(2011) 04 GUJ CK 0018

In the Gujarat High Court

Case No : Special Civil Application No. 5203 of 1996

Savitaben APPELLANT

Vs

Gangaben Shivabhai Valand and Others RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2011) 04 GUJ CK 0018

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : B.G. Patel, for the Appellant; L.R. Pathan, for Respondent 2 and Pranav Dave, AGP for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

M.R. Shah, J.—By way of this petition under Articles 226 and 227 of the Constitution of India the Petitioners have prayed for an appropriate writ, order or direction quashing and setting aside the impugned order passed the learned Secretary (Appeals), Revenue Department, State of Gujarat dated 24/31-05-1996/11/06/1996 in Revision Application SRD No. 32/1993 by which the learned revisional authority has allowed the revision application preferred by the Respondents quashing and setting aside the order passed by the Collector, Kheda dated 23/11/1992 in RTS Revision Application No. 12/1992.

2. The facts leading to the present petition in a nutshell are as under;

2.1. The father of the Petitioners-Shri Valand Dahyabhai Ashabhai was declared as a protected tenant and necessary mutation entry No. 816 was made on 10/04/1950. Thereafter, name of the Petitioners were mutated in the revenue record in the year 1957 vide mutation entry No. 925, and thereafter again further mutation entry was made, being mutation entry No. 626. The aforesaid entries were challenged by the Respondents herein after a period of thirty years before the Deputy Collector, Anand and the Deputy Collector, Anand dismissed the said Appeal, which came to be confirmed by the Collector, Kheda vide order dated 23/11/1992 in RTS Revision Application No. 12/1992. Being aggrieved and dissatisfied with the order passed by the Collector, Kheda dated 23/11/1992 in RTS Revision Application No. 12/1992 the Respondents preferred Revision Application before the Secretary (Appeals), Revenue Department, State of Gujarat, being Revision Application SRD No. 32/1993, by which the learned Secretary (Appeals), Revenue Department, State of Gujarat has allowed the Revision Application quashing and setting aside the order passed by the Collector, Kheda dated 23/11/1992. Being aggrieved and dissatisfied with the aforesaid order, the Petitioners have preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Shri Pathan, learned advocate appearing on behalf of the private Respondent has remained absent.

4. Having heard Shri B.G. Patel, learned advocate appearing on behalf of the Petitioners and considering the impugned order passed by the revisional authority, it appears that the revisional authority has materially erred in allowing the Revision Application quashing and setting aside the well reasoned order passed by the Collector, Kheda dated 23/11/1992 in RTS Revision Application No. 12/1992. It appears that the mutation entry was challenged by the private Respondents herein after a period of thirty years, which could not have been disturbed by the revisional authority. Even otherwise, the revisional authority has considered the rights of the daughters on the land in question, which could not have been gone into by the revisional authority in exercise of revisional powers. If the Respondents are/were of the opinion that they have got the right, title or interest in the land in question, being the daughters under the provisions of the Hindu Succession Act, in that case, Respondents are/were required to institute civil suit before the Civil Court and were required to crystallize their rights and only thereafter on the basis of the decision, which might be taken by the Civil Court, necessary mutation entry can be made. It is to be noted that the dispute is with respect to the mutation entry, which does not confer any right, title or interest in favour of the parties whose name is mutated in the revenue record and the same is for fiscal purpose. Considering the fact that the mutation entry in the revenue record was since 1957, the same could not have been disturbed by the revisional authority, which was rightly not disturbed by the Collector, Kheda.

5. Considering the above, the impugned order passed by the Secretary (Appeals) Revenue Department dated 24/31-05-1996/11/06/1996 in Revision Application SRD No. 32/1993 is hereby quashed and set aside and the order passed by the Collector, Kheda dated 23/11/1992 in RTS Revision Application No. 12/1992 is hereby restored with an observation that it will be open for the Respondents to initiate appropriate proceedings before the Civil Court for establishing their rights, which shall be considered in accordance with law on its own merits and necessary mutation entry can be made in the revenue record on the basis of the

decision of the Civil Court and the aforesaid mutation entry shall not come in the way of any of the parties as it is for the fiscal purpose only.

5. With this, the present petition is allowed. Rule is made absolute to the aforesaid extent. No cost.