IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2478 OF 2023

Kalidas s/o Govindrao Jadhav ... **PETITIONER**

VERSUS

1. Govindrao s/o Nivartirao Jadhav
2. Kaushalyabai w/o Govindrao Jadhav
3. Devidas s/o Govindrao Jadhav
4. Rekha d/o Govindrao Jadhav
   @ Rekha w/o Sumantrao Biradar
5. The Chief Officer,
   Municipal Council, Udgir,
   Taluka Udgir, Dist. Latur
6. District Collector, Latur
   Dist. Latur ... **RESPONDENTS**

...

Advocate for petitioner : Mr. P.V. Gole h/f. Mr. V.D. Gunale
Advocate for Respondent No.5 : Ajinkya S. Reddy
AGP for respondent No.6/State : Ms. V.N. Patil – Jadhav

...

CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR, JJ.

Reserved on : 12.11.2024
Pronounced on : 19.11.2024

ORDER (MANGESH S. PATIL, J.) :

Heard. Rule. It is made returnable forthwith. Learned AGP waives service for respondent No.6 and learned advocate Mr. Reddy waives service for respondent No.5 – Municipal Council. At the joint request, the matter is heard finally at the stage of admission.

2. The only short but interesting question that arises for our determination is as to whether a decree for partition would constitute an

instrument of partition under Section 2(m) and liable to be compulsorily registrable under Section 17 of the Indian Registration Act, 1908 and liable for payment of stamp duty under Article 46 in the Schedule-I to the Maharashtra Stamp Act, 1958.

3. We have considered the rival submissions and even perused the written submissions placed on record by the learned advocates for the petitioner and that of respondent No.5 – Municipal Council.

4. On a compromise decree for a partition arrived at between the petitioner and the respondent Nos.1 to 4 in a Lok Adalat, he applied for effecting necessary mutation in the municipal record of respondent No.5 vide his application dated 01.04.2021, and the subsequent similar applications which were rejected by the impugned communication of respondent No.5 dated 02.12.2022, referring to the part of the decree directing 'Compromise decree be sent along with memorandum to the concerned Sub-Registrar as per the provisions of the Indian Registration Act, 1908' and the Sub-Registrar of the district was accordingly informed by the Court vide communication dated 30.05.2022, calling upon the petitioner to deposit necessary stamp duty.

5. There is no dispute about passing of a compromise decree effecting the partition and separate possession of individual shares of the petitioner and respondent Nos.1 to 4, not only in the agriculture lands but even the non-agriculture plots, as agreed amongst them and pursuant to the terms of compromise (**Exhibit-B**).

6. So far as Section 17(2) of the Indian Registration Act, 1908 the issue as to if a decree for partition passed by the civil court requires compulsory registration, is no more *res integra* since a pre-existing right in each of the shareholders merely gets severed by passing of such a decree. It does not constitute transfer of property and even does not require compulsory registration under Section 17, in light of decision of the Supreme Court in **Bhoop Singh Vs. Ram Sing Major and Ors.; AIR 1996 SC 196**. The following observations in paragraph Nos.17 and 18 would be relevant:

> *"17. It would, therefore, be the duty of the court to examine in each case whether the parties have pre-existing right to the immovable property, or whether under the order or decree of the court one party having right, title or interest therein agreed or suffered to extinguish the same and created right, title or interest in praesenti in immovable property of the value of Rs.100/- or upwards in favour of other party for the first time, either by compromise or pretended consent. If latter be the position, the document is compulsorily registrable.*
>
> *18. The legal position qua clause (vi) can, on the basis of the aforesaid discussion, be summarised as below :*
>
> *(1) Compromise decree if bona fide, in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration, would not require registration. In a converse situation, it would require registration.*
>
> *(2) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs.100/- or upwards in favour of any party to the suit, the decree or order would require registration.*
>
> *(3) If the decree were not to attract any of the clauses 7 of sub-section (1) of section 17, as was the position in the aforesaid Privy Council and this Court's cases, it is apparent that the decree would not require registration.*

(4) *If the decree were not to embody the terms of compromise, as was the position in Lahore case, benefit from the terms of compromise cannot be derived, even if a suit were to be disposed of because of the compromise in question.*

(5) *If the property dealt with by the decree be not the "subject matter of the suit or proceeding", clause (vi) of sub-section (2) would not operate, because of the amendment of this clause by Act 21 of 1929, which has its origin in the aforesaid decision of the Privy Council, according to which the original clause would have been attracted, even if it were to encompass property not litigated."*

This was the view taken by the coordinate division bench in the matter of **Arvind s/o Yeshwantrao Deshpande Vs. State of Maharashtra; 2003 (3) Mh.L.J. 1039**.

7. In light of a Government Resolution dated 14.06.2021 in the Revenue and Forest Department of the State Government, even it was expressly declared that the compromise decrees arrived at in the Lok Adalat would stand exempted from registration specified in Section 89A of the Indian Registration Act, 1908 (Maharashtra Amendment). Even a similar view has been taken in the matter of **Vasant Bhaurao Khodve Vs. the State of Maharashtra and Ors.; Writ Petition No.2420/2022**, by the single Judge. Additionally, in the matter of **the Barshi Bar Association Vs. the State of Maharashtra; MANU/MH/0872/2023**, in similar set of facts, a division bench has specifically laid down that such compromise decrees effecting partition would not be compulsorily registrable under Section 17 (2) of the Indian Registration Act, 1908. We are in respectful agreement with the views of the division benches.

8. There is nothing before us to demonstrate that the decree for

partition on the basis of compromise terms arrived at between the petitioner and the respondent Nos.1 to 4 was a collusive decree and was not entered into *bona fide*. Consequently, it does not require registration under Section 17(2) of the Indian Registration Act, 1908.

9. Turning to the second issue regarding susceptibility of the decree of partition to any stamp duty, under the Maharashtra Stamp Act, 1958, even that issue has been dealt with by the coordinate division bench in the matter of **the Barshi Bar Association** (supra) in paragraph Nos.16 to 23, in following words :

> *16. This brings us to the second limb of the matter viz. payment of stamp duty. The stamp duty payable upon the documents is governed by the provisions of the Act of 1958. The documents in the State of Maharashtra are governed by the provisions of the Act of 1958. The payment of stamp duty on an instrument of partition finds place under Article 46 of the Act of 1958.*
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> *17. As a general rule, the stamp duty on an instrument of partition is 2% of the amount or the market value of the separate share or shares of the property. As per the note appended thereto, the largest share remaining after property is partitioned or if there are two or more shares of equal value and not smaller than any of the other shares, then one of such equal shares shall be deemed to be that from which the other shares are separated. Proviso (a) and (b) to section 46 further provide for certain exemptions. We would be concerned with proviso (b) in the present case. In view of proviso (b), where the instrument relates to the partition of agricultural land, the rate of duty applicable shall be 100/-.*
>
> *18. The compromise decree of an agricultural land in respect of property that is the subject matter of the Suit is not required to be compulsorily registered under the provisions of the Act of 1908 and the Stamp Duty on such a document would not be more than 100%. Proviso (c) to section 46 of*

the Act of 1958 further provides that where a final order for effecting a partition is passed by any Revenue Authority or any Civil Court or an award by an arbitrator directing a partition, is stamped with the stamp required for an instrument or partition, and an instrument of partition in pursuance of such order or award is subsequently executed, the duty on such instrument shall not exceed Rs.10/-.

19. On reading section 46 of the Act of 1958 in its entirety along with its provisos, an irresistible conclusion can be drawn i.e. a compromise decree effectuating partition of an agricultural land does not require compulsory registration in view of section 17(2) (vi) of the Act of 1908 and it would also not require payment of the stamp duty on valuation of the property, but would be governed by the proviso (b) and (c) of section 46 of the Act of 1958.

20. The Circular impugned by the petitioner does not only deal with the decree in case of partition suit but is of general nature that would also include the non-agricultural properties and different modes of transfers through various instruments.

21. The impugned Circular shall be read in a manner that the compromise decree of the court and/or the Lok Adalat in respect of agricultural land that is the subject matter of the Suit is not compulsorily registerable and would not attract stamp duty on the market value of the property but in accordance with the proviso (b) and (c) of section 46 of the Act of 1958.

22. Rule is accordingly made absolute in above terms.

23. Writ Petition is disposed of. No costs."

(*There seems to be a typographical mistake at some places in referring to '**Article 46**' as '**Section 46**'.*)

10. We are in complete agreement with the view taken by the division bench for the reasons recorded by it. Though the compromise decree arrived at between the petitioner and respondent Nos.1 to 4 is not compulsorily registrable, the impugned communication refers to the provisions of the Indian Registration Act, 1908, still it would be governed by and liable to payment of a stamp duty under the Maharashtra Stamp

Act, 1958, under Article 46 of its Schedule-I prepared under Section 3 of that Act, being an 'instrument' as defined by Section 2(m) which reads as under:

> *"**Section 2(m) :-** instrument of partition " means any instrument whereby co-owners of any property divide or agree to divide such property in severalty and includes,— (i) a final order for effecting a partition passed by any revenue authority or any civil court, (ii) an award by an arbitrator directing a partition, and (iii) when any partition is effected without executing any such instrument, any instrument or instruments signed by the co-owners and recording, whether by way of declaration of such partition or otherwise, the terms of such partition amongst the co-owners;"*

As can be understood, a decree for partition passed by the civil court being 'an instrument of partition', it would fall under Article 46 which reads as under:

Description of Instrument	**Proper Stamp Duty**
1	**2**
46. PARTITION – Instrument of	Two per cent. of the amount of the market value of the separated share or shares of the property.
	Note.—The largest share remaining after the property is partitioned or, if there are two or more shares of equal value and not smaller than any of the other shares, then one of such equal shares shall be deemed to be that from which the other shares are separated.
	Provided always that,— (a) when an instrument of partition containing an agreement to divide property in severalty is executed and a partition is effected in pursuance of such agreement, the

	duty chargeable upon the instrument effecting such partition shall be reduced by the amount of duty paid in respect of the first instrument, but shall not be less than five rupees ;
	(b) where the instrument relates to the partition of agricultural land, the rate of duty applicable shall be one hundred rupees;
	(c) where a final order for effecting a partition passed by any Revenue authority or any Civil Court or an award by an arbitrator directing a partition, is stamped with the stamp required for an instrument of partition, and an instrument of partition in pursuance of such order or award is subsequently executed, the duty on such instrument shall not exceed ten rupees.

11. Since the issue before us is merely pertaining to the communication of respondent No.5 in respect of mutation pursuant to the compromise decree for partition in respect of the plots/house properties falling within the municipal limits, as distinguished from agricultural lands susceptible to land revenue as described in Article 46 in respect of which the stamp duty payable would be one hundred rupees, the properties falling within the municipal limits regarding which the petitioner has been seeking mutation, it would be governed by Article 46 requiring 2% of the amount of the market value of the separate share as described in the Note. Meaning thereby that though the agriculture lands

separated by a decree of partition are liable to payment of maximum of one hundred rupees as the stamp duty, that is not the case in respect of the house properties or properties falling within the municipal limits which have been converted to non-agricultural use in respect of which the stamp duty would be 2% of the market value.

12. The emphasis of petitioner and his learned advocate in referring to proviso ‘c’ is misplaced. What this proviso lays down is that if the final order effecting the partition, of a civil court itself is stamped with the stamp required for an instrument of partition and an instrument of partition is subsequently executed, the duty on such instrument shall not exceed ten rupees. We have not been demonstrated that the fact situation in the matter in hand is the same as contemplated under this proviso. Therefore, a plain reading of Article 46 with the definition of ‘Instrument of Partition’ under Section 2(m) of the Maharashtra Stamp Act, 1958 requires a decree for partition passed by the civil court liable to a stamp duty as prescribed therein at 2% of the market value of the separated share, further, being the market value of the largest share.

13. In the matter of the **Barshi Bar Association** (supra) the issue was merely in respect of an agricultural land and not a non-agricultural land and the observations will have to be understood in that context alone. The petitioner is not entitled to rely upon it in every respect. It would be applicable to the present case to the extent it lays down that a decree for partition passed by a civil court will not be compulsorily

registrable under Section 17(2) of the Indian Registration Act. However, as regards the stamp duty payable under the Maharashtra Stamp Act, 1958, the petitioner is not entitled to derive any benefit from the decision in the matter of the **the Barshi Bar Association** (supra).

14. Admittedly, no such stamp duty has been paid by the petitioner under the Maharashtra Stamp Act under Article 46. It is necessary to note here that the impugned communication merely refuses to effect mutation in respect of the house property on the basis of the compromise decree, for want of registration under Section 17 of the Indian Registration Act, 1908. Apparently, it does not refer to its liability to payment of stamp duty under the Maharashtra Stamp Act, 1958, as a reason for refusing to effect the mutation. However, it being an instrument of partition, as discussed herein above, liable to a stamp duty, as laid down under Article 46 of the Maharashtra Stamp Act, 1958, being a non-agricultural property, for want of such a stamp duty the decree of partition being insufficiently/not stamped with adequate stamp duty, mere setting aside of the communication would not serve any purpose. It would be for respondent No.6 – Collector to examine this aspect and adjudicate upon it in the light of Chapter-III of the Maharashtra Stamp Act. That being not an issue directly addressed to us we leave it at that. We are merely making the aforementioned observations to demonstrate that though the impugned communication is not sustainable in law, since the fact is brought to the notice of this Court, without there being any

adjudication on that issue by the Collector, this Court cannot issue a mandamus directing respondent No.5 to straightaway mutate petitioner's name in respect of the house property on the basis of the decree of compromise arrived at between the petitioner and respondent Nos.1 to 4.

15. The writ petition is allowed partly. The impugned communication is quashed and set aside, to the extent it insists for the decree being registered under the Indian Registration Act, 1908 and respondent No.6 is directed to take appropriate step in the light of Chapter - III of the Maharashtra Stamp Act, as expeditiously as possible.

16. It is made clear that it would be open for him to determine all the issues including liability to the decree for partition in question to any stamp duty under the Maharashtra Stamp Act, 1958. He shall not feel influenced by the observation made herein above.

17. Rule made absolute in above terms.

[PRAFULLA S. KHUBALKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

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