

Gujarat High Court

Dahyabhai Chhitubhai Rathod vs State Of Gujarat Thro Secretary on 28 February, 2020

Bench: Sangeeta K. Vishen

C/SCA/8618/2011

CAV JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 8618 of 2011

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE SANGEETA K. VISHEN

=====

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law

as to the interpretation of the Constitution of India or any order made thereunder ?

===== DAHYABHAI
CHHITUBHAI RATHOD & 1 other(s) Versus STATE OF GUJARAT THRO SECRETARY & 9
other(s) =====
Appearance:

MR MP SHAH(2418) for the Petitioner(s) No. 1,2 MS. KRUTI M SHAH(2428) for the Petitioner(s)
No. 1,2 MS. VRUNDA SHAH, ASSISTANT GOVERNMENT PLEADER(1) for the MR CHETAN K
PANDYA(1973) for the Respondent(s) No. 10,5,6,7,8,9 RULE SERVED(64) for the Respondent(s)
N o . 1 , 1 0 , 2 , 3 , 4 , 5 , 6 , 7 , 8 , 9

===== CORAM:
HONOURABLE MS. JUSTICE SANGEETA K. VISHEN Date : 28/02/2020 CAV JUDGMENT

1. The present writ petition, has been filed under Articles 226 and 227 of the Constitution of India inter alia praying for quashing and setting aside the order dated 25.5.2011 passed by the Additional Secretary, Revenue Department (Appeals), Ahmedabad in Revision Application No.MVV/HKP/TP/8/2009 whereby, the revision application filed by the petitioners has been rejected.

2. The brief facts are as under:-

2.1 The agricultural lands bearing block numbers 17, 28, 20,345 and 1150 (hereinafter referred to as "the land in question") situated at village Valod, Taluka Valod, were in the name of Bai Parvati, widow of Umedsinh Nathusinh. Umedsinh Nathusinh predeceased Bai Parvati. The land in question was in possession of Bai Parvati, widow of Umedsinh Nathusinh since the year 1948. Somewhere in the year 1969, Regular Civil Suit No.198 of 1969 was filed by Bai Parvati, widow of Umedsinh Nathusinh before the court of Civil Judge (J.D.), Bardoli.

2.2 On 28.1.1971, a settlement purshis came to be executed between Bai Parvati, widow of Umedsinh on the one hand and Chhitubhai Nathubhai and Pratapsinh Nathubhai on the other wherein, it was agreed that an amount of Rs.13,151/- will be paid to Bai Parvati. It was agreed that out of the said amount, an amount of Rs.6,500/- will be paid on 28.1.1971 itself and out of the remainder amount of Rs.6,651/-, Rs.3,000/- will be paid on 31.10.1971 and Rs.3,651/- will be paid on 1.4.1972. Upon making such payment, Bai Parvati will execute a release deed and upon execution of the release deed, the land in question will be of the ownership of Chhitubhai Nathubhai and Pratapsinh Nathubhai and petitioners. The said settlement purshis was filed before the Civil Judge (J.D.), Bardoli with a request to draw a decree in terms of the said settlement. Accordingly, the Civil Judge (J.D.), drew the decree in terms of the settlement and passed a decree.

2.3 It appears that in the interregnum, execution proceedings were filed by Bai Parvati and as a result whereof, the remaining payment was made. Thereafter, on 27.5.1974 Bai Parvati executed a release deed in favour of the petitioners and others. In the said release deed, it has been categorically recorded that the payment of the total amount of Rs.13,151/- to Bai Parvati has been made and that Bai Parvati has released her right over the land in question. It has also been recorded that there is no dispute as regards any outstanding amount to be paid to Bai Parvati as per the decree. It is recorded in the said release deed that neither Bai Parvati nor her heirs will have any right of whatsoever nature over the land in question and even if any rights are claimed, the said rights will be invalidated by virtue of the said document. It further records that it will be the father of the petitioners and petitioners, who will have all the rights to use the property as the owner of the property. The said release deed has been registered with the office of the Sub-Registrar, Bardoli.

2.4 Bai Parvati died intestate on 5.12.1982 leaving behind the sole heir Laxmiben. In the year 2007, Laxmiben Umedsinh Thakor, daughter of Bai Parvati and Umedsinh Thakor, made an application to Talati-cum-Mantri along with pedhinama dated 25.7.2007, panchkyas, statement and affidavit inter alia requesting to enter her name as the only heir of Bai Parvati.

2.5 Apropos which, entry number 12838 was mutated in the revenue record on 26.4.2007 in favour of Laxmiben recording the heirship. Mutation of the said entry was objected to by the petitioners. The said entry number 12838 dated 26.4.2007 came to be registered in the dispute register and thereafter, notices came to be issued to the parties. The office of the Mamlatdar, Valod, District Tapi passed an order dated 7.2.2008 rejecting the objection application of the petitioners and certified the mutation entry number No.12838 dated 26.4.2007.

2.6 The Mamlatdar has observed that since the year 1948 the name of Bai Parvati widow of Umedsinh is reflected in the revenue record viz. village form No.7/12 and the same has been

continued as Kabjeddar, to which the petitioners neither have taken any objection nor have taken any steps for mutating their name in the revenue record. The Mamlatdar has further observed that the petitioners were aware about the fact that the revenue record carried the name of Bai Parvati. Moreover, the receipts of payment of land revenue also carried the name of Bai Parvati, widow of Umedsinh against which also, the petitioners have not raised any objection. The Mamlatdar has also observed that the only document on which the petitioners want their names to be mutated is the settlement arrived at before the Civil Court as well as the release deed. The Mamlatdar has further observed that the dispute being of the mutation of the entry and not either of possession or release deed, the petitioners should approach the competent court for appropriate relief. Finally the Mamlatdar observed that heirship is to be recorded on the basis of village form number 7/12 and ultimately, by the aforesaid order dated 7.2.2008, certified the entry number 12838 dated 26.4.2007.

2.7 Being aggrieved, the petitioners preferred an appeal before the Deputy Collector, Vyara, Songadh inter alia contending that the order dated 7.2.2008 passed by the Mamlatdar certifying the entry number 12838 is illegal and bad in law and deserves to be cancelled. It was also the case of the petitioners that the Mamlatdar disregarding the order passed by the learned Civil Court has certified the entry and on that ground also, the order deserves to be quashed and set aside. It was also contended that the land in question is of the ownership and in possession of the petitioners. In furtherance of the said contention, it has been stated that as a result of the settlement, which was arrived at between the parties, the decree was passed by the learned Civil Court in Regular Civil Suit No.198 of 1969. Thereafter, the release deed dated 27.5.1974 was executed by Bai Parvati relinquishing her right and the same was registered at serial number 2006 with the office of the Sub-Registrar, Bardoli and since thereafter, the land in question has been of the ownership and in possession of the fathers of the petitioners and after the death of the fathers of the petitioners, the land in question is in possession and ownership of the petitioners. It was also contended that the petitioners are making payment of revenue assessment and since Bai Parvati was not the owner of the land in question, the Mamlatdar committed a serious error in recording the entry and thus, the order dated 7.2.2008 passed by the Mamlatdar, Valod deserves to be quashed and set aside.

2.8 The Deputy Collector, Vyara, District Tapi after considering the written and oral submissions of the respective parties, concluded that Bai Parvati, widow of Umedsinh Thakor had entered into a settlement before the Civil Court in Regular Civil Suit No.198 of 1969 and a decree was passed on 28.1.1971 whereby, an amount was agreed to be paid. Bai Parvati had executed a release deed which was registered at serial number 2006 with the office of the Sub-Registrar and merely because petitioners have not taken any steps for mutating their names in the revenue record on the basis of the release deed, will not render the proceedings of the Civil Court null and void. The Deputy Collector also observed that Bai Parvati, widow of Umedsinh Nathubhai vide the release deed has agreed to handover the possession of the land in question and that the petitioners have been paying the land revenue since the years 1975 to 2007 and thus, in the revenue receipts, the said aspect has been recorded. Accordingly, the name of the petitioners were required to be mutated in the revenue record. The Deputy Collector, Vyara, vide its order dated 7.7.2008 allowed the appeal filed by the petitioners and quashed and set aside the order dated 7.2.2008 certifying the entry number 12838 dated 26.4.2007. The Deputy Collector ordered mutation of the names of the petitioners on the

basis of release deed.

2.9 The said order dated 7.7.2008 passed by the Deputy Collector, Vyara was challenged before the Collector, Tapi who, vide order dated 16.7.2009 quashed and set aside the order dated 7.7.2008 passed by the Deputy Collector, Vyara and confirmed the entry number 12838 dated 26.4.2007 certified by the Mamlatdar, Valod. The Collector observed that it was incumbent upon the petitioners to have taken necessary steps after the execution of the release deed; however, despite the passage of 34 years, the petitioners have not taken any steps in furtherance of the execution of the release deed. The Collector was of the opinion that the said release deed was document; however, it should have been a sale deed so that Government would have received full stamp duty. That the release deed not being a sale deed, the ownership cannot be determined. In such circumstances, the State Government has suffered a loss of stamp duty and registration fees. The Collector was also of the opinion that the order dated 7.7.2008 passed by the Deputy Collector, Vyara is not in consonance with the rules and the names of the parties cannot be mutated in the revenue records only on the basis of possession.

2.10 The Collector observed that the Deputy Collector, did not examine as to whether the mutation of the entry was on the basis of the heirship or on the basis of registered document and that the entry number 12838 dated 26.4.2007 was an entry of heirship and that the release deed was not for heirship. The release deed having not been implemented for more than 34 years, there are no reasons available to disturb the order of Mamlatdar, Valod, certifying the entry number 12838 dated 26.4.2007.

2.11 The order was challenged by the petitioners before the Additional Secretary, Revenue Department (Appeals) who, while rejecting the revision application of the petitioners, confirmed the order dated 16.7.2009 passed by the Collector, Tapi, Vyara. The Additional Secretary, Revenue Department (Appeals), concluded that though the release deed was executed beyond the period of 12 years, neither the factum of execution of the release deed nor of the decree has been mutated in the revenue record and thus, as per the Limitation Act, after a period of 34 years the order cannot be implemented. The petitioners have not got the release deed mutated in the revenue record and it is only when the heirship of Laxmiben has been posted that the petitioners have raised the issue and have tried to get the entry mutated in the revenue record. The Additional Secretary, Revenue Department (Appeals) has also observed that the Deputy Collector has not examined the issue of Limitation Act. It has also been observed that determination of the share will be within the purview of the Civil Court and that neither the Revenue Court nor the officers have any powers to determine such issue. It has also been observed that only on the basis of the release deed, the recording of the heirship cannot be denied.

2.12 Being aggrieved and dissatisfied, the petitioners have preferred the captioned writ petition with the aforementioned prayers.

3. Ms. Kruti M. Shah, learned advocate for the petitioners submitted that the Mamlatdar, Valod, while passing the order dated 7.2.2008 certifying the entry number 12838 dated 26.4.2007, has not considered the decree dated 28.1.1971 passed by the learned Civil Judge (J.D.), Bardoli as well as the

registered release deed dated 27.5.1974. It is submitted that the Mamlatdar ought to have considered the consequences of the release deed dated 27.5.1974, that is, that Bai Parvati upon executing the release deed had ceased to be the owner of the property and thus, there could not have been mutation of entry number 12838 dated 26.4.2007 in the revenue record.

3.1 It is further submitted that neither Bai Parvati nor Laxmiben and not even the respondents no.5 to 10 have ever challenged the veracity of the registered release deed dated 27.5.1974 and in the absence of any challenge to the registered release deed, the Mamlatdar ought not to have certified the entry number 12838 dated 26.4.2007 in the revenue record. It is further submitted that the factum of limitation weighed with the Mamlatdar in the first instance, Collector in the second and the Additional Secretary, Revenue Department (Appeals) in the third instance; however, the basis adopted by all the authorities is erroneous considering the fact that the proviso to section 135-C exempts the party from the obligation to report about the acquisition of the rights. It is thus submitted that there was no obligation on the part of the petitioners to have reported the acquisition of right. It is further submitted that undisputedly, the release deed is a registered document registered with the office of Sub-Registrar at serial number 2006 and the release deed being a registered document, it was the obligation on the part of the Mamlatdar to have taken note of such acquisition of right and consequent mutation of entry in the revenue record.

3.2 It is further submitted that even the Mamlatdar in the first instance, has accepted the factum that the land revenue has been paid by the petitioners. Having observed thus, the Mamlatdar could not have certified the entry number 12838 dated 26.4.2007 recording the heirship of the respondents no.5 to 10 in the revenue record. It is further submitted that all the authorities viz. the Mamlatdar, Valod in his order dated 7.2.2008, the Collector, Tapi in his order dated 16.7.2009 and the Additional Secretary, Revenue Department (Appeals) in his order dated 25.5.2011 committed an error in considering the delay of 34 years on the part of the petitioners. In fact, the aforesaid authorities ought to have considered the delay of 25 years on the part of the respondents no.5 to 10 in approaching the Mamlatdar. It is further submitted that the mutation of heirship after the period of 25 years in the revenue record, is nothing but a mala fide attempt on the part of the respondents no.5 to 10 only with a view to grabbing the land in question of which, the ancestors of the respondents had ceased to be the owner. It is further submitted that the respondents have submitted an application to the Mamlatdar; however, no reasons worth the name have been cited for approaching the Mamlatdar for mutation of the heirship of Bai Parvati after a period of 25 years inasmuch as, Bai Parvati, that is, mother of Laxmiben passed away way back on 5.12.1982. While drawing the attention of the court to the order dated 7.2.2008 passed by the Mamlatdar, Valod, it has been submitted that no satisfactory reasons are recorded by the Mamlatdar with respect to the delay of reporting the right of acquisition beyond a period of three months from the date of the death of Bai Parvati on 5.12.1982.

3.3 It is further submitted that the application made by the mother of the respondents no.5 to 10, that is, Laxmiben itself was time barred as per the provisions of section 135C of the Gujarat Land Revenue Code (hereinafter referred to as "the Code"). It is further submitted that the respondents no.1, 2 and 4 ought to have appreciated the fact that the petitioners became the legal owner by virtue of the decree of the court in terms of the compromise arrived at amongst the parties on 28.1.1971.

Clearly, the release deed dated 27.5.1974 was executed by Bai Parvati, widow of Umedsinh in favour of the legal heirs of the Chhitusinh Nathusinh, namely, Dahyabhai Chhitusinh, Chandrasinh Chhitusinh, Thakorbbhai Chhitusinh and Pratapsinh @ Dhirubhai Nathusinh confirming the receipt of an amount of Rs.13,151/- as per the consent terms.

3.4 It is further submitted that even as per the consent terms as well as the release deed dated 27.5.1974, the possession of the land in question was also handed over to the petitioners. It is further submitted that the respondents no.1, 2 and 4 ought to have appreciated the fact that the release deed was executed on the basis of the consent decree passed in Regular Civil Suit No.198 of 1969 and that it cannot be said that only on the basis of the release deed dated 27.5.1974, the petitioners are claiming ownership and possession. In fact, the consent decree dated 28.1.1971 read with the release deed dated 27.5.1974 clearly suggest that the petitioners have become the owners of the land in question and that the consent decree was binding upon both the parties, which has not been challenged either by the ancestors of the respondents no.5 to 10 or by them at any point of time.

3.5 Learned advocate for the petitioners placed reliance on the judgment in the case of Nathubhai Meraman Darji vs. Special Secretary (Appeals) reported in 1996(3) GCD 691. It is submitted that this court has held that second proviso to section 135C, inter alia exempts the purchaser from making report to the Village Accountant if such transaction is represented by a registered document and that in such circumstances, the question of following the procedure of section 135D of the Code would not arise and its suo motu cognizance is required to be taken by the Village Accountant for the purpose of its mutation in the concerned revenue record. It is further submitted that this court has observed and held that if such transaction is disputed, the disputing party will have to approach the competent civil court for annulling or avoiding such transaction as provided in section 31 of the Specific Relief Act, 1963. Thus, it is submitted that if at all the respondents no.5 to 10 or Bai Parvati had any grievance against the execution of the release deed dated 27.5.1974, they ought to have challenged it before the court of competent jurisdiction under the provisions of section 31 of the Specific Relief Act.

3.6 Reliance has also been placed on the judgment in the case of Radheshyam Developers vs. Official Liquidator of Shree Vallabh Glass Works Limited reported in 2011 JX(Guj) 662. While drawing the attention to paragraph 12, it is submitted that this court in the said judgment has also held that once the sale-deed has been executed in favour of the applicant, by virtue of the provisions contained in Section 135C of the Bombay Land Revenue Code it is obligatory on the part of the revenue authorities to effect necessary entries in the revenue record mutating the name of the applicant concerned. It is further submitted that it has also been held that procedure prescribed in section 135D of the Code is not required to be followed and that if there is any dispute with regard to mutation entry the disputing party should approach competent Civil Court for avoiding such transaction as provided in Section 31 of the Specific Relief Act, 1963. It is further submitted that this court has held that the revenue authority cannot dispute the validity of the transaction in RTS proceedings.

3.7 Further reliance has been placed on the judgment in the case of Balvantrai Ambaram Patel vs. State of Gujarat reported in 2014 JX (Guj) 1092 to submit that this court has taken a similar view to

the effect that in cases of claims for mutation, based on a registered document, the competent officer has to enter the name of the claimant- owner- right holder and that the revenue authority cannot insist for observing the requirements of Section 135D a priori and on that basis decline to enter the name in the revenue records. It has been held that the designated officer in charge of the said function has no jurisdiction to disregard the legal effect of the registered document, and cannot be permitted to do so even indirectly.

3.8 It is thus submitted that the orders dated 16.7.2009 passed by the Collector, Tapi and dated 25.5.2011 passed by the Additional Secretary, Revenue Department (Appeals) deserve to be quashed and set aside and the order dated 7.7.2008 passed by the Deputy Collector, Vyara deserves to be confirmed.

4. Per contra, Ms. Vrunda Shah, learned Assistant Government Pleader submitted that the respondents no.1, 2 and 4 were justified in passing the orders dated 25.5.2011, 16.7.2009 and 7.2.2008 respectively. It is further submitted that the petitioners, have not taken any steps after the execution of the release deed dated 27.5.1974 and thus, after a lapse of almost 34 years, it was not open to the petitioners to request for mutation of their names in the revenue record with respect to the land in question.

4.1 It is further submitted that the Deputy Collector, Vyara while setting aside the order dated 7.2.2008 passed by the Mamlatdar, Valod, certified the entry number 12838 dated 26.4.2007. It is further submitted that the Deputy Collector, Vyara ought not to have ordered mutation of entry recording the names of the petitioners only on the basis of the release deed dated 27.5.1974.

4.2 While supporting the order dated 16.7.2009, passed by the respondent No.2 Collector and order dated 25.5.2011 passed by the Additional Secretary, Revenue Department (Appeals), it is submitted that authorities below have rightly concluded that the petitioners did not take any steps for mutation of their names in the revenue record for 34 years and only when the respondents no.5 to 10 have initiated proceedings for mutation of the entry in the revenue record that the petitioners woke-up from slumber and agitated the issue of mutating their names in the revenue record on the basis of the release deed dated 27.5.1974.

5. Mr. Chetan K. Pandya, learned advocate for the respondents no.5 to 10 while vehemently opposing the writ petition submitted that the decree dated 28.1.1971 was a conditional decree. However, the conditions enumerated in the said conditional decree were not satisfied inasmuch as, the balance payment was never made to Bai Parvati and since the fathers of the petitioners failed to perform, the conditions enumerated in the decree, it cannot be enforced. It is further submitted that precisely for the said reason, the name of Bai Parvati continued in the revenue record. It is further submitted that though the parties agreed for payment of Rs.13,151/-; however, the petitioners did not make full payment as agreed in the civil suit and thus, their names were not entered in the revenue record. It is further submitted that if the decree was passed, then there was no requirement of executing the release deed and vice-versa. It is further submitted that the petitioners, ought to have executed the decree and decree having not been executed within a period of 12 years, now it will not be open to the petitioners to have mutated their names in the revenue record. It is

submitted that more than 12 years having passed after the judgment and decree, such decree cannot now be executed in view of Article 136 of the Limitation Act, 1963. Reliance has been placed on the judgments in the case of Antonysami vs. Arulanandam Pillai reported in (2001)9 SCC 658; Shyam Sunder Sarma vs. Pannalal Jaiswal reported in (2005)1 SCC 436; Dr. Chiranji Lal vs. Hari Das reported in (2005)10 SCC 746; and Ram Bachan Rai vs. Ram Udhar Rai reported in (2006)9 SCC 446.

5.1 It is submitted that the release deed itself is not competent to transfer the right, title and interest of the land in favour of the decree holder. It is further submitted that even otherwise also, after more than 12 years, the decree cannot be executed and thus, the action on the part of the petitioners suffers from the vice of delay and laches. It is also submitted that a bare perusal of the revenue receipts suggest that Bai Parvati was paying the land revenue. Had it been in the name of the petitioners, the land revenue would have been paid by them and not by Bai Parvati with respect to the land in question.

5.2 It is further submitted that as is evident from the record, since the year 1948, the land in question was in the name of Bai Parvati and continued till the respondents no.5 to 10 got their names mutated in the revenue record on 26.4.2007 vide entry number 12838. It is further submitted that it is only when Laxmiben submitted an application for recording the heirship and thereafter, the respondents no.5 to 10 that the petitioners raised the objection. Till that time, the petitioners have never raised any objection against the continuation of name of Bai Parvati in the revenue record despite the fact that there was a decree passed by the learned Civil Judge (J.D.) followed by the execution of release deed dated 27.5.1974 in favour of the petitioners.

5.3 It is submitted that since the petitioners did not make the payment, the execution proceedings were initiated before the competent court and precisely for the said reason, the name of Bai Parvati continued in the revenue record and subsequently, the names of the respondents no.5 to 10 being the heirs of Bai Parvati came to be entered in the revenue record in view of the provisions of the Code read with the provisions of Circular dated 3.2.2003. It is submitted that the respondents no.1, 2 and 4 having held in favour of the respondents no.5 to 10, this court in exercise of power under Article 227 of the Constitution of India may not reverse the findings of fact. It is further submitted that it is incumbent upon the petitioners to first prove that the ancestors of the petitioners had made full payment to Bai Parvati as agreed by initiating appropriate proceedings. It is also submitted that the release deed dated 27.5.1974 could have been executed only if the person claiming is a co-owner of the land otherwise there has to be sale deed executed.

6. While dealing with the controversy raised in the present writ petition, section 135C of the Code is worth referring to :

135C. Any person acquiring the right on any land by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or Certificate of No Dues made under sub-section (2) and (3) of section 125L and section 133(2), or otherwise any right as holder, occupant, owner, mortgagor, assignee of the rent thereof, shall make a report of such acquisition of such right, either manually or electronically, to the

designated officer within the period of three months from the date of such acquisition, and the said designated officer shall at once, give a written acknowledgment of the receipt of such report to the person making it :

Provided that where the person acquiring the right is a minor, or otherwise disqualified, his guardian or other person, having charge of his property, shall make the report to the designated officer :

Provided further that any person acquiring the right by virtue of a registered document shall be exempted from the obligation to report to the designated officer :
Explanation I.--The rights mentioned above include a mortgage without possession, but do not include an easement or a charge not amounting to a mortgage of the kind specified in section 100 of the Transfer of Property Act, 1882.

Explanation II.-A person in whose favour a mortgage is discharged or extinguished, or lease determines, acquires a right within the meaning of this section

7. Section 135C of the Code provides for reporting of acquisition of rights on any land by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise any right as holder, occupant, owner, mortgagee, assignee of the rent thereof, shall make a report of such acquisition of such right, either manually or electronically, to the designated officer within the period of three months from the date of such acquisition and the said designated officer shall at once, give a written acknowledgement of the receipt of such report to the person making it. Second proviso to section 135C envisages that any person acquiring the right by virtue of a registered document shall be exempted from the obligation to report to the designated officer.

8. Clearly, if any person acquires the right on any land inter alia by succession, survivorship, inheritance etc. then it is incumbent upon that person to make a report of such acquisition of such right either manually or electronically to the designated officer. As per the said provision, the obligation is on the person to report acquisition of such right within the period of three months from the date of such acquisition and further obligation on the designated officer to give written acknowledgement of the receipt of such report to the person making it. However, exception has been carved out in favour of any person acquiring right by virtue of registered document inasmuch as, the person is exempted from the obligation of reporting such acquisition.

9. At this juncture, few judgments of this court relied upon by the learned advocate for the petitioners are worth referring to.

10. In the case of Nathubhai Meraman Darji vs. Special Secretary (Appeals) (supra), this court while dealing with the second proviso to section 135C of the Code held that section 135C of the Code provides that any person acquiring interest inter alia by purchase of land has to report the sale transactions to the Village Accountant obviously for the purpose of effecting necessary mutation in the revenue record. This court further held that second proviso to section 135C exempts the purchaser from making such report to Village Accountant if such transaction is represented by a

registered document. This court has held that the Village Accountant is under an obligation to take note of the transaction suo motu on account of its registration according to the Indian Registration Act and question of following the procedure under the provisions of section 135D of the Code would not arise. This court, further held that if the transaction is disputed the disputing party shall approach the competent Civil Court for annulling or avoiding such transaction as provided in section 31 of the Specific Relief Act, 1963 and that it would not be open to the disputing party to dispute the validity of the transaction in the RTS proceedings. Relevant extract of paragraph 8 of the said judgment reads thus:-

"8. The Second Proviso thereto has exempted inter alia the purchaser from making such report to the Village Accountant if such transaction is represented by a registered document. It is an admitted position on record that the petitioner purchased the disputed land from the deceased by means of a registered sale deed. He was therefore not required to report that transaction to the Village Accountant. The Village Accountant was required to take note of that transaction on account of its registration according to the Indian Registration Act, 1908. In that case, the question of following the procedure of Section 135-D of the Code would not arise when a transaction is represented by a registered document, its suo motu cognizance is required to be taken by the Village Accountant for the purpose of its mutation in the concerned revenue record. If that transaction is disputed, the disputing party will have to approach the competent civil court for annulling or avoiding such transaction as provided in Sec. 31 of the Specific Relief Act, 1963. It would not be open to him to dispute the validity of the transaction in what is popularly known as the RTS proceedings. I think respondent No.3 was not justified in setting aside the entry at Annexure-A to this petition on the ground that the required notice under Sec. 135-D of the Code was not served to the deceased. I am of the opinion that the deceased was not required to be served with the notice under the said statutory provision."

11. In the case of Radheshyam Developers vs. Official Liquidator of Shree Vallabh Glass Works Limited (supra), this court while following the aforesaid principle held that once the sale deed has been executed in favour of the party, by virtue of the proviso contained in section 135C of the Code, it is obligatory on the part of the revenue authorities to effect necessary entry in the revenue record mutating the name of the party concerned and in such a situation, it is not necessary for the revenue authorities to follow the procedure prescribed in section 135D of the Code.

12. In another decision of this court in the case of Balvantrai Ambaram Patel vs. State of Gujarat (supra) it has been held that in the cases of claim for mutation based on a registered document, the competent officer has to enter the name of the claimant - owner - right holder and the revenue authorities cannot insist for observing the requirements of section 135D a priori and on that basis decline to enter the name in the revenue record. This court held that the designated officer in charge of the said function has no jurisdiction to disregard the legal effect of the registered document and cannot be permitted to do even indirectly. Paragraph 6 whereof reads as under.

"6. Therefore in all cases of claims for mutation based on a registered document, the competent officer has to be entered the name of the claimant-owner-right holder. The authority cannot insist for observing the requirements of Section 135-D apriori and on that basis declined to enter the name in the revenue records. The designated officer in charge of the said function has no jurisdiction to disregard the legal effect of the registered document, and he cannot be permitted to do so even indirectly. Once the petitioner purchased the land in question by virtue of registered sale deed, he is entitled to have his name mutated in the revenue records. The reasons given in the impugned order dated 04.02.2014 of the Mamlatdar for not mutating the entry and insisting for consent letters, etc. have no sanction of law and they do not hold good in light of the statutory provisions noted above."

13. Thus, the principle which has been laid down in the aforesaid judgments is that second proviso to section 135C, exempts the person concerned who has acquired the right by virtue of registered document from the obligation to report to the designated officer the acquisition of right and that the obligation is on the revenue authorities to take suo motu note of the transaction on account of its registration according to the Indian Registration Act, 1908 and shall mutate the transaction in the revenue record. Clearly, party acquiring right through registered document is exempted from the obligation of reporting the acquisition of the right to the designated officer and hence, there does not arise any question as regards the limitation, for taking steps for reporting the acquisition of the right to the designated officer. In the present case, undisputedly, pursuant to the decree dated 28.1.1971, a release deed dated 27.5.1974 came to be executed in favour of the petitioners which was duly registered with the office of the Sub-Registrar, Bardoli. Under the circumstances, by virtue of second proviso to section 135C of the Code, and as held by this court in the case of Nathubhai Meraman Darji (supra), the Village Accountant was required to take note of the transaction registered under the provisions of the Indian Registration Act, 1908 for the purpose of its mutation in the concerned revenue record.

14. In the present case, the Mamlatdar has observed that the petitioners have objected to the entry number 12838 dated 26.4.2007 recording the heirship of the respondents no.5 to 10 on the basis of the consent decree and the release deed dated 27.5.1974. That the name of Bai Parvati in the revenue record has been continued since the year 1948 as the occupant of the land and the petitioners neither have taken any objection against the continuation of the name of Bai Parvati in the revenue record nor have taken any steps for mutating their names in the revenue record despite they being aware of the name of Bai Parvati in the revenue record. The Mamlatdar has recorded that the factum of knowledge to the petitioners is strengthened by the fact that the land revenue receipts carry the endorsement to the effect that the land revenue has been paid by the petitioners. The Mamlatdar concluded that the petitioners did not take any objection against the continuation of the name of Bai Parvati in the revenue record and no steps were ever taken by the petitioners for mutation of their names in the revenue record and that the plea of the petitioners to mutate their names in the revenue record only on the basis of the consent decree as well as the release deed, cannot be accepted. The Mamlatdar further held that the entry of heirship is to be recorded on the basis of Village Form number 7/12 and accordingly, the Mamlatdar certified the entry number 12838 dated 26.4.2007 vide his order dated 7.2.2008.

15. It is pertinent to note that the Mamlatdar proceeded on an erroneous basis inasmuch as, in view of second proviso to section 135C of the Code read with the principle enunciated by this court in the aforesaid judgments, it was never the obligation of the petitioners to have reported the acquisition of right acquired by virtue of the registered release deed dated 27.5.1974. Concededly, the registered release deed relinquishing the right of Bai Parvati over the land in question has remained unchallenged.

16. The Deputy Collector vide order dated 7.7.2008, quashed and set aside the order dated 7.2.2008 passed by the Mamlatdar on the ground that Bai Parvati has entered into the settlement in the Regular Civil Suit No.198 of 1969 which has been culminated into the decree dated 28.1.1971 followed by the release deed dated 27.5.1974 which was registered with the office of the Sub-Registrar at serial number 2006 and even if the petitioners have not taken any steps for mutation of the entry of their names in the revenue record, that by itself would not nullify the proceedings before the Civil Court. The release deed dated 27.5.1974, categorically records that Bai Parvati has handed over the possession. Moreover, from the years 1975 to 2007, the land revenue receipts contain the names of the petitioners having paid land revenue for the original owner. The order dated 7.7.2008 of the Deputy Collector also records that the petitioners are in possession of the land in question for more than 30 years and on that basis also, the name of the petitioners are required to be mutated in the revenue record. The Deputy Collector while allowing the appeal of the petitioners, set aside the order dated 7.2.2008 of the Mamlatdar and accepted the plea of the petitioners for mutation of their names in the revenue record on the basis of the registered release deed dated 27.5.1974.

17. The Collector and the Additional Secretary, Revenue Department (Appeals), while setting aside the order dated 7.7.2008 of the Deputy Collector held that the petitioners even after 34 years of the execution of the release deed, have not taken any steps and that the release deed is only a document and the document should have been the document for sale. The release deed not being a document of sale, the ownership cannot be determined. Further, the State Government has suffered a loss of stamp duty as well as the registration fee. The Collector, raised a doubt with respect to the execution of the release deed dated 27.5.1974. The Collector further observed that the order dated 7.7.2008 is not in consonance with the rules of record of rights and the names cannot be mutated only on the basis of possession. The Collector observed that before mutation of names in the revenue record, it was necessary to determine as to whether the right has been acquired through heirship or on the basis of the registered document and that the Deputy Collector has not considered such aspects. It is further observed that the entry number 12838 dated 26.4.2007 is on the basis of heirship whereas, the release deed dated 27.5.1974 is not providing for heirship. The release deed has not been implemented for more than 34 years and thus, the proceedings initiated by the Mamlatdar under the provisions of section 135 of the Code, cannot be faulted and the entry number 12838 dated 26.4.2007 certified vide order dated 7.2.2008 does not warrant interference. The Collector, while setting aside the order dated 7.7.2008 of the Deputy Collector, confirmed the order dated 7.2.2008 passed by the Mamlatdar.

18. Apparently, the contents of the order dated 16.7.2009 passed by the Collector, Vyara clearly suggests that the Collector also did not consider the effect of proviso to section 135C of the Code

which as aforesaid, does not obligate the party to report the acquired right by virtue of the registered document. The Collector clearly erred in observing that the petitioners have not taken any steps in furtherance of the registered release deed dated 27.5.1974 despite the expiry of 34 years. What has been lost sight of by the Collector is that as per the second proviso to section 135C, it was the obligation of the Village Accountant to have mutated the names of the petitioners in the revenue record on the basis of the release deed dated 27.5.1974, which was very much registered with the office of the Sub-Registrar, Bardoli. Since there was no obligation on the part of the petitioners to have reported the acquisition of the right to the Village Accountant, there arises no question of the petitioners having not taken any steps in furtherance of the registered release deed dated 27.5.1974; however, when the registered document was before the authorities, it was rather incumbent upon the authorities to have taken cognizance for the purpose of its mutation in the revenue record.

19. The Additional Secretary, Revenue Department (Appeals), while confirming the order dated 16.7.2009 of the Collector, Vyara, held that as per the Limitation Act, after the expiry of 34 years, the order/decreed passed by the Civil Court cannot be implemented. The Additional Secretary, Revenue Department (Appeals) also observed that the petitioners have not got their names mutated in the revenue record at the relevant point of time on the basis of the release deed dated 27.5.1974. The Additional Secretary, Revenue Department (Appeals) while finding fault with the order of the Deputy Collector held that the Deputy Collector ought to have examined the aspect of Limitation Act and having not done so, the order of the Deputy Collector is illegal and cannot be sustained. The Additional Secretary, Revenue Department (Appeals) observed that so far as the petitioners have any share in the property or not, is concerned the said issue can be decided by the Civil Court and that the revenue authorities have no right to determine the said aspect. The Additional Secretary, Revenue Department (Appeals) also observed that the heirship of Laxmiben and the respondent nos.5 to 10 cannot be denied merely on the basis of the release deed.

20. The observations of the Additional Secretary, Revenue Department (Appeals) are also erroneous, inasmuch as, the Additional Secretary, Revenue Department (Appeals) also failed to consider the second proviso to section 135C of the Code, which exempts any person from the obligation to report the acquisition of right by virtue of registered document to the designated officer. Moreover, the authorities below have imported the concept of limitation without any basis inasmuch as, the petitioners are not seeking enforcement of any decree, but are merely asserting the right which according to them has crystallised in their favour in view of the release deed dated 27.5.1974. In the present case, concededly, the registered release deed dated 27.5.1974 is in favour of the petitioners and the petitioners have acquired the right over the land in question and the right of Bai Parvati ceased to exist after the decree dated 28.1.1971 read with the registered release deed dated 27.5.1974. More so, firstly because the decree has attained finality in absence of any challenge thereto and secondly, the execution and existence of the registered release deed is not disputed, except the aspect of non-payment of consideration. Evidently the release deed, contents whereof, records the aspect of full payment and hence that argument is also unavailable to the respondents no.5 to 10.

21. Adverting to the contentions raised by the learned counsel for the respondents no.5 to 10, it may be noted that they do not deserve acceptance for the reasons discussed hereinbelow.

21.1 It is contended that the petitioners did not act as per the decree dated 28.1.1971 for, the payment as agreed to be paid to Bai Parvati was not paid and only payment of Rs.6,500/- was made and remaining payment of Rs.6,651/- out of Rs.13,151/- remained unpaid. In such an eventuality, the conditions of the decree having not been honoured, it cannot be said that the petitioners have acquired the right over the land in question. Though the contention has been raised with all vehemence; however, the same has not been substantiated by any document on the record. On the contrary, the release deed dated 27.5.1974, which was executed by Bai Parvati categorically records to the effect that an amount of Rs.13,151/- which was required to be paid pursuant to the decree dated 28.1.1971 has already been paid and received by Bai Parvati and now nothing remains to be paid. It further records that the said amount having been paid, the right and interest over the property is relinquished. It further records that no right, title or interest of either Bai Parvati or her heirs is there over the land in question and if any claim is laid, the same shall be treated as nullified by the present document, that is, the release deed dated 27.5.1974. The release deed also records that the petitioners will have the absolute ownership right over the land in question. Thus, the contention that since the full payment was not made the decree cannot be enforced, is fallacious and does not merit acceptance. If at all there is and was any grievance on the part of the respondents no.5 to 10 against the enforcement of the conditions contained in the release deed, as held in the judgment in the case of Nathubhai Meraman Darji vs. Special Secretary (Appeals) (supra), it would be for the disputing party to take out proceedings under the provisions of section 31 of the Specific Relief Act. In the present case, admittedly, the respondents no.5 to 10 have not challenged either the decree or the release deed and to that extent, both the decree dated 28.1.1971 as aforesaid has attained finality and the release deed is binding on the parties including the respondents no.5 to 10 in absence of any challenge to it.

21.2 It has also been contended by the learned advocate for the respondents that the action of the petitioners is barred by the limitation inasmuch as, the petitioners have not enforced the decree dated 28.1.1971 within a period of 12 years. The contention raised by the respondents no.5 to 10 that the judgment and decree now cannot be executed after a period of more than 12 years in view of Article 136 of the Limitation Act is an attempt in futility for, the decree was passed on 28.1.1971 and in furtherance of the said decree, a release deed dated 27.5.1974 was executed by Bai Parvati. As discussed hereinabove, the decree was a result of the settlement apropos which, the release deed dated 27.5.1974 was executed which was subsequently registered with the office of the Sub-Registrar, Bardoli. Pertinently, the decree was honoured by executing release deed and thus, there arises no question on the part of the petitioners to have sought for execution of the decree dated 28.1.1971 and neither are they seeking execution of the decree so as to attract the provisions of the law of limitation. Resultantly, there arises no question of action of the petitioners of opposing the mutation of entry in favour of the respondents no.5 to 10 being barred by limitation.

22. The reliance placed by the respondents no.5 to 10 on the judgments deserve brief mention.

22.1 In the case of Antonysami vs. Arulanandam Pillai (supra), specified date was mentioned in the decree for the judgment debtor to carry out the directions i.e. on or before 23.9.1966 and if he fails to carry out the direction it was open to the decree holder to seek help of the executing court for measurement and demarcation of the land and thereafter, to get sale deed executed by the judgment

debtor, if possible or by the court. In the said case, the decree holder chose to execute the decree somewhere in the year April, 1980 and in the said context, the Apex Court while referring to the provisions of Article 136 of the Limitation Act held that the execution petition filed in the year 1980 was beyond the period of 12 years prescribed under the Act.

22.2 The case of Shyam Sunder Sarma vs. Pannalal Jaiswal (supra) deals with the provision of Order 9 Rule 13 of the Code of Civil Procedure, 1908. It nowhere lays down any proposition of law with respect to Article 136 of the Limitation Act except recording the submission of the learned counsel placing reliance on the decisions rendered in the context of Article 136 of the Limitation Act and thus, the reliance placed on the said judgment is misconceived.

22.3 In the case of Dr. Chiranji Lal vs. Hari Das (supra), the issue before the Apex Court was when would the period of limitation for execution of a decree becomes enforceable i.e. from the date when the decree is made or when the decree is engrossed on the stamp paper which, out of these two, would be the starting point of limitation. The appellant therein had raised objection against the execution application being filed by the respondent therein on the ground that the same is barred by limitation in view of Article 136 of the Limitation Act. In the said case, the decree was passed on 7.8.1981 in favour of the predecessors in interest of the respondents therein and the stamp papers required for engrossing the decree were furnished by the respondents therein on 25.5.1982 and it is thereafter, the decree was engrossed. In fact, there was no order of the court directing the parties to furnish stamp papers for the purposes of engrossing the decree. The contention raised therein by the respondents was to the effect that a decree was passed in a suit for partition cannot be acted upon which means it cannot be enforced until engrossed on stamp paper. The Apex Court while allowing the appeal held that the starting of the period of limitation for execution of a partition decree cannot be made contingent upon the engrossment of the decree on the stamp paper. The said judgment cannot be made applicable to the facts of the present case for the reason that in the present case, the petitioners are not enforcing or executing the decree, but as discussed hereinabove, the petitioners are asserting their right arising from the release deed dated 27.5.1974.

22.4 Similarly, in the case of Ram Bachan Rai vs. Ram Udhar Rai (supra), ex parte decree was passed in the year 1976; whereas, an application for execution was filed in the year 1991. The Apex Court, while pressing the provisions of Article 136 of the Limitation Act held that the application for execution filed in the year 1991 was clearly time barred having been filed beyond the period of 12 years prescribed under Article 136 of the Limitation Act.

22.5 Thus, the reliance placed on the judgments by the respondents no.5 to 10 have no relevance to the facts of the present case, considering the fact that the petitioners are not seeking execution of the decree so as to attract the Article 136 of the Limitation Act.

23. In view of what is discussed hereinabove, the stand taken by the Mamlatdar vide order dated 7.2.2008, by the Collector vide order dated 16.7.2009 and the Additional Secretary, Revenue Department (Appeals) vide order dated 25.5.2011, is illegal and bad in law and deserves to be quashed and set aside. For the foregoing reasons, the order dated 16.7.2009 passed by the Collector, Vyara and order dated 25.5.2011 passed by the Additional Secretary, Revenue Department (Appeals)

are hereby quashed and set aside and the order dated 7.7.2008 of the Deputy Collector is hereby confirmed.

24. It is clarified that this court has not gone into the validity or otherwise of the release deed dated 27.5.1974. The trial court shall decide the Regular Civil Suit no.5 of 2012 which has been filed by the petitioners and pending before the court of Principal Civil Judge (Senior Division), Valod, in accordance with law and without being influenced by the observations made in the present judgment, where the correctness of the orders passed by the authorities below in the revenue proceedings under the Code, were under consideration.

25. The petition, therefore, succeeds and is accordingly allowed. Rule is made absolute. No order as to costs.

(SANGEETA K. VISHEN,J) BINOY B PILLAI