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

WRIT PETITION NO.8350 OF 2020

1. Shri Sudam Ashok Sapkal,
Age : 36 years, Occup. Agril.,
R/o Chinchban, Ta. Newasa,
District Ahmednagar
 2. Sau Savita @ Kartiki Rajendra Gund
@ Savita D/o Sanjay Karle,
Age : 30 years, Occup. Household,
R/o Undirgaon, Tq. Shrirampur,
District Ahmednagar
- ..PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-400 032
 2. The Inspector General of
Registration and Controller of Stamps,
Maharashtra State, Pune
 3. The Deputy Inspector General of
Registration (Computer),
Maharashtra State, Pune
 4. Joint District Registrar (Registration),
Ahmednagar, Dist. Ahmednagar
 5. Sub-Registrar Grade-I (Registration),
Newasa, Tal. Newasa,
District Ahmednagar
- ..RESPONDENTS

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Mr. V.D. Sapkal, Senior Advocate, instructed by Mr. S.R. Sapkal, Advocate
for petitioners;
Mr. S.B. Yawalkar, A.G.P. for respondents

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, J.**

DATE : 21st December 2021

ORAL JUDGMENT (Per S.G. Mehare, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioners have put-forth the prayer clause (B), (C) and (D) that reads thus:--

“(B) To quash and set aside the communication dated 05-10-2018 issued by respondent No.3 holding that it is arbitrary and contrary to various provisions of law, by issuing appropriate writ or, order or direction in the nature of writ or as the case may be.

(C) To quash and set aside the order dated 08.12.2020 passed by respondent No.5, refusing the registration of sale deed by issuing appropriate writ or, order or direction in the nature of writ or as the case may be.

(D) To direct respondent No.5 to register the sale deed which was tendered on 08-12-2020 for registration by issuing appropriate writ or, order or direction in the nature of writ or as the case may be.”

3. The brief facts as pleaded in the petition are that petitioner no.2 is the coparcener with her father and brother. She wishes to transfer her coparcenary undivided property right/interest in the joint family, in favour of petitioner no.1. Accordingly, the document of sale dated 7.12.2020 was prepared. It was to be executed on 8.12.2020. The document of sale was tendered for registration on 7.12.2020 before respondent no.5. The entry of the document presented for registration was taken in the register maintained by the Sub-Registrar. The formalities required for the

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registration of the document have been complied with. Since the other coparceners of petitioner no.2 are alive, her name is not inserted in the 7/12 extract. Respondent no.5, on the basis of the directions issued in circular dated 05.10.2018 issued by respondent no.3, has arbitrarily and illegally refused to register the document. The reasons assigned in the impugned order dated 08.12.2020 passed by respondent no.5, that, in view of section 71 (1) of the Registration Act and as per the circular dated 5.10.2018 by respondent no.3, unless the name of the transferor is mentioned in the 7/12 extract, the document shall not be registered, are incorrect and illegal. Therefore, the petitioners have challenged the impugned order as well as the Circular dated 5.10.2018, issued by respondent no.2.

4. The learned Senior Counsel Shri Sapkal for the petitioners has vehemently argued that petitioner no.2 has a birthright as a coparcenary in the immovable property along with her brothers and father. She has a right to transfer her interest without the partition. The Sub-Registrar has only administrative powers to examine the documents within the legal parameters but has no quasi-judicial powers to examine the title. Hence, he shall not deny registering the document placed before him. The condition put forth by Sub-Registrar/respondent no.5 to produce the document showing her name in the revenue record is arbitrary and against the provisions of law.

5. To bolster his argument, learned Senior Counsel relied on the case of **K.S. Vijayendran vs. The Inspector General of Registration, Santhome High Road, Santhome, Chennai & anr., dated 18.3.2011**; **Vineeta Sharma vs. Rakesh Sharma AIR ONLINE 2020 SC 676** and

State Bank of India vs. The State of Maharashtra & ors., 2021 (6) ALL MR 29.

6. Per contra the learned Additional Government Pleader has strongly opposed the petition contending that unless the title of the person executing the documents is ascertained, the registration of the document is prohibited. The impugned circular dated 05.10.2018 is issued to avoid illegal, sham, and fraudulent transfers. No doubt the coparcener has a right in the property, but for the transfer of such right/interest, there shall be partition. Unless the right is determined, it would be difficult for the registering authority to presume the title of the executant. There is no perversity in the impugned circular and the communication issued by respondent no.5. The petition is devoid of merit and liable to be dismissed.

7. The respondents have not disputed the coparcenary right of petitioner no.2 in the immovable property along with her brother and father. Section 44 of the Transfer of Property Act allows the co-owner to transfer his or her undivided share. In such transfer, a transferee, on transfer, acquires the title in such share. The transferee has to enforce the partition against the remainder co-owners to give effect to such transfer. Until the property is legally partitioned, the transferor cannot describe the specific area of his/her share in such document of transfer. The transferee, in such transfer, acquires the joint possession or other common or part enjoyment of such property. In such transfers, the transferee must have the share or interest in such property.

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8. The Registration Act 1908, itself provides for the powers of the registering authority to refuse the registration. As per Section 19 of the said Act, when the document presented for registration is in the language which is not understood by the registrar and not in the language in the district, the true translated copy in the language of the district is not accompanied by such document, the registering authority shall refuse to register the document. Under Section 20, the registering authority may in his discretion refuse the registration of the document, where the executant fails to attest the document with his signature and initial, the interlineation, blanks, erasures or alterations. Under Section 21, if the document presented for registration does not contain a description or maps of the property sufficient to identify, the registration may be refused. Under Section 23 where the document is presented for registration after four months of its execution that shall not be accepted for registration. It has been provided in Section 34 of the Act, subject to the provisions contained in this Part and sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under the said Act, unless the person executing such document, or their representatives, assigns or agents authorised, appear before the registering authority within the time allowed for the presentation under Sections 23 to 26.

9. In the impugned Circular, issued by respondent no.3, dated 5.10.2018, the directions have been issued to all Sub-Registrars in the State, that the name of the executant shall be registered as it is mentioned in 7/12 extract. While using the 'skip option' also if the name of the executant is on online 7/12 extract, then only the document shall be registered. In Circular dated 5.12.2013 issued by the Inspector General of

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Registration and Controller of Stamps, it has been mentioned that verifying the title of the executant of the document is not the duty of the Registrar, hence, for that sole reason, the registration of the document cannot be refused. Even if it is the legal condition, then also it is the primary object that the condition of the existing 7/12 extract shall be brought to the knowledge of the clients. It has also been instructed that if the 7/12 extract is not available on the screen of the computer, the option that '7/12 extract is not available' shall be endorsed.

10. The impugned circular dated 05.10.2018 appears not in supersession of the above circular dated 05.12.2013, even then the registration of the document of sale presented for registration is refused on the sole ground that on the date of presentation of the document, the name of petitioner no.2 is not inserted in 7/12 extract. The 7/12 extracts are maintained by the Revenue Authority in the State of Maharashtra as provided in the Maharashtra Land Revenue Code and Rules made thereunder. Column 7 of the said extract pertains to the record of right and column 12 of the said extract pertains to the name of the person who has sown the crop. It is used for proof of the possession of that agricultural field. By catena of judicial pronouncements of the Hon'ble Apex Court, the law is settled that the 7/12 extract is not the proof of title. In the case of State Bank of India, cited supra the ratio from the case of Satyapal Anand vs. State of Madhya Pradesh & Ors., 2016 (10) SCC 767, is considered in which it is observed that "the function of the registering officer is only administrative and not quasi-judicial. He cannot decide whether a document presented for registration is executed by a person having the title as mentioned in the instrument."

11. Considering the provisions of law and the instructions issued in Circular dated 5.12.2013, it is clear that the registering officer has no power to verify the title of the executant and he cannot force the executant to place a document of his title. Therefore, in the peculiar circumstance of this case in hand, we are of the opinion that the conditions imposed in the impugned circular dated 5.10.2018 would not come in the way of registration of the document presented by petitioner no.2 for registration. Petitioner no.2 has a specific contention that she, as a co-parcener, along with her father and brother. She has a right and interest in the property which she proposes to transfer her undivided share in favour of petitioner no.1. The document of transfer of her 1/20 share in the various fields has been filed along with the petition. We have examined the said document and its recitals. It is recited in the documents that, step by step the process of partition of the coparcenary is going on and the names are inserted in the 7/12 extract as per convenience. Pragmatically, the suit for partition by respondent no.2 was the best remedy. However, instead of seeking partition, she preferred to transfer her undivided share to petitioner no.1.

12. In the present petition, relief is sought against the public officer who has no right to object to the coparcenary right of the transferor. The other coparceners have not been made a party to the present petition. The Court is well aware that where, the judgment or decision in any petition, the right of the absent party may affect, the interest of such absent party shall be protected. However, legally the registering authority cannot deny the registration of such document except on the grounds as discussed above and it only has administrative powers. But the powers of the court to

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protect the interest of such absent parties (not joined as a party to the petition) does not cease. The coparcenary right is fluctuating. The circumstances of the case establish that the other coparceners are unaware of the document presented for registration by petitioner no.2. In the light of the above circumstances, we are of the opinion that blanket directions to respondent no.5 to register the document presented for registration may harm or injure the rights of the other coparceners who have not been made a party to the present petition. Hence, certain conditions shall be imposed on the petitioners which shall be recited, inserted, added or reflected in the document of transfer of undivided share in the immovable property.

13. In the light of the above discussion, we pass the following order;

- a) The petition is partly allowed.
- b) The impugned communication dated 08.12.202 issued by respondent no.5 is quashed and set aside.
- c) The petitioners shall add the recitals in the document presented for the registration that, the transfer of undivided share is subject to the coparcenary rights on the day of the partition of the property, in which the other coparceners have right, by the competent court of law or any other legally valid mode.
- d) The names of all coparcener shall be added in the document of transfer of undivided share or any such other document presented for the

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registration before respondent no. 5.

e) The petitioners shall also recite in the document of title that petitioner no.1 will not claim possession over the properties mentioned in the document of the transfer without following the process of law.

f) The parties to the document shall be bound by the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act 1947 and amendments made therein from time to time.

g) Respondent no.5 is directed to register the document of transfer of the undivided share of petitioner no.2 in favour of petitioner no.1 only after the above recitals are added, inserted or reflected in the document of transfer place before it for registration.

h) Soon after the registration of the document as mentioned above, a copy of the said document/sale deed shall be served by registered post acknowledgment due upon all the coparceners named in the sale deed on the next day of its registration.

14. Rule is made partly absolute in the above terms.

15. No orders as to costs.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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