

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 15102 OF 2022

Prakash Satgonda Patil

...Petitioner

Versus

The State of Maharashtra Thr
Tahsildar Shirol

...Respondents

...

Mr. Laxman Kalel for Petitioner.

Mr. P. P. Pujari, AGP for Respondent Nos.2 to 4.

...

CORAM: SANDEEP V. MARNE, J.

DATE : 07 OCTOBER 2023.

ORAL ORDER:

Rule. Rule is made returnable forthwith. With the consent of learned counsels for the parties, petition is taken up for final hearing.

2. The challenge in the present petition is to the communication dated 14 March 2023 issued by Tehsildar, Shirol rejecting application filed by Petitioner for effecting mutation entry in pursuance of the partition decree of Civil Judge Junior Division, Kurundwadi in Regular Civil Suit No.69 of 2020 dated 11 September 2020. In the impugned communication it is stated that Petitioner ought to have been obtained no objection certificate as per the circular issued by the Joint District Registrar, Kolhapur vide dated 27 April 2012.

3. Heard learned counsel appearing for Petitioner and learned AGP.

4. The issue as to whether the decree of a Civil Court would require compulsory registration has been decided by the Apex Court in its Judgment in **Ripudaman Singh Vs. Tikka Maheshwar Chand**, Civil Appeal No.2336 of 2021 decided on 06 July 2021. The Apex Court in paragraph No.17 held as under-

17. In view of enunciation of law in **Bhoop Singh's** case, we find that the judgment and decree of the High Court holding that the decree requires compulsory registration is erroneous in law. The compromise was between the two brothers consequent to death of their father and no right was being created *in praesenti* for the first time, thus not requiring compulsory registration. Consequently, the appeal is allowed and the suit is decreed.

5. A Single Judge of this Court has also decided a similar issue in **Vasant Bhaurao Khodve Vs. The State of Maharashtra & Ors.**, Writ Petition No.2420 of 2022 decided on 04 April, 2022 in which it is held in paragraph Nos.7 to 10 as under-

7. In **Arvind S/o Yeshwantrao Deshpande Vs. State of Maharashtra** reported in 2003 (3) Mh.LJ., Co-ordinate bench has held that property received by coparcener in the partition of joint hindu family is not a transfer and is not necessary to register the deed of transfer.

8. Note-68 in the notification issued by Revenue and Forest Department, Mantralaya, Mumbai on 14/06/2021 read thus;

“Note 68 No registration fees shall be chargeable on filing of any copies of court decrees or orders or any type of document or instrument specified in section 89A of the said Act when received from the court or the officers specified in the said section 89A.”

9. In the light of the above judgments and note-68, it is clear that the Collector, Beed has erred in issuing the impugned communication. dated 04/01/2022. When a communication dated 30/12/2022 was issued, it was on the basis of notification dated 14/6/2021, decision of the Apex Court in Civil Appeal No.2336/2021 as well as the letter of the District Judge dated 27/11/2011. However while issuing the impugned letter dated 04/01/2022, the only reason given his guidance is sought from the Director of registration and Controller of stamp.

10. Since it is a settled legal position that the compromise decree does not require registration, the impugned communication dated 04/01/2022 cannot sustain and the same is hereby quashed and set aside. The respondent nos.2 and 3 shall process the request of the petitioner for certifying the necessary revenue entries expeditiously.

6. I have perused affidavit-in-reply filed by the State Government. In paragraph 5 of the reply it is stated as under-

5. With reference to Para No. 7, I say and submit that, contents of the para are false and misleading to this Hon'ble Court. After filling the said petition by the petitioner this office has also made reference to JDR Kolhapur regarding the Maharashtra Government Gazette dated 15.06.2021 and as per the Gazette the amendment made in the registration act 1908 and there implementation. JDR Kolhapur has given direction vide letter no jdr.kolhapur/hukumnama/2023/330/2023 dated 17.01.2023. Here is annexed. (EXHIBIT 1) In this letter JDR has mentioned the letter marked to Deputy Collector (Revenue), Kolhapur dated 06.12.2022 (EXHIBIT -2) and the provisions of

u/s 89 (C) and also referred the orders of the Hon. Supreme Court Civil Appeal 2336/2021 and 5167/2010 directing that in any family compromise decree there is no need to make compulsion about the registration of said decree vide taking mutation in record of right because it is totally the discretion of applicant/darkhastdar to register the court decree. But if once it is filed for the registration then stamp duty must be levied as per the Maharashtra Stamp Duty Act. The communication to the petitioner from this office dated 14.03.2022 was much earlier than the directions sent by JDR Kolhapur through above letter dated 06.12.2022 and 17.01.2023.

Till date after filling an application for mutating the compromise decree in revenue record we had communicated concerned applicants to produce NOC from JDR regarding the stamp duty and in these all cases JDR has charged the stamp duty as per the court compromise decree and given NOC to the applicant and after filling these NOC's we have entered their names in revenue record after certifying the breach of any other provisions of existing laws in the court decree. Here is annexed. (EXHIBIT-3).

So this office has not intentionally declined the name of petitioner on revenue record. Only in preview of revenue recovery of stamp duty communicated to such applicants to produce NOC from JDR and also till date JDR has given NOC in these cases. So we are unaware of the facts so it is humble request to take a opinion from the concerned department before passing any order.

7. Thus, the State government admits the position that in case of a family compromise decree, there is no need for compulsory registration of the decree for the purpose of effecting mutation entry in the records of right. It is further stated that registration is totally at the discretion of the applicant seeking mutation entry. However once he / she opts for registration, payment of stamp duty is mandatory.

8. In present case the Petitioners have not exercised the option of registering the decree. The State government in its affidavit has clarified that in respect of family compromise decrees, registration of the decree is not necessary for the purpose of effecting a mutation entry. R.C.S. No. 69/2020 was filed by one of the family members for partition of the property and the same has been decreed on 11 September 2020.

9. In my view therefore, the decree would require neither registration nor payment of stamp duty.

10. The petition is accordingly allowed. Impugned communication dated 14 March 2020 is set aside. Respondents are directed to effect the mutation entry in pursuance of the decree of the Civil Court in R.C.S. No.69 of 2020. Necessary action be taken within 12 weeks from today. With the above directions, Writ Petition is disposed of. Rule is made absolute.

SANDEEP V. MARNE, J.

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