

(2011) 09 GUJ CK 0007

In the Gujarat High Court

Case No : Special Civil Application No. 6300 of 1999

Purbai Ramjibhai Harijan

APPELLANT

Vs

Collector Kutch and 3

RESPONDENT

Date of Decision : 13-09-2011

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 203, 79A

Citation : (2011) 09 GUJ CK 0007

Hon'ble Judges : K. S. Jhaveri, J

Bench : Single Bench

Advocate : Kalpesh N. Shastri for Petitioners 1, for the Appellant; N.J. Shah, Assistant Government Pleader for Respondent(s) 1 - 3 and Notice Served for Respondent(s) 4, for the Respondent

Judgement

Honourable Mr. Justice K.S. Jhaveri

1. By way of this petition, the Petitioner has prayed to quash and set aside the order of Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat dated 16.03.1999, passed in Revision Application No. 14 of 1998, whereby the said application was allowed and the order of the District Collector was quashed and set aside.

2. The facts in brief are that the deceased husband of the petitioner Ramjibhai Bhojabhai Harijan executed a Will dated 05.09.1995 in favour of the Petitioner and subsequently died on 16.09.1995.

3. It is the case of the Petitioner that Respondent No. 4 herein entered his name in the revenue record on the ground that the husband of the Petitioner had executed a Will in his favour on 29.12.1995 and that as per the Will necessary entry has been effected in the revenue record. However, said entries made in favour of respondent No. 4 was cancelled by the competent Authority on 19.03.1996 on the ground of breach of conditions.

4. Pursuant thereto, the Deputy Collector, Anjar, Kutch registered a case of

breach of condition u/s 79A of the Bombay Land Revenue Code, 1879 (for short "the Code"). In the said case, the Deputy Collector passed an order on 27.06.1997 rejecting the order passed by the competent Authority.

5. Against the said order, the Petitioner preferred an appeal u/s 203 of the Code. The said appeal came to be allowed by order dated 15.07.1997.

6. Being aggrieved by the said order, Respondent No. 4 preferred revision application before the Additional Chief Secretary (Appeals), Revenue Department, Government of Gujarat. The said Authority allowed the said application by order dated 16.03.1999 and quashed the order passed by the District Collector on 09.03.1998. Hence, this petition.

7. Heard Learned Counsel for the respective parties and perused the records. Admittedly, the dispute between the parties pertain to certain revenue entries registered in the record of rights. It appears from the record that in connection with the same dispute, the petitioner has filed a civil suit being Civil Suit No. 63 of 1997 before the Court of learned Civil Judge (S.D.), Anjar, Kutch, which is reported to be pending.

8. Considering the fact that civil suit involving similar issue is pending adjudication before the competent Civil Court, it would be just and feasible that the parties lead evidence before the Civil Court in the said civil suit on the basis of which, the Civil Court could adjudicate upon the same on merits. In my opinion, when a civil suit, involving similar issue is pending between the parties, I do not find it fit to consider this petition on merits at this stage, since it may prejudicially affect the rights and/ or interest of either party in the proceedings pending before the Civil Court concerned. It would be appropriate that the competent Civil Court proceeds with the civil suit in accordance with law during which time the parties could be directed to maintain status-quo.

9. In view of the above, it is observed that pending final disposal of Civil Suit No. 63 of 1997, pending before the competent Civil Court, Anjar, Kutch, the parties are directed to maintain the status-quo as on today. It is made clear that this Court has not gone into the merits of the case and therefore, while deciding the suit in question, the trial Court shall not be influenced by this order and shall decide the civil suit on its own merits and in accordance with law since this Court has not adjudicated the issue on merits. The rights between the parties shall remain, subject to the final outcome in the suit pending before the competent Civil Court.

10. With the above observation and direction, the petition stands disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.