011 has not addressed the issue as regards the entitlement of Smt. Anusayabai to get her name entered in the revenue record on the basis of her claim as a coparcener. The said issue will have to be addressed in the context of the fact that the father of Anusayabai Natthuji Dharmare has died on 8/6/1949 i.e. much prior to the Hindu Succession Act coming into force. The said issue, therefore, would have to be considered from the said angle. The impugned order dated 7/3/2011, therefore, would have to be quashed and set aside and is accordingly quashed and set aside and the following directions are issued.

(i) The Additional Commissioner to consider the Revision Petition No. 15/ RTS64/2008-2009 afresh in the light of the decree passed by the Civil Court dated 8/7/2011 in Reg. Civil Suit No. 331 of 2008 wherein a declaration has been issued that the Will executed by Smt. Anusayabai is void.

(ii) The entry of Smt. Anusayabai would have to be considered in the context of the death of the father of Anusayabai i.e. Natthuji Dharmare on 8/6/1949 i.e. prior to the Hindu Succession Act coming into force.

(iii) The parties to appear before the Additional Commissioner on 16/8/2011 at 3.00 p.m. and thereafter the Additional Commissioner to decide the Appeal within a period of three months from the first appearance of the parties.

(iv) The parties would be entitled to file additional submissions and documents, if so advised, in support of their respective cases.

(v) Needless to say that the Additional Commissioner would try the Revision Application on its own merits and in accordance with law uninfluenced by the impugned order dated 7/3/2011 and the instant order.

8. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs.

