

Sankalchan Jaychandbhai Patel And Ors vs Vithalbhai Jaychandbhai Patel And Ors on 13 September, 1996

Equivalent citations: AIRONLINE 1996 SC 388, (1997) 1 REC CIV R 565, 1996 (6) SCC 433, (1997) 2 GUJ LR 1041, (1997) 1 LJR 197, (1996) 9 JT 110, (1996) 9 JT 110 (SC), 1997 ALL CJ 1 435, (2009) 2 ALL RENTCAS 765, (2009) 2 ORISSA LR 477, (2009) 3 ICC 764, (2009) 77 ALL LR 142

Author: K. Ramaswamy

Bench: K. Ramaswamy

PETITIONER:

SANKALCHAN JAYCHANDBHAI PATEL AND ORS.

Vs.

RESPONDENT:

VITHALBHAI JAYCHANDBHAI PATEL AND ORS.

DATE OF JUDGMENT: 13/09/1996

BENCH:

K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Leave granted.

These appeals by special leave arise from the order of the learned single Judge of the High Court of Gujarat, Originally, made on March 23, 1995 in Order NO.40/95 and in MCA No.656/95 on June 30, 1995.

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 petition between

them as co-owners on March 20, 1982.

Subsequently, it would appear mutation was effected to the revenue record on July 21, 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 July 24, 1986. It is the case of the appellant that the respondent filed an appeal under Section 11 of the Bombay Revenue Jurisdiction Act which was dismissed by the appellant Court on March 9 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.

The primary question raised by Mr. Yashank Adharyu, 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 vs. The state of Gujarat [(1960) 1 GLR 1791. 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.

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 bring his suits 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."

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 process 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 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 based on title.

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 de hors 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 lis pendense always stands in the way of purchaser of the land subject to the result in revision.

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

The appeals accordingly dismissed. No costs