

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 12802 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 12902 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 13029 of 2018

FOR APPROVAL AND SIGNATURE:**HONOURABLE MR. JUSTICE A.Y. KOGJE****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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BHIMJIBHAI GORDHANBHAI BERA

Versus

STATE OF GUJARAT THROUGH THE SECRETARY & 4 other(s)

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Appearance:**MR MURALI N DEVNANI(1863) for the Petitioner(s) No. 1****MR HARDIK SONI, AGP for the Respondent(s) No. 1****MR KISHAN R CHAKWAWALA(9846) for the Respondent(s) No. 5****MR. MANAN S DOSHI(9795) for the Respondent(s) No. 5****NOTICE SERVED for the Respondent(s) No. 2,3,4**

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CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE

Date : 30/11/2022**COMMON ORAL JUDGMENT**

1. This petition under Article 226 of the Constitution of India is filed for the following reliefs:

“(A) Admit this Special Civil Application;

(B) Allow this Special Civil Application by issuing a writ of certiorari or any other writ in the nature of certiorari or direction quashing and setting aside the impugned order at Annexure-A & B dated 25.5.2018/5.6.2018 & 30.1.2018 and thereby be pleased to restore the order passed by learned Dy.Collector, Mendarda and learned Mamlatdar Maliya Hatina in the interest of justice.

(C) Pending admission, hearing and final disposal of this petition, this Hon’ble Court may be pleased to grant stay as to execution, implementation and operation of the orders at Annexures A & B dated 25.5.2018/5.6.2018 & 30.1.2018 in the interest of justice.

(D) To pass such other and further orders as may be deemed just and proper in the circumstances of the case.”

2. The claim of the petitioner is on the basis of the sale-deed No.151 which was registered and executed on 1.2.1985 (sic 1.2.1982) [sale-deeds dated 1.2.1982 & 16.2.1984 in SCA No.12902 of 2018 and sale-deed No.143 dated 16.2.1984 in SCA No.13029 of 2018].

3. It is the claim of the petitioner that though the effect of the registered sale-deed was given belatedly, still the revenue record will be bound by the registered sale-deed and therefore only the entry is required to be maintained on the basis of the registered sale-deed. He has referred to and relied upon the decision of the Division Bench of this Court in case of Vijaysinh S.Zala vs. State of Gujarat (Special Civil Application No.11902 of 2017 decided on 25th July 2018) (Annexure-E) to emphasize that the sale-deed would prevail against the existing revenue entry.

4. Learned advocate for the petitioner submitted that inadvertently the entry on the basis of the registered sale-deed was not made by the petitioner. For that reason, the petitioner may not be punished.

5. As against this, learned advocate opposing the petition has drawn attention of this Court to the fact that two civil suits have been filed before the concerned civil court questioning the very sale-deed and, therefore, the orders passed by the Collector and the SSRD are not required to be interfered with.

6. It appears that Survey No.33/p/2 admeasuring H-2-46-85 of village Sarakdiya, Taluka Maliya Hatina, came in account of Polabhai Parbatbhai Majethiya. As part of the said land admeasuring H-0-48-56 came to be purchased by Bhimjibhai Gordhanbhai Bera by registered document sale-deed No.151 dated 1.2.1982 and as it was demanded to transfer the same in the name of the purchaser, vide entry no.1479 dated 23.5.2016 the same came to be registered in the record of rights of Mouje

Sarakdiya. As against that, since objection was raised by Polabhai Parbatbhai Majethiya, the Mamlatdar, Maliya Hatina, vide order No.Dispute Case/14/2016 dated 23.9.2016, certified the entry. Against the said decision, an application for condonation of delay in filing the appeal was preferred by Polabhai Parbatbhai Majethiya before the Deputy Collector, Mendarda, and the Deputy Collector allowed the said application for condonation of delay and vide order Resolution No.R.R.T./Delay Condone/Appeal Case No.7/2017 dated 26.9.2017 the appeal application came to be rejected on the ground that the applicant is having a remedy of civil proceeding since the entry was posted on the basis of a registered document. Being aggrieved with the same, the applicant has filed R.R.T. Revision before the Collector. It has been submitted that the applicant has been paying the land revenues and has been obtaining loans from bank on the said land. The applicant's name was showing in the revenue record from the year 2016, when the disputed entry no.1479 was posted, until the same was allowed. Therefore, it is to be believed that he has been paying the land revenue. The revenue record does not confer ownership title. It is settled by a catena of decisions of the Hon'ble High Courts as well as Supreme Court, that record of rights is meant only for fiscal purpose and is showing only the details from whom to collect the land revenue. Moreover, the disputed entry no.1479 has been posted on the basis of sale-deed 35 years ago. In that behalf and with regard to the disputed land, Regular Civil Suits Nos.1/17 and 2/17 are pending between the parties before the Civil Court, Maliya Hatina, and whatever may be the outcome, the same shall be binding upon the parties. In future, mutation in the revenue record will be

carried out as per the decision that may be rendered in the Civil Suits by the Civil Court.

7. In the opinion of the Court, considering the fact situation, particularly, the challenge to the sale-deed of 1982, which is the subject matter of Civil Suit Nos.1 of 2017 and 2 of 2017 before the Civil Court at Maliya Hatina, the revenue authorities were justified in observing that the revenue entries will be governed by the outcome of the aforesaid two civil suits.

8. In view of the aforesaid, no interference is required. Petition stands disposed of with the aforesaid observations.

/MOINUDDIN

(A.Y. KOGJE, J.)