

Sankalchan Jaychandbhai Patel and Others

Vs

Vithalbhai Jaychandbhai Patel and Others

Civil Appeals Nos. 12808-12809 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

13.09.1996

ORDER

1. Leave granted.

2. These appeals by special leave arise from the order of the learned Single Judge of the High Court of Gujarat, originally made on 23-3-1995 in Order No. 40 of 1995 in MCA No. 656 of 1995 on 30-6-1995.

3. The facts are fairly not in dispute. The admitted position is that the appellant and the respondent had jointly purchased the suit scheduled property. It would appear that there was a partition between them as co-owners on 20-3-1982. Subsequently, it would appear that mutation was effected in the revenue record on 21-7-1982 to the extent of the property that had fallen to the share of the appellant who claims to have a further effected partition between the appellant and his children on 24-7-1986. It is the case of the appellant that the respondent filed an appeal under Section 11 of the Bombay Revenue Jurisdiction Act, 1876 which was dismissed by the appellate court on 9-3-1994. Without availing of the further right of revision as provided thereunder, he filed the civil suit in the Court seeking declaration of his title to the property and perpetual injunction. Initially, the trial court refused to grant injunction. But, on appeal, the District Judge had granted injunction pending the suit restraining the appellant from alienating the property. The revision was dismissed by the High Court. Review petition was also dismissed. Thus, these appeals by special leave.

4. The primary question raised by Mr Yashank Adhyaru, learned counsel for the appellant, is that Section 11 is a bar on entertaining the suit. The High Court, therefore, was not right in restraining the appellant from alienating the property without deciding jurisdictional issue, i.e., whether the suit itself is maintainable. In support thereof, he placed strong reliance on a judgment of a Single Judge of the Gujarat High Court in Rukmanibai v. State of Gujarat [(1960) 1 Guj LR 179]. The question, therefore is whether Section 11 is a bar for maintainability of the suit ? It is seen that the bar of Section 37 of the Bombay Land Revenue Code would be only as against the lands vesting in or belonging to the State. Therefore, it has no relevance to the inter se claims of the private parties. The High Court, therefore, was not right in relying on Section 37.

5. Section 11 of the Bombay Revenue Jurisdiction Act reads as under :

"11. Suits not to be entertained unless plaintiff has exhausted right of appeal. - No civil court shall entertain any suit against the Government on account of any act or omission of any Revenue Officer unless the plaintiff first proves that previously to bringing his suit, he has presented all such appeals allowed by the law for the time

being in force as, within the period of limitation allowed for bringing such suits, it was possible to present."

6. A reading of the section would clearly indicate that there is a prohibition on the civil court to entertain any suit against the Government, on account of any act or omission of any Revenue Officer, unless the plaintiff first proves that he previously brought it by way of an appeal before the competent authority and within the time prescribed. Without availing of that remedy, he cannot present the suit against the State. The question is whether Section 11 applies to the inter se claim of the private parties ? It would be seen that the learned Single Judge has construed Section 11 of the Bombay Revenue Jurisdiction Act, and concluded that Section 11 prohibits entertainment of the suit between private parties unless the plaintiff has exhausted right of appeal or revision prescribed therein and available to him before he resorts to the suit challenging the order passed by the Revenue Officer. A reading of Section 11 does not indicate any prohibition on private parties inter se to avail of the remedy of a suit provided under the Code of Civil Procedure, 1908 (CPC). Section 9 of CPC does not expressly or by necessary implication, prohibits the jurisdiction of the civil court to entertain the suit based on title.

7. It is settled law that mutation entries are only to enable the State to collect revenues from the persons in possession and enjoyment of the property and that the right, title and interest as to the property should be established dehors the entries. Entries are only one of the modes of proof of the enjoyment of the property. Mutation entries do not create any title or interest therein. Therefore, the view taken by the learned Single Judge, with due respect, is not correct in law. The civil suit is clearly maintainable. The High Court rightly granted injunction restraining the appellants from alienating the land. Even otherwise, Section 52 of the Transfer of Property Act, 1882 *lis pendens* always stands in the way of the purchaser of the land subject to the result in revision.

8. Under these circumstances, we do not find any illegality in the order of the High Court warranting interference.

9. The appeals are accordingly dismissed. No costs.