

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

WRIT PETITION NO.2298 OF 2022
WITH
INTERIM APPLICATION NO.18932 OF 2022
WITH
INTERIM APPLICATION NO.18931 OF 2022

Namdev Mahadu Jambhulkar and Others ...Petitioners
vs.
The State of Maharashtra and Others ...Respondents

Ms. Prachiti Deshpande, for the Petitioners.
Mr. Surel Shah i/b. Mr. Chaitanya Nikte, Mr. Hitanshu Jain and Mr.
Prajit Sahane, for Respondent Nos. 3 to 10.
Mr. C.D. Mali, AGP for the State.

CORAM : N. J. JAMADAR, J.
RESERVED ON : JUNE 15, 2023
PRONOUNCED ON : AUGUST 10, 2023

JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, heard finally.

2. This petition assails the legality, propriety and correctness of an order passed by the Tahsildar, Mulshi (Poud), Dist. Pune in HNO/257/SAR/05/2011 dated 10th December, 2021 directing rectification of mutation entry No. 8744 to the extent of deleting the survey No. 233/2A/1 from the perview of the said mutation.

3. Though the litigation has a checkered history with multiple rounds of litigation before the revenue authorities and the Civil Courts and this round in effect being the third round of substantive proceedings before this Court yet the background facts necessary for the determination of this petition can be stated as under:

3.1 Agricultural land bearing survey No. 233 admeasuring 22 Acre and 23 R situated at Hinjewadi, Tal. Mulshi, District Pune was held by the More family. Ganpat Jambhulkar, the predecessor in title of the petitioners, claimed to have purchased an area admeasuring 11 Acre and 11.50 Gunthas out of the said land bearing survey No. 233 from one Mr. Ganpat More under a registered Sale Deed dated 20th April, 1960. M. Entry No.1568 came to be certified carving out survey Nos. 233/1 and 233/2 and mutating the names of Ganpat Jambhulkar to survey No.233/1 and name of Bhiva More to survey No. 233/2, each admeasuring 11 Acre and 11.5 R.

3.2 Asserting that, without notice to the predecessor in title of the petitioners, vide mutation entry No. 1802, the area of the survey No. 233/1 (the subject land) came to be reduced to 7 Acres and 21 R from 11 Acres and 11.5 R. The petitioners preferred Revision Application No. PTI/WS/318/2001 before the Collector, Pune. By a

judgment and order dated 22nd July, 2002, the Additional Collector was persuaded to allow the revision thereby setting aside the mutation entry No. 1802 and restoring mutation entry 1568, primarily on the ground that in the intervening period the Civil Courts had adjudicated the dispute and returned a finding that the Sale Deed dated 20th April, 1960 executed in favour of the predecessor in title of the petitioners was not fabricated and void.

3.3 The said adjudication was made in Regular Civil Suit No. 238 of 2000 instituted by Baban More and Pandurang More, the successors in interest of Bhiva More, in whose name survey No. 233/2 had been mutated under mutation entry No. 1568. Baban and Pandurang More approached the Civil Court with a case that they were the absolute owners and in exclusive possession of the entire survey No. 233 admeasuring 22 Acre and 23 Gunthas. The alleged vendors of Ganpat Jambhulkar had no concern with More family. The petitioners-defendants in the said suit falsely claimed to have acquired ownership over the subject land on the basis of fabricated and false Sale Deed dated 20th April, 1960. Thus they prayed for a declaration that the said Sale Deed was void and consequential relief of injunction.

3.4 By a judgment and order dated 31st March, 2021 the said suit came to be dismissed. An appeal preferred thereagainst by Baban More and Pandurang More, being Civil Appeal No. 459 of 2001, also came to be dismissed by the learned IIIrd Extra Joint District Judge by a judgment and order dated 11th October, 2004.

3.5 An endeavour was made to assail the said decree in a Second Appeal before this Court. Since there was delay, an application for condonation of delay bearing Civil Application No. 799 of 2006 in Second Appeal (St.) No. 9327 of 2006 was filed. However, the said application came to be dismissed as withdrawn vide order dated 16th February, 2008.

3.6 In the intervening period, Baban and Pandurang More had assailed the order passed by the Additional Collector in Revision Application No. PTI/WS/318/2001 setting aside mutation entry No. 1802 and restoring mutation entry No. 1568.

3.7 In Revision Application No. PTI/WS/318/2001 by a judgment and order dated 13th June, 2005 the Addl. Commissioner, Pune allowed the revision by setting aside the order of the Addl. Collector. Resultantly, mutation entry No. 1802, whereby the area of the subject land came to be reduced to 7 Acre 21 R, came to be restored.

3.8 The petitioners challenged the said order in Writ Petition No. 9127 of 2005. By a judgment dated 26th February, 2015 this Court allowed the petition holding, inter alia, that the Additional Commissioner was not at all justified in setting aside the order passed by the Additional Collector and in the process the Additional Commissioner had misread or misinterpreted the judgment and decree dated 31st March, 2001 passed by the Civil Court and the judgment and decree dated 11th October, 2004 passed by the First Appellate Court.

3.9 In the meanwhile, respondent Nos. 3 to 10 claimed to have purchased various parcels of agricultural land out of survey No. 233/2 under diverse Sale Deeds aggregating to 15 Acre and 9 R. The respondents No. 3 to 10 preferred an application being Civil Application No. 827 of 2015 in the above disposed Writ Petition No. 9127 of 2005 seeking recall of the order dated 26th February, 2015 and also restrain the petitioners herein from creating third party interest and/or causing obstruction to peaceful possession of the agricultural land bearing survey No.233/2 admeasuring 15 Acre and 9 R.

3.10 By an order dated 8th July, 2015 this Court clarified that the said order in Writ Petition No. 9127 of 2005 pertained to survey No. 233/1. The application preferred by respondent Nos. 3 to 10 was in respect of survey No. 233/2 and thus no case was made out to recall the order dated 26th February, 2015.

3.11 It would be contextually relevant to note that when an apprehension was expressed on behalf of respondent Nos. 3 to 10 that on the strength of the said order dated 26th February, 2015 the petitioners were seeking to interfere with the possession of the applicants over the lands bearing survey No. 233/2, this Court clarified that it was always open to the applicant to resort to proper civil proceedings for the protection of their alleged rights. It was reiterated that the order dated 26th February, 2015 was in respect of entries in the record of right pertaining to the land survey No. 233/1.

3.12 In pursuance of the order passed by this Court, the revenue authorities effected mutation entry No. 8744 and both survey Nos. 233/1 and 233/2A/1 were thereunder mutated in the name of the petitioners.

3.13 It seems, instead of invoking the remedies before the Civil Court, the respondents No. 3 to 10 approached the Tahsildar, Mulshi for review of the said order in survey No. 8744.

3.14 By an order dated 14th September, 2015 the Sub Divisional Officer, Maval-Mulshi Sub Division, directed the Tahsildar to review the proceeding in mutation entry No. 8744, in exercise of the powers under section 258 of the Maharashtra Land Revenue Code, 1966 (the Code).

3.15 In Writ Petition No. 10831 of 2015 the petitioners unsuccessfully challenged the said direction to review. By an order dated 29th October, 2015 this Court declined to entertain the petition as remedy of statutory appeal was available under the Code, 1966.

3.16 The petitioners endeavour to assail the direction to review the decision to mutate entry No. 8744, did not succeed upto the State Government as by an order dated 4th March, 2022 in RTS/3421/2053/PK.224/J-5, the Minister (Revenue) dismissed the Revision Application.

3.17 Upon review, the Tahsildar, Mulshi, by the impugned order

was persuaded to rectify mutation entry No. 8744 to the extent that the land bearing survey No. 233/2A/1 be deleted from the effect and operation of the said mutation entry. The Tahsildar was of the view that the order passed by this Court in Writ Petition No. 9127 of 2005 was in respect of survey No. 233/1 only and it did not govern survey No. 233/2 and, therefore, the parcel of land bearing sub survey No. 233/2A/1 carved out of survey No. 233/2, could not have been mutated in the name of the petitioners vide mutation entry No. 8744.

3.18 Being aggrieved, the petitioners have invoked the writ jurisdiction.

4. I have heard Ms. Prachiti Deshpande, learned counsel for the petitioners, Mr. Surel Shah, the learned counsel for respondent Nos. 3 to 10 and Mr. Mali, learned AGP for respondent Nos. 1 and 2. The learned counsel took the Court through the pleadings, affidavits filed in support of, and in opposition to, the petition and the material on record.

5. Ms. Deshpande, the learned counsel for the petitioners strenuously submitted that the impugned order manifests an intent

on the part of the revenue authorities to overreach the order passed by this Court in Writ Petition No. 9127 of 2005. Ms. Deshpande urged with a degree of vehemence that the validity of the Sale Deed in favour of the predecessor in title of the petitioners having been conclusively determined by the Civil Court, it was not open for the revenue authorities to take refuge under the untenable claim that the earlier proceedings pertained to survey No. 233/1 only. The fact that the predecessor in title of the petitioners had purchased $\frac{1}{2}$ portion of survey No. 233 is evidenced by a registered Sale Deed and an endeavour to challenge the legality and validity thereof failed up to this Court and yet for more than 60 years, despite existence of a registered instrument and orders passed by the Civil Court, the petitioners are made to run from pillar to post for correct entries in the revenue record and, therefore, this is a fit case to exercise the extraordinary writ jurisdiction, submitted Ms. Deshpande.

6. Mr. Shah, the learned counsel for respondent Nos. 3 to 10 countered the submissions on behalf of the petitioners with equal tenacity. It was submitted that the petitioners have an efficacious statutory remedy before the authorities under the Code, 1966. Thus, there is no reason to entertain the petition.

7. On merits, Mr. Shah would urge that, the petitioners have resorted to a boggie of revenue authorities overreaching the orders of Civil Courts. On a close scrutiny, according to Mr. Shah, it becomes abundantly clear that the Tahsildar was justified in passing the impugned order. In fact, this Court had clarified in Civil Application No. 827 of 2015, that the challenge in Writ Petition No. 9127 of 2005 was restricted to survey No. 233/1 yet, while certifying mutation entry 8744, the Tahsildar had unjustifiably included survey No. 233/2A/1 which indisputably formed part of survey No. 233/2. That being the position, according to Mr. Shah, if the petitioners are aggrieved by the impugned order, they have their remedies before the authorities under the Code, 1966 or the Civil Court. Thus, there is no exceptional circumstance which would warrant exercise of extraordinary writ jurisdiction, especially in the face of efficacious statutory remedy, submitted Mr. Shah.

8. I have carefully considered the submissions canvassed across the bar.

9. To begin with, I am fully mindful of the fact that the impugned order passed by the Tahsildar is amenable to further challenge before the authorities under the Code, 1966. Undoubtedly, the

remedy is statutory. It can be definitely urged that the petitioners have an efficacious alternate statutory remedy. At the same time, it needs to be emphasized that the existence of an alternate efficacious remedy, by itself, does not preclude the Court from exercising the writ jurisdiction as ultimately it is a self-imposed restraint. I am also conscious of the fact that the existence of a statutory remedy of an appeal is a factor which ordinarily and invariably dissuades the Court from exercising the writ jurisdiction.

10. The legal position is well nigh settled. The existence of an alternative remedy is one of the limitation on the exercise of writ jurisdiction. Yet, it is a self-imposed limitation. There are exception to the rule of alternative remedy where High Court would be justified in exercising the writ jurisdiction, namely, where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of fundamental principles of judicial procedure, or has resorted to invoke the provisions which are not in existence or where an order has been passed in total violation of the principles of natural justice.

11. In the case of **State of H.P. and Others vs. Gujarat Ambuja Cement Limited and Another**¹ a three Judge Bench of the Supreme

¹ (2005) 6 Supreme Court Cases 499.

Court expounded the law as under:-

17] We shall first deal with the plea regarding alternative remedy as raised by the appellant State. Except for a period when Article 226 was amended by the Constitution (Forty-second Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.

12. In the case of **Commissioner of Income Tax and Others vs. Chhabil Dass Agarwal**², the legal position was expounded as under:-

11] It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226.

12] The Constitution Benches of this Court in **K.S. Rashid and Sons vs. Income Tax Investigation**

² (2014) 1 Supreme Court Cases 603.

Commission, AIR 1954 SC 207; Sangram Singh vs. Election Tribunal, Kotah, AIR 1955 SC 425; Union of India vs. T.R. Varma, AIR 1957 SC 882; State of U.P. vs. Mohd. Nooh, AIR 1958 SC 86 and K.S. Venkataraman and Co. (P) Ltd. vs. State of Madras, AIR 1966 SC 1089 have held that though Article 226 confers a very wide powers in the matter of issuing writs on the High Court, the remedy of writ absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

13. In the case of **Radha Krishan Industries vs. State of Himachal Pradesh and Others**³ after a survey of the previous precedent on the maintainability of the Writ Petition in the face of an alternative remedy, the Supreme Court culled out the principles of law as under:-

27] The principles of law which emerge are that :

27.1 The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2 The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3 Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or

³ (2021) 6 Supreme Court Cases 771.

proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4 An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5 When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6 In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

14. The moot question which, crops up for consideration is whether, in the facts and circumstances of the case, this Court would be justified in exercising the writ jurisdiction despite the existence of an alternate statutory remedy ? An answer may warrant answers to further questions: Are the facts so glaring and exceptional ? Are the issues concluded by prior determination between the parties ? Whether relegating the petitioners to the remedies under the Code, 1966 would further perpetuate injustice ? Answers to these questions would bear upon the necessity of exercise of writ jurisdiction.

15. First and foremost, un-controverted facts: 1) It is incontrovertible that the subject land originally formed part of survey No. 233. 2) The carving out of survey No. 233/1, 233/2 out of survey No. 233 vide mutation entry No. 1568 dated 30th June, 1960 is incontestible, though the exact area of survey No. 233/1 and 233/2 is at the heart of the controversy. 3) Indisputably, the respondent Nos. 3 to 10 claimed through Baban and Pandurang More, the successors in interest of Bhiva More whose name was mutated to survey No. 233/2 vide mutation entry No. 1568. 4) The facts that the predecessor in title of respondent Nos. 3 to 10 had instituted the suit claiming absolute ownership and exclusive possession over the entire survey No. 233 and had, inter alia, sought a declaration that the Sale Deed dated 20th April, 1960 executed in favour of the predecessor in title of the petitioners was void and the said suit and appeal there against came to be dismissed are incontestible. 5) The thrust of the claim of respondent Nos. 3 to 10, or for that matter their predecessors in title, is based on mutation entry No. 1802, whereby the area of survey No. 233/1 came to be reduced to 7 Acre and 31 R. 6) It is recorded in the orders that no record of certification of mutation entry No. 1802 was forthcoming.

16. In the backdrop of the aforesaid rather incontrovertible facts, the petitioners claim hinges upon the area of the land which their predecessors in title acquired under the registered Sale Deed dated 20th April, 1960 as that is the primary source of title. The registered Sale Deed dated 20th April, 1960 described the property transferred thereunder as Northern side agricultural land, out of survey No. 233, admeasuring 11 Acre and 11 Gunthas. The land was also described with reference to the boundaries. The vendors remaining land was shown to situate towards the Southern side. Thus, in the Sale Deed, the land, which was sold thereunder, was described both with reference to area and boundaries. In the face of the registered Sale Deed, the submission that the Sale Deed does not describe the area of the land transferred thereunder with sufficient clarity to identify the alienated land could not have been countenanced and does not merit countenance.

17. If there was any doubt about the area of land conveyed under the Sale Deed, the same stood clarified as early as the year 1960. By certification of mutation entry No. 1568, survey No. 233 came to be divided into survey Nos. 233/1 and 233/2 each admeasuring 11A and 11 R. Up to this point of time, in the least, there was no controversy as regards the area of the land sold under

the Sale Deed dated 20th April, 1960.

18. The institution of Regular Civil Suit No. 238 of 2000 by the predecessor in title of respondent Nos. 3 to 10 seeking declaration as to absolute ownership over the entire survey No. 233 and that Sale Deed dated 20th April, 1960 was fabricated and void, and the outcome thereof, were required to be appreciated in the correct perspective. In the said suit, the learned Civil Judge settled, inter alia, an issue that as to ‘whether the plaintiff thereunder proved that the Sale Deed dated 20th April, 1960 executed in favour of the predecessor in title of the petitioners was fabricated one’ and answered the same in the negative with a categorical finding. As noted above, the predecessor in title of respondent Nos. 3 to 10 suffered adverse finding before the Civil Court and the first appellate Court and an endeavour to assail the same remained abortive as an application for condonation of delay came to be withdrawn.

19. In the face of this adjudication, it would be rather naive to accede to a submission that, in the said suit, the Civil Court had not delved into the question of area of the survey No. 233/1, which was purchased by the predecessor in title of the petitioners under the

Sale Deed. Such a submission loses sight of the case of the predecessor in title of respondent Nos. 3 to 10 that they were the owners of entire survey No. 233 and the Sale Deed was void.

20. In my view, once the validity of the Sale Deed is adjudicated, the revenue authorities could not have brushed aside the said adjudication on the premise that there is no determination as to the area of land purchased under the Sale Deed. If at all such a challenge subsists, it can be properly constituted before the Civil Court and not revenue authorities.

21. That leaves certification of mutation entry No. 1802, on which the edifice of respondent Nos. 3 to 10's case was sought to be built. Mr. Shah would urge that the said mutation entry was not challenged for decades and eventually when the Additional Commissioner had restored mutation entry No. 1802 and the petitioners had challenged the same before this Court, the respondent Nos. 3 to 10 were not impleaded as parties to the Writ Petition, despite being aware that the properties had changed hands. It was further submitted that since the entire challenge in the proceedings before the revenue authorities culminating in Writ Petition No. 9127 of 2005 was restricted to the area of survey No.

233/1, vide mutation entry No. 8744, area of a sub division forming part of survey No. 233/2 could not have been annexed.

22. The aforesaid submissions appear attractive at the first blush. However, if considered through the prism of entire setting of the matter, the fragile thread to which respondent Nos. 3 to 10's case hangs in balance crumbles traceless. The entire case is based on certification of mutation entry No. 1802 whereby the area of survey No. 233/1 came to be reduced to 7 Acre and 31 R. As noted above, the Additional Collector has recorded a categorical finding that there is no record to throw light on the circumstances under which mutation entry No. 1802 came to be certified and what was its basis.

23. At this stage the fact that the properties/ lands were carved out of survey No. 233 into sub division Nos. 233/1 and 233/2 vide mutation entry No. 1568 pursuant to registered Sale Deed dated 20th April, 1960 assumes significance. It is not a case of respondent Nos. 3 to 10, or for that matter their predecessor in title, that there was any other instrument on the basis of which mutation entry No. 1802 came to be certified. On the contrary, the predecessor in title of respondent Nos. 3 to 10 had asserted title over the entire survey

No. 233 and sought declaration against the validity of the Sale Deed dated 20th April, 1960. This stand dismantles the very edifice of certification of mutation entry No. 1802.

24. Mr. Shah placed a very heavy reliance on the observations of this Court in the order in Civil Application No. 827 of 2015 in Writ Petition No. 9127 of 2005, to bolster up the submission that this Court had clarified that the dispute in Writ Petition No. 9127 of 2005 was restricted to survey No. 233/1. The observations of this Court in paragraphs 2 to 4 are material for the determination of the controversy and hence extracted below:-

2] Heard the learned counsels for the parties and perused the record. Admittedly, the applicants were not arrayed as parties to writ petition no. 9127 of 2005. The record discloses that the reliefs in writ petition and the consequent order dated 26 February 2015 made therein relates to entries in the Record of Rights relating to survey no. 233/1. The learned Senior Advocate appearing for the original petitioners in writ petition no. 9127 of 2005 once again, asserts that the petition and the reliefs therein were concerning property surveyed under no. 233/1. The civil application, essentially concerns property surveyed under no. 233/2. Accordingly, it cannot be said that any fraud was practiced upon this Court in either instituting the writ petition or obtaining the order dated 26 February 2015 therein. There is accordingly, no case made out for recall of the order dated 26 February 2015.

3] Mr. Warunjikar, the learned counsel for the applicants however contended that on the basis of the order dated 26 February 2015, the original petitioners seek to interfere with the possession of the applicants to the properties, which are mainly

described as properties surveyed under no. 233/2. There is neither any reason nor is this the occasion to go into or entertain such allegations. This is because, it is always open to the applicants to take resort to appropriate civil proceedings for the protection of their alleged rights. As indicated earlier, the order dated 26 February 2015 concerns entries in Record of Rights pertaining to the property surveyed under no. 233/1.

4] Mr. Warunjikar, made reference to some terms of compromise dated 22 November 2005, entered into between the original petitioners in writ petition no. 9127 of 2005 and the applicants. Mr. Warunjikar contends that the effect of such terms was not considered whilst making the order dated 26 February 2015. At least prima facie, the compromise terms appear to relate to property surveyed under no. 233/2. That apart, it is settled position in law, which has in fact been reiterated in the order dated 26 February 2015, that mere entries in survey records are not determinative of title of any of the parties to the property.

25. To appreciate the import of the aforesaid observations in a correct perspective, the reasons which weighed with this Court in allowing the Writ Petition No. 9137 of 2005 also deserve to be noted. They read as under:-

8] The impugned order made by the Additional Commissioner is required to be set aside for several reasons. In the first place, the Additional Commissioner has not at all seriously gone into the issue as to the manner in which the original mutation entry no. 1568 was varied without any notice to the petitioners. It was submitted that the order by which said variation was brought about is not even available in the records of the revenue authorities. Secondly, it is settled position in law that the revenue entries, per se, are not determinative of title of the parties to the property in question. For that purpose, the parties are required to approach the civil court and obtain appropriate decrees or orders, with regard to their

status qua the properties concerned. In the present case, the respondent nos. 1 and 2 had approached the Civil Court by instituting civil suit no.238 of 2000. The Civil Court did not accept the claim of the respondent nos. 1 and 2. The judgment and decree made by the Civil Court has attained finality, since even the second appeal against the same came to be dismissed. The Additional Collector had the benefit of a decree of the Civil Court dated 31 March 2001 and the Additional Collector correctly applied the same and restored the mutation entry no. 1568. The Additional Commissioner, though had the benefit of the judgment and decree dated 31 March 2001 made by the Civil Court and judgment and decree dated 11 October 2004 as made by the Appellate Court, chose to misread or misinterpret the same. On the said basis, the Additional Commissioner, has reversed the Additional Collector. The reversal is patently incorrect and borders upon perversity. The Additional Commissioner was not at all justified in observing that the Additional Collector should have directed the petitioners to approach the Civil Court with regard to the validity of the sale deed dated 20 April 1960 or the genuineness of the vendor Gana Genu More. This was not at all necessary in the present case, particularly in the light of categorical findings recorded in the judgment and decrees of the Civil Courts. Thirdly, the Additional Commissioner was not at all justified in observing that the Civil Courts decrees do not state that the petitioners are not in possession of half portion of the suit property. Such observation, has possibly been made, without adverting to the judgment and decrees of the civil courts, which have since attained finality.

26. A conjoint reading of the aforesaid observations, in my view, militates against the submission sought to be canvassed on behalf of respondent Nos. 3 to 10. Undoubtedly, this Court was dealing with the controversy in respect of certification of mutation entry pertaining to survey No. 233/1. However, the facts that by mutation entry 1802, the area of survey No. 233/1 was reduced to 7 Acre and

21 R from 11 Acre and 11.5 R, as originally certified under mutation entry No. 1568, and that was at the heart of the controversy, can not be lost sight of. It is imperative to note that the effect of setting aside of the order of Additional Commissioner impugned in the Writ Petition No. 9127 of 2005 by this Court was two-fold. One, setting aside of mutation entry No. 1802. Two, restoration of mutation entry No. 1568 whereby an area admeasuring 11 Acre and 11 R was mutated in the name of predecessor in title of the petitioners pursuant to a registered Sale Deed. To constrict the determination in Writ Petition No. 9127 of 2005 would be to miss the wood for the trees and be oblivious to the obvious i.e. the controversy over which the parties have been litigating for decades.

27. Conversely, if the impugned order is sustained the parties would be brought to the same stage, as it obtained, on the day mutation entry No. 1802 was certified and, resultantly, the entire proceedings in the intervening period and the outcome thereof would be rendered nugatory. It is this consequence which persuades the Court to hold that this case presents an extraordinary situation where this Court would be justified in exercising the writ jurisdiction despite the existence of a statutory remedy, lest the public policy of bringing about a finality to litigation would be a

casualty. The reasons are not far to seek.

28. A registered instrument, whereunder land has been conveyed, with sufficient clarity as to its identity, stands. The challenge to the validity of the registered instrument has been negatived up to this Court. The record of mutation entry No. 1802 whereby the area of survey No. 233/1 was sought to be curtailed has not been forthcoming. A challenge to said mutation entry No. 1802 has been upheld by this Court and it was eventually set aside. Mutation entry No. 1568 stands restored in full measure.

29. In such a situation, to countenance a challenge on the premise that the subject matter of dispute of all these proceeding was survey No. 233/1 only, would be to perpetuate an illegality by allowing the technicalities to score a march over the substantive justice.

30. If the respondent Nos. 3 to 10 still claim title over a portion of the land, which the petitioners claim, to have been sold to their predecessor in title, under the registered Sale Deed dated 20th April, 1960 their remedies are before the Civil Court and not before the authorities under the Code, 1966. Needless to clarify that in the

event such proceeding is instituted, it deserves determination on its own merits and in accordance with law.

31. For the foregoing reasons, the petition deserves to be allowed.

Hence, the following order.

ORDER

1] The petition stands allowed.

2] The impugned order stands quashed and set aside.

3] Mutation Entry No. 8744, as certified pursuant to the order of this Court in Writ Petition No.9127 of 2005, stands restored.

4] The respondent Nos. 3 to 10 are at liberty to work out their remedies as available in law before the Civil Court, if they choose to.

5] By way of abundant caution it is clarified that aforesaid observations are confined to the determination of the legality, propriety and correctness of the impugned order and in the event respondent Nos. 3 to 10 institute any proceeding before the Civil Court, such proceeding be decided on its own merits and in accordance with law without being influenced by any of the observations made hereinabove. All contentions of all the parties are expressly kept open for consideration in such proceeding, if instituted.

6] Rule made absolute to the aforesaid extent.

7] In the circumstances, there shall be no order as to costs.

8] In view of the above, the Interim Application(s), stand(s) disposed.

(N. J. JAMADAR, J.)