



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 15504 OF 2025

1. Manohar S/o. Bhagaji Gaikwad
Age : 59 years, Occ. Labour
R/o. Rampur,
Tq. & Dist. Aurangabad

----PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Department of Revenue and Forest,
Mantralaya Mumbai.,
2. The Divisional Commissioner Chhatrapati Sambhajinagar,
Marathwada Region at Chhatrapati Sambhajinagar.
3. District Collector,
Chhatrapati Sambhajinagar
Collector office At Chhatrapati Sambhajinagar
4. The Joint District Registrar, Class-I,
@ Collector Stamps,
Chhatrapati Sambhajinagar
Collector office At Chhatrapati Sambhajinagar.
5. The Sub Divisional Officer,
Chhatrapati Sambhajinagar
6. The Tahsildar
Chhatrapati Sambhajinagar
7. The Circle Officer,
Circle Chikalthana,
Tq. & Dist : Chhatrapati Sambhajinagar.
8. The Talathi,
Talathi Saja, Zalta
Tq. & Dist: Chhatrapati Sambhajinagar.

---RESPONDENTS

Mr. I. K. Wagh, Advocate for petitioner
Mr. S. B. Pulkundwar, AGP for respondent-State

**CORAM : Smt. Vibha Kankanwadi &
Hiten S. Venegavkar, JJ.**

DATE : 12th February, 2026

Judgment (PER : Hiten S. Venegavkar, J.) :-

1. The petitioner has invoked the writ jurisdiction under Article 226 to assail the communication/order dated 06.05.2025 issued by Respondent No.4, the Joint District Registrar (Class I) and Collector Stamps, Chhatrapati Sambhaji Nagar, whereby the petitioner has been called upon to pay stamp duty quantified at Rs. 5,700/- and a further amount described as penalty/fine of Rs. 22,800/-, aggregating to Rs. 28,500/-, as a condition precedent for registration of the document described by the petitioner as a "compromise decree".

2. The material facts, as emerge from the pleadings and documents placed on record, are that the petitioner had instituted Regular Civil Suit No. 235 of 2004 before the Civil Judge, Junior Division, Aurangabad seeking a decree of perpetual injunction against the defendant therein, who is the petitioner's father, restraining him from alienating, transferring or creating third party interest in agricultural land bearing Gut No.2 (popularly described as "Mali"), situated at village Jawarpur, Taluka and District Aurangabad, admeasuring 85 R. During pendency of the suit the parties tendered a compromise pursis. The compromise terms, in substance, record that the defendant would

"surrender"/give to the petitioner a portion of land admeasuring 85 R along with trees, and that the petitioner would pay consideration of Rs. 50,000/- to the defendant. It is the petitioner's case that the consideration was paid and that, on the basis of the compromise, a decree came to be drawn on 14.07.2004.

3. After the decree, the petitioner approached the revenue authorities for mutation and entry of his name in the revenue record in respect of the 85 R portion claimed by him. The record indicates that though directions were issued by the Tahsildar on 06.02.2023, to the Talathi to take steps to enter the petitioner's name in terms of the compromise decree, and although a spot panchnama was prepared, mutation was not effected. The petitioner, thereafter, made a representation dated 30.10.2023. The Talathi, upon that representation, required the petitioner to have the compromise decree registered through the office of Respondent No. 4 (Stamp/Registration). The petitioner therefore applied on 12.12.2024 for registration of the compromise decree. Respondent No.4, by the impugned communication dated 06.05.2025, directed payment of stamp duty and penalty/fine, treating the document as chargeable under the relevant conveyance entry. This has led to the present petition.

4. Learned counsel for petitioner would submit that the

document in question is a compromise decree passed by a competent civil court and that Section 17(1) of the Registration Act, 1908 (for short "**the Act**") provides for compulsory registration but Section 17(2) of the Act carves out exceptions; and that a compromise decree, particularly where it recognizes/records the arrangement between parties, falls within the protective ambit of Section 17(2)(vi) of the Act and, therefore, does not require registration, and consequently cannot be subjected to stamp duty and penalty as demanded. Reliance is placed on the decision of the Supreme Court in ***Mukesh v. State of Madhya Pradesh & Anr.***, Civil Appeal No.14808 of 2024 (decided on 20 December 2024), to contend that a consent decree does not operate as a conveyance where it merely recognizes a pre-existing right and creates no new right, and that, in such circumstances, stamp duty cannot be demanded.

5. Per contra, the learned AGP, supporting Respondent No.4, submits that the compromise decree here is not one merely declaring or recognizing any pre-existing right of the petitioner. The original suit was one for injunction; it was not a suit for declaration of title or partition founded on admitted antecedent rights. The compromise terms, on their plain language, provide for transfer/surrender of ownership in favour of the petitioner upon payment of consideration of Rs. 50,000/- to the defendant-father. Such a transaction, though clothed in the form of a compromise decree, in substance creates for the first time a right, title

and interest in immovable property in favour of the petitioner for consideration and is, therefore, compulsorily registrable under Section 17(1)(b) and/or (c) of the Act. Once it is compulsorily registrable and is in the nature of a conveyance/transfer, stamp duty is attracted under the applicable stamp law; and the petitioner, having approached belatedly, cannot avoid the statutory consequences. The learned AGP places reliance on the settled exposition of Section 17(2)(vi) of the Act by the Supreme Court in **Bhoop Singh v. Ram Singh Major & Ors.**, (1995) 5 SCC 709, which cautions that the Court must examine whether the decree merely declares a pre-existing right or whether, under the decree/compromise, one party extinguishes his rights and creates rights in immovable property in favour of the other for the first time; if the latter, the document is compulsorily registrable, failing which it cannot be used to effectuate transfer and cannot be a device to avoid stamp duty and registration.

6. We have considered the rival submissions and perused the compromise pursis, the compromise decree and the impugned communication. The statutory scheme is clear. Section 17(1)(b) of the Act requires compulsory registration of non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest of the value of one hundred rupees and upwards, to or in immovable property; and

Section 17(1)(c) of the Act similarly covers non-testamentary instruments acknowledging receipt/payment of consideration on account of such creation/declaration/assignment etc. Section 17(2) of the Act then provides exemptions from clauses (b) and (c), and clause (vi) exempts “any decree or order of a Court”, with an important rider. The rider, as authoritatively explained, ensures that compromise decrees comprising immovable property other than that which is the subject-matter of the suit do not get the benefit of exemption; and, even where the property is the subject-matter of the suit, the court must still be astute to see whether the decree/compromise is being used as a device to create new rights for the first time so as to evade the law of registration and stamp duty.

7. In **Bhoop Singh** (supra), the Supreme Court held, in substance, that if the compromise memo/decreed extinguishes the rights of one party and confers right, title or interest in praesenti immovable property of value of Rs.100/- or upwards in favour of the other for the first time, it is compulsorily registrable; and that the exception in Section 17(2)(vi) of the Act is meant to cover decrees (including compromise decrees) that declare pre-existing rights and do not themselves create new rights, title or interest in praesenti, lest the decree become a vehicle to avoid registration and stamp duty. The Court further emphasized that it is the duty of the court to examine, in each case, whether parties had

pre-existing rights, or whether by compromise/consent one party has agreed/suffered to extinguish his right and thereby created rights in immovable property in favour of the other for the first time.

8. The later decision in **Mukesh** (supra) reiterates that the questions of registration and stamp duty are distinct; and that where a compromise/consent decree merely asserts and conveys a pre-existing title/right/interest of the successful party, and no new right is created through the consent decree, such decree would not operate as a conveyance and, in the facts of that case, stamp duty was held not payable and registration was held not required because the conditions of Section 17(2)(vi) were satisfied. At the same time, **Mukesh** (supra) does not dilute **Bhoop Singh** (supra); rather it applies the very same test pre-existing right versus first-time creation of rights and turns on its own facts.

9. Applying these settled principles to the present case, the nature of the original suit assumes significance. The petitioner's suit was for perpetual injunction restraining alienation/creation of third party interest. It was not framed as a suit for declaration of title, partition, or specific performance on the footing of an established entitlement to ownership of the suit land. The compromise pursis, on its plain reading as placed before this Court (and as noticed even by the stamp

authority), contains two features that are determinative: first, it records that the defendant would surrender/transfer his rights in the identified portion of the suit land in favour of the petitioner; secondly, it expressly makes the petitioner's entitlement dependent upon payment of consideration of Rs. 50,000/- to the defendant. These terms are not in the nature of a mere recognition of an already vested title of the petitioner. They embody, in substance, a bilateral bargain: extinguishment of the father's ownership/right and creation of ownership/right in favour of the son, for consideration. Such a bargain is the classic indicia of a transfer/conveyance in substance, even if the parties have embedded it in a compromise pursis and obtained a decree upon it.

10. Once the compromise decree is found to be the instrument by which right, title and interest in immovable property is created in praesenti for the first time in favour of the petitioner for consideration, the case falls squarely within the principle in **Bhoop Singh** (supra) that such a decree/compromise cannot be permitted to become a device to bypass registration and stamp duty, and must be treated as compulsorily registrable. The petitioner, therefore, cannot successfully invoke Section 17(2)(vi) as a blanket exemption merely because a civil court has drawn a decree on compromise. The exemption operates to protect bona fide decrees that merely declare pre-existing rights; it does not protect

decrees that themselves create new rights in immovable property for consideration.

11. The reliance on **Mukesh** (supra) is misplaced for additional reason as it proceeds on the finding, on those facts, that the consent decree only asserted pre-existing rights and did not create a new right, and therefore, would not operate as a conveyance. In the present matter, the compromise terms themselves demonstrate that title/ownership is being transferred upon payment of consideration; the petitioner has not been able to demonstrate that the compromise decree merely declared an already vested proprietary right of the petitioner in the 85 R portion. On the contrary, the transaction is structured as a transfer from father to son for consideration, which is precisely the species of compromise that **Bhoop Singh** (supra) cautions courts to scrutinize and, when necessary, to hold compulsorily registrable.

12. In that view of the matter, the impugned communication dated 06.05.2025, directing the petitioner to pay stamp duty (and consequential amounts as permissible under the applicable stamp/registration regime) prior to registration of the compromise decree, cannot be termed without jurisdiction or contrary to law. In writ jurisdiction, this Court does not sit as an appellate authority over valuation and computation, unless perversity or patent illegality is

shown. The petitioner's foundational challenge, namely that no stamp duty at all can be demanded because the document is a compromise decree, fails on the legal test laid down by the Supreme Court. Consequently, once the document is held to be compulsorily registrable and chargeable as a transfer/conveyance in substance, the petition must fail.

13. Accordingly, the writ petition stands dismissed.

14. There shall be no order as to costs.

(Hiten S. Venegavkar, J.)

(Smt. Vibha Kankanwadi, J.)

B. S. Joshi