IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD

WRIT PETITION NO. 305 OF 2016

1. Tukaram s/o. Maruti Walekar
Died Through his L.R's

1/1. Smt. Rukminbai w/o. Tukaram Walekar
Age-61 years, Occ- Household,
R/o. Borgaon (Bk), Tq. Kaij,
Dist. Beed.

1/2. Smt. Sindhu d/o Tukaram Walekar
Age: 34 years, Occu. Household & Agri.,
R/o. Borgaon (Bk.) Tq. Kaij,
Dist. Beed.

1/3. Kamalakar s/o Tukaram Walekar
Age- 35 years, Occ- Agri.,
R/o. Borgaon (Bk.) Tq. Kaij,
Dist. Beed.

1/4. Ashok s/o Tukaram Walekar
Age- 30 years, Occ- Agri.,
R/o. Borgaon (Bk.) Tq. Kaij,
Dist. Beed ....PETITIONERS
[Orig. Respondents]

VERSUS

1. Narayan s/o Maruti Walekar
Died Through his L.Rs

1/1 Smt. Bhagirathibai @ Saragbai Narayan
Walekar, Age- 71 years, Occ- Household,
R/o. Borgaon (Bk.) Tq. Kaij,
Dist. Beed

1/2 Balasaheb s/o Narayan Walekar
Age- 51 years, Occ- Agri.,
R/o. Borgaon (Bk.) Tq. Kaij,
Dist. Beed

1/3 Dhananjay @ Dhanraj Narayan

Walekar, Age- 49 years, Occ- Agri.,
R/o. Borgaon (Bk.) Tq. Kaij,
Dist. Beed

1/4 Gahininath Narayan Walekar
Age- 47 years, Occu- Agri.,
R/o. Borgaon (Bk.) Tq. Kaij,
Dist. Beed

2. Maruti Rama Walekar (Died)

3. Bhagwan s/o. Maruti Walekar
Age- 86 years, Occu- Nil,
R/o. Borgaon (Bk.) Tq. Kaij,
Dist. Beed

4. Tahsildar, Kaij
Tq. Kaij, Dist. Beed.

5. The Sub-Divisional Officer,
Ambajogai, Tq. Ambajogai,
Dist. Beed.

6. Additional Collector, Beed,
Dist. Beed.

7. The Additional Commissioner,
Aurangabad Region, Aurangabad,
Dist. Aurangabad.

8. The State of Maharashtra
Through Secretary
Revenue Department
Mantralaya, Mumbai. ...RESPONDENTS

[Resp. No. 1/1 to 1/4 are orig. appellants and resp. no. 3 to 7 are respondents]

Mr. D.J. Choudhary, Advocate for petitioners
Mr. N.B. Khandare, Senior Advocate i/b. Mr. D.B. Rakhunde for respondent No. 1/1 to 1/4
Mrs. M.L. Sangit, AGP for State

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CORAM : MANJUSHA DESHPANDE, J.

RESERVED ON : 27th JANUARY, 2025
PRONOUNCED ON: 4th FEBRUARY, 2025

ORDER :

1. The order dated 21.09.2015 passed by State Minister (Revenue) in the proceedings under Section 257 of Maharashtra Land Revenue Code has been challenged by the petitioners in the present writ petition. The impugned order has set aside the order dated 21.11.2014 passed by Additional Commissioner, Aurangabad Region, Aurangabad in case No. ROR/ REV./ 602/ 2013.

2. The brief history of the facts leading to the litigation between the parties *inter se* in nutshell is as under:

Respondent No. 1-Narayan who is represented through his legal heirs was aggrieved by certification of Mutation Entry No. 1006 of village Borgaon, Tq. Kaij, Dist. Beed in respect of lands Survey Nos. 32, 83, 100/A, 103, 132, 134/1. Therefore, he had preferred appeal before Sub Divisional Officer, Ambajogai. The Sub Divisional Officer rejected the appeal and confirmed the Mutation Entry No. 1006, which was certified by Circle Inspector on 23.02.1988. Being aggrieved by order, respondent No. 1 filed appeal before Additional Collector, Beed, which was dismissed in default on 21.09.1996. The revision was filed by respondent after a delay of two years and eight months. State Minister (Revenue) has been pleased to allow the revision petition and set aside the order passed by Sub Divisional Officer, Ambajogai and also cancelled Mutation Entry No. 1006 dated 23.02.1988 vide order dated 13.09.2012. Writ Petition No. 101/2013 was preferred against that order before this Court. This Court after hearing the parties has passed order on 06.08.2013 and quashed and set aside all above orders of the revenue authorities and remanded the case to the Additional Collector, Ambajogai.

3. After remand of the matter, Additional Collector, Ambajogai by order dated 20.11.2013 allowed the appeal filed by respondent No. 1 and set aside the order of Sub Divisional Officer, Ambajogai dated 31.05.1990 and cancelled the Mutation Entry No. 1006. Being aggrieved by order passed by Additional Collector the petitioners filed revision before the Additional Commissioner, Aurangabad Division, Aurangabad. The Additional Commissioner has considered all the earlier orders passed by revenue authorities and allowed the revision vide judgment and

order passed by Sub Division Officer, Ambajogai dated 31.05.1990 is confirmed and judgment and order passed by Additional Collector, Ambajogai dated 20.11.2013 is set aside. The Mutation Entry No. 1006 is also confirmed till the decision of the competent civil Court in respect of dispute which has been pending between the parties *inter se*.

4. Being aggrieved by the order, respondent filed review before the Additional Commissioner, which also came to be rejected. Thereafter, respondent No. 1 through his legal heirs filed revision before State Minister (Revenue). The State Minister (Revenue) has conducted hearing on 17.06.2015 and parties were permitted to submit their written submissions/arguments and the matter was closed for orders.

5. The case of respondent No. 1 before the State Minister (Revenue) can be summarized as under:

(i) Shri. Maruti Walekar was the original owner of land Survey Nos. 31, 32, 83, 100/A, 103/A, 132/A and 134/B. He had three sons namely Bhagwan Narayan and Tukaram.

(ii) It is the case of Narayan, who is second son of Maruti that his two brothers namely Tukaram and Bhagwan in connivance have prepared bogus record in respect of partition deed dated 01.02.1988 and have obtained Mutation Entry No. 1006 by way of fabricated partition and fertile land Survey No. 100/1A admeasuring 2 Hectare 91 R, Survey No. 103 admeasuring 1 Hectare 93 R, Survey No. 134/1B admeasuring 1 Hectare 92 R are shown in the name of Bhagwan and Tukaram whereas infertile land Survey No. 31 admeasuring 1 Hectare 8 R, Survey No. 32 admeasuring 1 Hectare 37 R, Survey No. 83 admeasuring 1 Hectare 29 R and Survey No. 132 admeasuring 0 Hectare 8 R are shown in the name of their father. According to him, without taking any application from his father on the basis of application of his other two brothers, Talathi has taken Mutation Entry No. 1006, without following due procedure of law.

(iii) Though, he had filed appeal against said entry before Sub Division Officer, Ambajogai, it was rejected on 21.05.1990. The appeal filed against the order before Additional Collector was also rejected and thereafter subsequent authorities have also recorded their findings and ultimately after the matter reached this Court, the matter was remanded to the Additional Collector, Ambajogai and after the remand the matter was heard by Additional Collector and it was decided by him in favour of respondent No. 1.

(iv) According to him, without taking into consideration the earlier orders passed by the revenue authorities, the Additional Commissioner has passed the order against him. It has been contended that during the ROR proceeding Bhagwan and Tukaram have filed Regular Civil

Suit No. 221/1988 in which the application for temporary injunction was rejected on 22.08.1988. Tukaram and Bhagwan had filed appeal before the District Court against rejection of application for temporary injunction, which was allowed. It is stated that during the proceedings before Civil Judge, Junior Division an affidavit came to be filed by parents of respondents and petitioner stating that no partition has taken place in the year 1976 or thereafter. In view of said affidavit petitioners have withdrawn the suit.

(v) Relying on withdrawal of suit it is contended by respondents that partition is fabricated and false. Had there been an actual partition, there was no occasion for Bhagwan to file Regular Civil Suit No. 353/1996 for declaration of ownership. He has also raised an objection that no notices were issued before certifying Mutation Entry No. 1006. It was mandatory to issue notices to respective parties. The authorities were bound to issue personal notices to the parties as provided under Section 149 and 150 of Maharashtra Land Revenue Code. Since the partition is an oral partition is not registered document and value of partition exceeds Rs. 100 is therefore compulsorily registrable document. Since it is an oral partition and not registered document, it has no evidentiary value.

(vi) Though Bhagwan and Tukaram had claimed that partition had already taken place in the year 1976 and the entry was certified in the year 1988, there is no explanation as to why it had taken 12 years for certifying the said entry.

The fabricated partition has been made only with a view to grab fertile lands.

(vii)As against this petitioners had replied to the revision contending that since there was discord between the family while they were staying in joint family Maruti Walekar orally partitioned the land in the year 1976 and accordingly handed over the possession of the respective shares to his three children and accordingly they were in possession and enjoyment of the property.

(viii)In order to facilitate each of his children to record their names in the 7/12 extract Maruti along with his three children made an application for entering their names in the revenue record according to their possession. Maruti along with his three sons was personally present before the revenue authority while making said application. In the application it was stated that oral partition had taken place in the year 1976 and Maruti had stated that till his lifetime for maintenance and his expenses he will cultivate land Survey No. 83 and after him said land will be held by Narayan. Accordingly, agreement was executed. Therefore, on the application made by all the parties on 01.02.1988, after making necessary compliance, Mutation Entry No. 1006 was certified on 23.02.1988. When entry was taken on 23.02.1988 signatures of Maruti along with his three sons were obtained on record. After death of Maruti, the land which was given to Maruti have devolved upon the petitioners and respondents as per agreement executed by parties and they are in possession and enjoyment of that property also.

(ix) The revenue authority had issued proclamation calling upon objection for the revenue entry and only after following procedure the signatures/thumb impression of parties have been obtained on the revenue record. There was Regular Civil Suit No. 65/1979 pending between the parties. However, subsequently, there was compromise in the said suit on 07.09.1987. Therefore, upon disposal of said suit, application was made for certifying the entry in 1988.

(x) Since their father Maruti was residing with Narayan, Narayan was insisting and threatening, for making changes in the partition and has tried to obstruct possession of petitioners. Therefore, they were constrained to file Regular Civil Suit No. 221/1988 in Kaij Court. After refusal of injunction in the appeal they have obtained order of temporary injunction restraining the respondents. Regular Civil Suit No. 221/1988 was pending for quite a long time and thereafter it was dismissed for want for persecution.

(xi) In the meanwhile, respondent No. 1 started having good relations with Bhagwan and has also stopped obstructing the possession of petitioners. Therefore, the suit was withdrawn. So far as the affidavit filed by their parents in Regular Civil Suit No. 221/1988 is concerned it is stated by petitioners that the affidavit of their parents which is relied upon is false, bogus and fabricated. The affidavit has been rejected by the Appellate Court, however, the same is produced and relied upon by the respondents in all the proceedings.

(xii) According to petitioners, since the year 1976 respective parties are in possession and enjoyment of their respective shares. Because of the efforts taken by them now the land has become fertile. The respondent, therefore wants to grab the land. Hence, with a view to grab the land, which has come to the share of petitioners, proceedings have been filed by the respondent.

6. On the basis of rival pleadings of parties and submissions, the State Minister (Revenue) has allowed the revision of respondents on the ground that no procedure as contemplated under Maharashtra Land Revenue Code has been undertaken by the revenue authorities while making the Mutation Entry No. 1006. It is observed by him that though proclamation seems to have been issued on 18.02.1988 and accordingly entry is taken, when no objection has been received to the proclamation. However, such procedure is adopted only in respect of parties whose addresses are not available. The notices are affixed on the *chavdi* or the notice board of Government offices. Proclamation is issued only in the areas where there is thick population. Therefore, it was the duty of Sub Divisional Officer to verify the correctness of the procedure followed by the authorities who has made the mutation entry.

7. The next issue which has been dilated upon by the State Minister (Revenue) is that according to Section 17 of the Registration Act, partition which is effected is required to be made on the stamp paper of at least of Rs. 100/- and should be registered. In the present case, no such documents is available. Referring to the judgment of Hon’ble Supreme Court reported in AIR 1958 SC 807 wherein it is held that property in respect of which partition is effected and valuation of property is more than Rs. 100/- in such case, it is compulsorily registrable document as per Section 16 of the Registration Act.

8. It is also observed that considering the affidavit of Maruti which is submitted in the Civil Court about the partition and also absence of signatures of villagers or relatives on the partition makes the case of oral partition doubtful. In conclusion it is observed that since the Mutation Entry No. 1006 is not made on the basis of registered document, which is required to be registered as per Section 17 of the Registration Act, the Mutation Entry No. 1006 deserves to be cancelled. Accordingly, the revision application has been allowed by State Minister (Revenue) and Mutation Entry No. 1006 has been cancelled.

9. It is the contention of learned advocate for the

petitioners that during the proceedings of mutation entry, the suit which was filed by the present respondents was pending in the Civil Court. Now, said Regular Civil Suit No. 06/2004 has been decided by Civil Judge, Junior Division, Kaij on 19.10.2024 and it has been decided against the respondent No. 1. The suit is dismissed wherein the prayer for partition and possession has been rejected. In view of dismissal of suit, rights have accrued in favour of petitioners. Though, it is settled position of law that mutation entry do not confer title of the suit property, however, considering that the suit of respondent No. 1 which was filed for partition and separate possession has been dismissed, it can be one of the favorable consideration while deciding the present writ petition.

10. So far as finding recorded by State Minister (Revenue) regarding oral partition is concerned, according to him, oral partition is permissible under the Hindu Law. Oral partition between co-parceners is considered to be a valid partition and there are various judgments of Hon’ble Supreme Court on the said issue. He places reliance on the judgment of Hon’ble Supreme Court in the case of ***Digambar Adar Patil, v. Devram Girdhar Patil (died) and another***, AIR 1995 SC 1728

wherein it is categorically held that, under the Hindu Law it is not necessary that the partition should be effected by a registered partition deed. Even a family arrangement is enough to effectuate the partition between coparceners and to confer right to a separate share and enjoyment thereof. Therefore, according to him, in view of pronouncement of Supreme Court since it is an oral partition, there was no question of registration of document under the Registration Act. Hence, the finding recorded by the State Minister (Revenue) on that issue is contrary to the Supreme Court judgment.

11. So far as the procedure that was followed while making mutation entry is concerned, according to petitioners, the Additional Commissioner after taking into consideration the record and papers as well as orders of lower authorities has observed that lower revenue authorities have taken appropriate steps and sanctioned Mutation Entry No. 1006 as per partition deed in favour of revision petition as well as respondents. The proclamation has been issued by the revenue authority while sanctioning the entry which was certified. Therefore, the procedure followed by the revenue authorities cannot be faulted with. It is also further observed that if the respondent had any

objection regarding revenue entry he should have file objection to that effect. It is only upon the objection being raised within prescribed period it could have been referred to Tahshildar. It is further contended by the petitioners that so far as registration of document is concerned, the family arrangement does not need any registration. This view has been consistently taken by the Hon'ble Apex Court as well as High Court.

12. So far as objection regarding absence of witnesses to the partition deed and also the affidavit filed by father of petitioners in the Civil Court about non existence of partition deed is concerned, it is the contention of petitioners that the Circle Officer after receiving intimation on 01.02.1988 has approved the entry only after proclamation which was affixed on the *chavdi* and which did not receive any objection, the entry was certified on 23.02.1988. The disputed mutation entry had been taken on the basis of partition deed during the life time of the father. Though the State Minister (Revenue) while passing the order has relied on the affidavit filed by father in civil proceeding, fact remains that the father himself was present while taking the mutation entry and during his life time he has not challenged that entry. According to the petitioners, Mutation

Entry No. 1006 in the record of rights is based on the partition deed and unless and until partition deed is cancelled by competent Civil Court, revenue authorities have no jurisdiction and power to interfere with the ownership of parties. Therefore, unless and until Court of competent jurisdiction interferes with the revenue entry, the revenue entry is required to be maintained.

13. The petitioners have placed on record extract of disputed revenue entry No. 1006. In the first column serial of the entry is given along with name of Bhagwan, Tukaram and Narayan. Against their names, there is an endorsement of obtaining thumb impression as well as signatures. It reflects to the partition effected by Maruti Walekar in favour of Bhagwan, Narayan and Tukaram. The shares along with serial number are also mentioned in the next column. In the second column, in last portion of that column there is a statement that proclamation is made and no objections are received and after the signatures are endorsed on 18.02.1988.

14. Therefore, considering that all the parties in whose favour mutation entry have been recorded have themselves affixed their signatures and thumb impression. The presence of

the parties while accepting the mutation entry finds support from the said document. The document discloses that the procedure prescribed under Section 149 and 150 of Maharashtra Land Revenue Code gas been followed. Hence, according to the petitioners order passed by State Minister (Revenue) in revision deserves to be quashed and set aside by confirming the order passed by Additional Commissioner, Aurangabad as well as Mutation Entry No. 1006 dated 23.02.1988 be maintained.

15. Per contra, learned Senior Advocate Shri. Khandare opposes the writ petition. He submits that though the suit filed by respondents has been dismissed by the Trial Court, however, they have filed appeal challenging the order passed in Regular Civil Suit No. 6/2004. Therefore, merely on the basis of dismissal of suit of respondents, petitioners cannot claim benefit of order of dismissal. According to him while deciding present writ petition, this Court is exercising jurisdiction under Article 227 of the Constitution of India, the scope for interference with the order passed by subordinate Courts/authorities is very limited. It is only to the extent of deciding whether the authorities while passing the orders have committed any error on account of which the order impugned is required to be declared bad in law.

Learned Senior Advocate has relied on the observations made by Additional Collector, Ambajogai in his order dated 20.11.2013, he has observed that though the oral partition was made in the year 1976, the entry is certified on 23.02.1988. There is no explanation as to the what prevented the petitioners to take appropriate entry in the revenue record for 12 long years. He further points out that though it is claimed that there is partition, however, the application on the basis of which the mutation entry has been recorded, claiming that it is partition effected and therefore entry to be recorded does not bear signature or thumb impression. Therefore, it is apparent that defendants have in connivance with each other on the basis of fabricated and false documents managed to take Mutation Entry No. 1006. It is contrary to the procedure prescribed under Section 85 of the Maharashtra Land Revenue Code since petitioners and respondents are co-parceners, the partition should have been effected as provided under Section 85 of the Maharashtra Land Revenue Code.

16. Learned Senior Advocate contends that non adherence to the provisions of Registration Act as well as procedure prescribed under Section 85 of Maharashtra Land

Revenue Code have been violated by the petitioners and disputed entry is taken without following prescribed procedure. Learned Senior Advocate submits that the Additional Commissioner while passing the order has exceeded his jurisdiction by making reference to the pending civil proceeding between parties i.e. Regular Civil Suit No. 6/2004 filed by petitioners before Civil Judge, Junior Division, Kaij and as in the operative order observed that Mutation Entry No. 1006 sanctioned by lower revenue authority is confirmed till the decision of competent civil Court. Reliance placed by the authority on the decision of the pending suit is not at all proper and uncalled for. Learned Senior Advocate places reliance on the judgment of this Court in ***Nalini Onkar Patil (Smt) v. Girdhar Kashinath Patil & others***, 2002(2) Bom.C.R. 287 to contend that while making entries in the record of rights, Talathi is required to follow the procedure. While seeking change in entries, application must be accompanied by deed of transfer duly stamped and registered. According to him, in the present case since it was oral partition and subsequently it was on the application of father of respective parties partition has been effected, it is not permissible in view of judicial pronouncement mentioned herein above.

17. He further relies on judgment in ***Lakkoji Mohan Rao v. Lakkoji Viswa-nadham and others***, AIR 2012 Andhra Pradesh 110, which pertains to the provisions of Stamp Act and Registration Act. He relies on para 24 of the judgment, which reads thus;

> *"24. As discussed above, the document sought to be filed is nothing but a partition deed creating right and title in the lands said to have been allotted to the parties. It is settled law that registration of document which is to be required under Section 17(1)(b) of the Registration Act makes the document inadmissible in evidence. Under Section 49(c) of the Registration Act, no document required by Section 17 to be registered shall be received as evidence of any transaction affecting the said property unless it has been registered. Of course the proviso says that an unregistered document affecting immovable property and required to be registered, may be received as evidence of a contract in a suit for specific performance or as evidence of part performance of a contract for the purpose of section 53-A of the Transfer of Property Act or as evidence of any collateral transaction not required to be affected by registration of instrument."*

18. It is further contended that the power to adjudicate right of parties to immovable properties is vested in the Court and duly empowered authorities and not with the revenue officers acted under Section 149 and 150 of Maharashtra Land Revenue code. In support of his submission he places reliance on

judgment in case of ***Shrikant R. Sankanwar & others v. Krishna Balu Naukudkar***, 2003(3) Bom.C.R. 45. According to him, the only issue which can be dealt with by revenue authorities is of the actual possession of properties by giving due credence to documentary evidence. Learned Senior Advocate has relied on this judgment in support of his submission that enquiry contemplated under Section 150 in relation to application for mutation of entries is to ascertain whether the document produced reveal acquisition of right stated to have been acquired in the land in respect of which mutation of entry is sought for, and does not empower such Authorities to adjudicate upon the title and rights of the parties to the immovable proprieties.

19. After hearing the respective parties as has been correctly contended by learned Senior Advocate Shri. Khandare that scope of interference with the orders passed by Sub-ordinate Courts/Authorities in writ jurisdiction under Article 227 of Constitution of India is limited, therefore, in view of limited powers of interference with the orders passed by Sub-ordinate Courts/Authorities, I have to decide correctness of the order passed by State Minister (Revenue). More so, in view of conflicting orders passed by Sub-ordinate revenue authorities,

the first issue which the State Minister (Revenue) has decided is the correctness of revenue entry certified on 23.02.1988. The extract of mutation entry is placed on record. Upon going through the entry it is evident that the petitioners, respondents and their father were very much present before the revenue authority and they have affixed their signatures in the record of mutation entry. It is recorded in that column that a mutation is taken as per partition deed in favour of revision petitioner as well as respondents ,and the Talathi not at all acted in hasty manner. After receipt of information, though he has recorded it on same day, it was approved and certified by him on 23.02.1988, after making due enquiry. The proclamation has been issued by the concerned authority about sanctioning disputed entry in the village and since no objection was received the mutation entry has been sanctioned by him. Therefore, there is no substance in the allegation that there is any illegality committed by the revenue authorities. If the respondents had any objection to the entry, they should have filed objection to the proclamation which is issued by the revenue authority within the prescribed period. Since no objection was received mutation entry was certified.

20. As far as objection to initial oral partition deed and thereafter partition on the basis of application by father of

parties is concerned the useful reference can be made to judgment in the case of ***H. Vasanthi v. A. Santha (dead) through Lrs. And others***, 2023 LiveLaw SC 655, wherein the Hon'ble Supreme Court has observed that;

> *"We are alive to the principle that there is no prohibition to effect a partition otherwise than through an instrument in writing by duly complying with the requirement of law. In other words, the division may also be effected under a settlement or oral understanding."*

21. Learned advocate for the petitioners has also placed reliance on the judgment in the case of Digambar Patil (supra), wherein in paragraph 5, relevant portion relied upon by learned advocate for petitioners reads thus;

> *"The Tribunals below did not advert to the entries in the Record of Rights or to the factum of partition, while the High Court has taken this factor into consideration, which in our considered view had rightly been taken into account. The entries in the Record of Rights regarding the factum of partition is a relevant piece of documentary evidence in support of the oral evidence given by the respondent and his brother to prove the factum of partition. Even in the evidence of Ram Chander, he clearly stated that there was a partition but he could not give the date and year in which the partition was effected nor the deed of the partition was produced. Under the Hindu Law, it is not necessary that the partition should be effected by a registered partition deed. Even a family arrangement is enough to effectuate the partition between coparceners and to confer right to a separate share and enjoyment*

thereof."

22. Therefore, both the aforesaid judgments clearly lay down that there is no necessity of having written partition deed. So far as registration of partition deed is concerned, the State Minister (Revenue) has categorically observed that according to Section 17 of the Registration Act though the partition is by way of deed it is required to be reduced in writing on the stamp paper of Rs. 100/- and also compulsorily registered. The State Minister (Revenue) has also relied on judgment reported in AIR 1958 SC 807 in support of his finding regarding compulsory registration of document.

23. In the reported judgment of this Court in ***Arvind Yeshwant Deshpande vs. State of Maharashtra***, 2003 (3) Mh.LJ. 1039, this Court was faced with the similar situation wherein the oral partition was reduced into writing subsequently, mutation entry was taken as per oral partition. The Talathi had refused to take entry raising objection that deed which demonstrated oral partition is not registered document and therefore, application of the petitioner for mutation was not allowed. Argument of the petitioner in the said case was accepted by the Court, wherein it was argued that joint family property received by co-parceners

in partition is not a transfer and for this purpose he had placed reliance on judgment in the case of Digambar Patil (supra). By placing reliance on the said judgment, this Court given a finding that *"property received by the coparcener in the partition of joint Hindu family property is not a transfer and, therefore, registration of transfer deed is not necessary*."

24. In view of the observations made in the above said judgment in Arvind Deshpande (supra), the finding of State Minister (Revenue) becomes unsustainable.

25. So far as observation regarding affidavit filed by Maruti in the pending suit as well as absence of signatures of witnesses from village on the partition deed is concerned, as already observed herein above, petitioners have explained that the affidavit filed by their father was rejected by the Appellate Court and Maruti himself was present before the revenue authorities while effecting the mutation entry. Hence, doubt expressed by State Minister (Revenue) regarding veracity of partition deed would not survive. There is no irregularity or illegality committed while taking Mutation Entry No. 1006 by the revenue authority. Finally, the State Minister (Revenue) while recording his finding that mutation entry is not valid has

observed that since it is not registered document as per direction of Hon’ble Supreme Court, the entry is required to be quashed and set aside. Resultantly, the appeal has been allowed and Mutation Entry No. 1006 has been cancelled.

As has been observed herein above all the finding of State Minister (Revenue) are contrary to the judicial pronouncements as well as law governing the rights of co-parceners to receive shares in the partition by way of oral partition, which is reduced into writing and on the basis of which shares are allocated during life time of Maruti. As can be seen from various judicial pronouncements, oral partition is admissible. The partition deed under the Hindu Succession Act is not compulsorily registrable document and revenue authorities have followed the procedure prescribed as contemplated under Section 149 and 150 of Maharashtra Land Revenue Code.

26. Hence, the order passed by State Minister (Revenue) which suffers from error of law deserves to be quashed and set aside. Hence, the following order:

ORDER

(i) Writ Petition is allowed.

(ii) Order dated 21.09.2015 passed by State Minister

(Revenue) in case No. Appeal/2015/C.N.84/J-7A is hereby quashed and set aside.

(iii) Order dated 21.11.2014 passed by Additional Commissioner, Aurangabad Division, Aurangabad in case No. ROR/REV/602/2013/B is confirmed.

(iv) Writ Petition stands disposed of.

(MANJUSHA DESHPANDE, J.)

. The judgment in the matter was pronounced in the morning session. In the afternoon session, learned Advocate for respondent makes a request that the effect of the order may kindly be stayed for further period of four weeks as the respondent proposes to challenge the order before the Hon'ble Supreme Court.

Hence, considering the request made by learned Advocate for respondent, the effect of the order shall stand stayed for a period of four weeks.

(MANJUSHA DESHPANDE, J.)