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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1892 OF 2016

Baburao s/o Bapurao Iylane,
Age: 67 years, Occ: Agri.,
R/o. Harangul (Bk),
Tq and Dist. Latur.

..PETITIONER

VERSUS

1. The Additional Commissioner,
Aurangabad Division, Aurangabad.
2. The Additional Collector,
Latur district, Latur.
3. Sub Divisional Officer, Latur.
4. The Tahsildar, Latur.
5. Talathi Harangul (Bk)
Tq. & Dist. Latur.
6. Gangabai Shivaji Shinde,
Age: 46, Occ: HH,
R/o. Harangul, Tq. & Dist. Latur.
7. Sonali @ Mohini Krishna Bandgar,
Age: 20years, Occ: HH,
R/o. Uti, Tq. & Dist. Latur.,
8. Satish @ Santosh Shivaji Shinde,
Age: 19 years, Occ: Education,
R/o. Harangul, Tq. & Dist. Latur.
Through his next friend
Pandurang Hanmant Bandgar,
Age: Major, Occ: Agri.,
R/o. Harangul,
Tq. & Dist. Latur.

..RESPONDENTS

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Mr G.N. Kulkarni (Mardikar), Advocate for
petitioner;

Mr A.P. Basarkar, A.G.P. for respondent Nos. 1 to
5;

Mr S.V. Gundre, Advocate for respondent Nos.6 to 8

CORAM : NITIN W. SAMBRE, J.

DATE : 1st NOVEMBER, 2017

ORAL ORDER :

Vide registered sale deed dated 15th April, 2004, the petitioner purchased the suit property to the extent of 22 Are out of Gat No. 266 of village Harangul (Bk), Taluka and District Latur. Respondent Nos. 7 and 8, claiming to be legal heir of deceased Shivaji, filed Regular Civil Suit No. 811 of 2012 for declaration that the aforesaid sale deed and possession of the present petitioner is illegal, as such, sale deed is executed contrary to the provisions of Section 8 of Hindu Minority and Guardianship Act, 1956. The suit is pending adjudication, in which, there operates injunction against the present petitioner from creating third party interest in relation to the suit property.

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2. It is pursuant to this sale deed, the petitioner approached Tahsildar, Latur for mutation, which prayer was objected by respondent Nos. 6,7 and 8. Overruling the said objection, Tahsildar allowed the mutation in the name of present petitioner vide M.E. No. 5638 vide order dated 30th July, 2012 and subsequently upset by the Sub Divisional Officer at the behest of the respondents. The petitioner then preferred an appeal before the Additional Collector, which came to be allowed. However, the revision preferred by the present respondents under Section 247 of the Maharashtra Land Revenue Code, 1966 came to be allowed. As a consequence, mutation ordered in favour of the petitioner came to be set aside. As such, this petition.

3. The petition is opposed by learned Counsel for respondent Nos. 6, 7 and 8 on the ground that the sale deed dated 15th April, 2004 even if registered one, has to be termed as a mortgage

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transaction and in view of provisions of Section 8 of the Hindu Minority and Guardianship Act, 1956, the said sale deed has to be considered as void. He would draw support from the judgment of Apex Court in the matter of ***Saroj vs Sunder Singh and others*** reported in ***2013(15) SCC 727***.

4. If the order impugned is examined in the light of submissions made by respondent Nos. 6, 7 and 8, it is to be noted that the husband of respondent No.6 and father of respondent No.7 and 8 namely Shivaji expired before the transaction in question, is an admitted fact. The execution of the sale deed is not issue under dispute, however, the said sale deed is questioned in Regular Civil Suit No. 811 of 2012 by respondent Nos. 7 and 8, in which, respondent No. 6 is added as defendant No.1. The said suit is pending adjudication qua status of sale deed executed in favour of the petitioner. It is required to be noted that there exists injunction order against the present petitioner, whereby he is restrained from alienating or

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creating third party interest in regard to the suit property in question.

5. Learned Counsel for the petitioner, in addition, upon instructions, submits that the present petitioner shall abide by the said order till disposal of Regular Civil Suit No. 811 of 2012.

6. In the above referred background, the fact remains that the order of Tahsildar, which was confirmed by the Additional Collector ought not to have been interfered by the revisional authority, particularly when the issue as regards legality of the sale deed is already subjudice before learned Civil Court.

7. The proceedings before revenue authorities lack originality and orders therein are always subject to outcome of the proceedings in the civil suit.

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8. In the wake of above and in view of operation of injunction in favour of the petitioner and having regard to the assurance given by the petitioner, it will be appropriate, in my opinion, to allow the petition in terms of prayer clause (C) and is accordingly allowed.

9. It is made clear that the said mutation entry will be subject to outcome of Regular Civil Suit No. 811 of 2012.

(NITIN W. SAMBRE, J.)

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