

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10152 OF 2022

1. Revansidappa S/o Madhavappa Chakote
Age : 60 years, Occu: Agri,
2. Gajanan S/o Revansidappa Chakote
Age: 35 years, Occu: Agri,
3. Nagesh S/o Revansidappa Chakote
Age: 35 years, Occu: Agri,
4. Mainabai W/o Revansidappa Chakote
Age: 35 years, Occu: Agri,

All R/o Jawala Panchal,
Taluka Kalamnuri, District Nanded

.... Petitioners

Versus

1. State of Maharashtra
Through its Secretary
Revenue and Forest Department,
Mantralaya, Mumbai.
2. The District Collector,
Collector Office, Hingoli
3. Collector of Stamp
Collector Office, Hingoli

.... Respondents

.....
Mr. Shivsamb N. Janakwade, Advocate for Petitioners
Mr. S.R. Yadav Lonikar, AGP for Respondent Nos. 1 to 3
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 16th JUNE, 2023

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally
with the consent of the parties.

2. By this petition, filed under Article 227 of the Constitution of India, the petitioners take exception to the order passed by the learned Civil Judge, Senior Division and Head of the Panel, Kalamnuri, below Exhibit-1 in Regular Civil Suit No.89 of 2021, thereby giving direction to forward the compromise decree in Lok Adalat for registration to the Sub Registrar.

3. Issue raised in this petition is no more *res integra*, and it is held by the Apex Court in Civil Appeal No.2336 of 2021 that a compromise decree does not require registration and the High Court was not right in holding that the said decree requires compulsory registration. It is further held that there was no new right being created for the first time when the parties entered into a compromise before the Civil Court but rather an pre-existing right in the property was recognized by way of settlement in the court proceedings.

4. Division Bench at Principal Seat in Public Interest Litigation No.88 of 2021, held:

"14 The prima donna grievance of the Petitioner appears to be that the compromise decree as passed by the courts in the suits for partition and separate possession and or by the Lok Adalat, is not compulsorily registerable

document under the provisions of the Act of 1908. The Revenue Authorities are insisting for the Registration of the documents and payment of stamp duty as per the valuation of the property for mutating the names in the revenue records.

15 *Section 17(1) of the Act of 1908 prescribes the documents of which Registration is compulsory. Sub section 2 of section 17 carves out an exception. The documents / instruments enumerated in sub section 2 of section 17 of the Act of 1908 are not compulsorily registerable. The decree or order of the court is covered under section 17 (2)(vi) of the Act of 1908. Under the said provision, any decree or order of a court (except the decree or order expressed to be made on compromise and comprising immovable property other than that which is the subject matter of the suit or proceedings) would not require compulsory registration. Section 17(2) (vi) of the Act of 1908 carves out the distinction between the property which forms subject matter of the suit and the property that was not the subject matter of the suit but for which the compromise has been arrived at. If the compromise decree involves the immovable property other than the decree involved, such a property would not be exempted and would require registration. If a compromise decree is arrived at in respect of the property that is the subject matter of the Suit then the compromise decree does not require compulsory registration. The compromise arrived at before the Lok Adalat and the award passed by the Lok Adalat thereto assumes the character of a decree and would also come within the ambit and purview of sub section 2 of section 17 of the Act, 1908."*

5. This petition is squarely covered by the above ratio.
6. In the result, the writ petition is allowed.
7. Impugned order dated 25/09/2021 passed by the learned Civil Judge Junior Division and Head of the Panel, Kalamnuri to the extent of Clause (3), by which the compromise decree is directed to forward to the Sub Registrar for registration, is hereby quashed and set aside.
8. The impugned notice dated 22/06/2022 is consequently quashed and set aside.

Rule is made absolute in the above terms. No costs.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane