

(2024) 10 GUJ CK 0070

In the Gujarat High Court

Case No : Letters Patent Appeal No. 689, 864 of 2023, Special Civil Application No. 387 of 2021

State of Gujarat & Ors. Versus

APPELLANT

Vs

Shalin Mukeshbhai Patel

RESPONDENT

Date of Decision : 30-10-2024

Acts Referred:

Gujarat Stamp Act, 1958 — Section 2(c), 2(g)(ii), 5, 33, 39(1)(b), 46, 53(1), 57, Article 20, 49(b)
Income Tax Act, 1961 — Section 2(31), 80
Indian Stamp Act, 1899 — Section 10(2)

Citation : (2024) 10 GUJ CK 0070

Hon'ble Judges : Sunita Agarwal, J;Pranav Trivedi, J

Bench : Division Bench

Advocate : Krutik Parikh, R V Deshmukh

Final Decision : Allowed

Judgement

Sunita Agarwal, J

1. Letters Patent Appeal No. 689 of 2023 is filed by the State against the judgment and order dated 12.12.2022 passed by the learned Single Judge in holding that the orders dated 02.07.2019 and 03.06.2020 passed by the authorities under the Gujarat Stamp Act' 1958 are illegal and hence liable to be set aside, further that the money recovered by the State respondents from the original petitioners is to be refunded. Whereas, the Letters Patent Appeal No.864 of 2023, is a cross-appeal preferred by the original Writ petitioner to modify the Judgment of the learned Single Judge dated 12.12.2022 to the extent of granting 12% interest on the amount directed to be refunded by the State respondents. Hence, both the appeals are heard together and decided by this common judgement and order.

2. The original petitioner namely the respondent herein had filed the writ petition challenging the orders passed by the Stamp authorities in impounding two

documents termed as release documents treating them as “transaction for-say” and imposing stamp duty on it, based on the market price.

3. Certain facts relevant to decide the controversy, at hands, are that the father of the original petitioner namely Mr. Mukeshbhai Hirabhai Patel purchased two parcels of agricultural lands in Zundal Village, District Gandhinagar admeasuring 0-51-60 sq.mts as Survey No. 11/1, and land admeasuring 0-54-62 sq.mts in Survey No. 11/2, by way of two registered sale deeds dated 24.02.2000. The lands in question were converted into Non-agricultural lands. On 26.03.2013 and 07.07.2013, the father of the petitioner declared the pedigree stating that the Joint Hindu family in the name of Mukeshbhai Hirabhai Patel (HUF) comprised of himself, his wife, a daughter and a son (who is the original petitioner herein). In the year 2015, the names of the wife, daughter and son were mutated in the revenue records in Form – 6 and Form – 7/12 along with the owner – father namely Mr. Mukesh Patel, on an application filed by the owner father during his lifetime.

4. Vide two Release Deeds dated 27.12.2016, executed on a stamp paper of Rs.100/-, the daughter had relinquished her right to the extent of her share in favour of the son (namely her brother, i.e. the petitioner herein) in respect of the two lands namely Survey No. 11/1 and Survey No. 11/2. The said documents executed as Release deeds were presented before the Sub-Registrar for registration when show-cause notices dated 08.05.2017 and 14.09.2017 were issued impounding the documents under Section 33 of the Gujarat Stamp Act’ 1958. The stamp authorities opined that the stamp duty of Rs.100/-was inadequate and the correct stamp duty was to be levied on the basis of the market value of the relinquished portion of the share of the executant in the lands in question.

5. Before the learned Single Judge, it was argued by the learned counsel for the original petitioner that the instruments of release presented for registration cannot attract the stamp duty under Schedule I of Article 20 as a ‘conveyance’ by treating the said documents falling within the ambit of Article 49 (b) of Schedule I read with Section 2(c), Section 5 and Section 39(1)(b) of the Gujarat Stamp Act’ 1958.

6. It was argued that the release deeds relinquishing her share was executed by the sister in favour of her real brother out of love and affection and without any consideration and therefore, it cannot be said to be a transaction or conveyance for the purposes of levy of stamp duty at the market value. As regards the mutation entries of entering the names of three family members in the revenue records during the lifetime of the owner, it was argued that the mutation entries are made only for fiscal purposes and they cannot be considered as transaction or conveyance in favour of the persons, whose names were recorded in the revenue record. Moreover, the lands in question were belonging to HUF and the entry of the name of the members of HUF in the revenue record would not create any new right, title and interest in favour of those persons.

7. On behalf of the State respondents, it was argued before the learned Single Judge that the lands in question were self-acquired properties and the instrument of transfer, though termed as release, executed by one person in favour of another of his share in the joint property would amount to conveyance and hence, levy of stamp duty was justifiable.

8. The learned Single Judge, while posing a question to itself that whether a release deed purported to release the share or the interest of property by one persons in favour of another would amount to the documents chargeable under Article 49 (b) of the Gujarat Stamp Act' 1958, has proceeded to note various decisions of the Apex Court, Madras High Court, wherein it was held that a release, in law, may be effected either for consideration or for no consideration. But in either case, if transaction operates as a relinquishment or renunciation on a claim by one person against another, it is a release. It cannot be said to be conveyance for consideration and therefore, stamp duty cannot be charged in accordance with the reasoning given in the orders impugned. It was held that in light of the law discussed therein as settled from various decisions of the High Court, the impugned orders were liable to be quashed.

9. Upon a perusal of the judgment, extract of which has been extensively quoted by the learned Single Judge in the judgment impugned, it shows that the judgment of the Madras High Court in the Chief Controlling Revenue Authority, Board of Revenue, Madras VS Dr. K. Manjunatha Rai., [1976 SCC OnLine Mad 98], was in the fact situation where an instrument was executed by the husband in favour of his wife as a deed of release (relinquishment), wherein recital was that the husband had purchased the vacant lands and the entire sale consideration was borrowed as loan from the Vijaya Bank, jointly by husband himself and wife in their names. The properties of the wife consisting of agricultural lands were offered as the security to the Bank and besides that, the bank was given other personal security, both of the husband and the wife. The release instrument contained recital that subsequent to the purchase of the properties in question, the wife borrowed some money from her sister and utilized the same for discharging the portions of the debt due to both of them by payment to Vijaya Bank. The balance amount owing to the bank was discharged subsequently by the husband and wife, both out of the proceeds of joint borrowing by them from the Indian Bank.

10. It was further noted that apart from the property in question, certain adjacent lands were acquired by the husband and wife jointly by way of an assignment from the State Government in the year 1954. The instrument of release contained recital that even at the time of original purchase of the property in the year 1947, it was agreed that out of the total area of 27 Grounds, a block to the extent of 10 Grounds should be taken by the wife for her own exclusive benefit. This agreement was actually implemented and the wife took possession of a portion of the land, subdivided the Block No. 110 purchased by them jointly and put up a building thereon at her own cost in the year 1954-55.

Further the wife had ever since been in possession and enjoyment of the subdivided door No. 110, paying assessment and taxes herself leasing the property and enjoying the rents and profits therefrom. The action and execution of the release deed by the respondent in favour of his wife was stated to be to regularize the title of the wife to her portion of the property which she had been enjoying for several years in her own right. The recital in the deed of release that the husband was clearly desirous of acceding to the request of his wife in view of the fact that nominal title under the sale deed stood solely in his name.

11. With these recitals, the deed of release declared that the releaser had no claim or interest at the site specified in the schedule attached to the deed, which had description and detail of the subdivision of the property bearing door No. 110, Mount Road, Madras.

12. In these facts and circumstances of the case, it was held by the Madras High Court therein that the clear recital in the release deed does not admit of any doubt as to the nature of transaction that it was a release, pure and simple. It was held that this conclusion must fairly stem from the recitals contained in the deed. A clear recital in the release deed that even at the time of original purchase, it was agreed between the husband and wife that 10 out of 27 grounds were for wife's benefit, was noted.

13. It was, thus, held therein that though it is true that the original purchase of the property to the extent of 27 grounds in the deed in question dated 14.03.1947, was not in the joint name of the parties, nor it is stated to be in the joint benefit of both husband and wife but clear recital in the release deed that even at the time of original purchase, it was agreed between the husband and wife that 10 out of 27 grounds were for wife's benefit, cannot have been brushed aside.

14. It was observed that the Court should have gathered the intention from the document which is shown by the fact that a better part of purchase consideration of the property was borrowed on the joint credit of both husband and wife from the Vijaya Bank and later from the Indian Bank. Besides, the wife had repaid the loan from resources found by her alone. In these circumstances, it was held that there can be no doubt that even from the start, the respondents and the wife were co-owners of the property and it was only as a co-owner, that the wife raised superstructure on the portion of the property at her own cost and thereafter, was enjoying the income from the property and paying the taxes herself.

15. In such facts and circumstances of the said case, it was held that the Stamp authorities, while impounding the document holding it deficient in stamp duty did not really show much on the recitals which the documents contain, rather embark on an examination of the factum of sale and drew inference that the husband alone was the purchaser to the entire extent of property of 27 Grounds. It was held that it was not open to the Stamp authorities to question the recitals

in the release deed in absence of any material to the contrary.

16. In another decision of the Delhi High Court in the case of Hari Kapoor Vs. South Delhi Municipal Corporation [2019 SCC OnLine Del 11153], relied by the learned Single judge in Paragraph '7.2' of the judgment, while relying upon the judgment of the Madras High Court in the case of Dr. K. Manjunatha Rai.(supra), it was held that renunciation must be in favour of a person who already has title to the estate, the effect of which is only to enlarge the existing right and share. Renunciation does not vest in a person, a title where it did not exist.

17. It was observed that a release can only enlarge an existing title of the releasee and there can be no release in favour of a releasee, who has no interest in the property. Referring to the decision of the Delhi High Court and the Supreme Court, it was noted by the learned Single Judge that a deed of release cannot fall within the definition of 'Conveyance'. It is only a release by which one of the co-owners relinquishes his share in favour of the other. It is only a release of interest and therefore, such a document cannot be said to be susceptible to be charged as a conveyance.

18. The relevant portions of the judgment of the Delhi High Court referring to the decision of the Apex Court in Ranganayakamma v. K.S. Prakash, [(2008) 15 SCC 673], the decision of the Madras High Court in Board of Revenue, The Chief Controlling Revenue Authority v. V.M. Murugesu Mudaliar of Gudiyatham, [1955 SCC OnLine Mad 83], wherein it was held by the Apex Court that renunciation in the Indian context may be for consideration or may not be for consideration and whether the instrument amounts to a release document or not is not a pure question of law.

19. The full Bench of the Madras High Court in Board of Revenue, The Chief Controlling Revenue Authority (supra) was considering the documents, whereby three persons renounced all their interest in the property to the partnership firm in favour of two remaining partners for some consideration. The Full Bench of the Madras High Court has held that the documents proceed on the footing that five persons, namely, the three executants and the two persons in whose favour the instrument was executed, who were carrying on business of that firm owned the property as co-owners, the executants being entitled to three-fifths share and the other two being entitled to the remaining two-fifths share and it is not the case of any one that there was a division of the property by metes and bounds and in accordance with the said shares. The document by which the co-owners purport to abandon or relinquish their claim to the share to which they would be entitled, would be in the nature of a release under the Stamp Act. In such a case there need be no conveyance as such by one of the co-owners in favour of the other co-owners, inasmuch as, each co-owner in theory is entitled to enjoy the entire property in part and in whole. It is, therefore, not necessary for one of the co-owners to convey his interest to the other co-owners. It is sufficient if he releases his interest. The result of such release would be the enlargement of the share of the other co-owners.

20. The reference has been made to the Full Bench judgment of the Allahabad High Court in *Balwant Kaur and Ors. Vs. State of UP* [1983 SCC OnLine ALL 700], wherein two daughters of the deceased owner of the property sought to release their share in favour of the wife and son of the deceased, who were the only other legal heirs of the deceased. It was held by the Full Bench from the recitals in the document that it clearly intended to renounce of their interest in the properties left by their deceased father. They do not contain any stipulation whereunder, they seek to convey their title to their mother and brother. The two sisters were fully competent to release their undivided interest in the property in favour of their mother and brother, and on a plain interpretation of the document, it was a deed of release and not a conveyance deed within the meaning of the Indian Stamp Act' 1899.

21. It was observed by the Delhi High Court in *Ranganayakamma* (supra) that to distinguish between the release deed, or a gift deed or a sale deed, the decisive factor is the actual character of the transaction and precise nature of the rights created by the instrument. In the case of co-owners, each co-owner is in theory entitled to enjoy the entire property in part or in whole. It is not, therefore, necessary for one of the co-owners to convey his interest to the other co-owner. It is sufficient if he released his interest. The result of such a release would be the enlargement of the share of the other co-owners. A release can only feed title and cannot transfer title. It was held that a document under which a Hindu coparcener purports to give up his right to the family property in favour of the remaining coparcener would not be a deed of conveyance but a deed of release. There is no difference in principle between such a document as between members of a coparcenary or as between co-owners. In order to class a document as a release, the executant of the instrument having common or joint interest along with other should relinquish his interest, which automatically results in the enlargement of the interest and others. It was also noted that however, where the owner executes a document in respect of his share in favour of one of several a co-owners, it cannot be treated as a release and must come within the definition of conveyance. The transaction to assume a character of conveyance, what is necessary is the transfer of interest from one co-owner to another co-owner.

22. From the reading of the impugned of the learned Single Judge, it is, thus, relevant to note that the judgments relied by the learned Single Judge were dealing with the renunciation of right by a co-owner of his right in the coparcenary or a joint property in favour of the other co-owners. What was intended by the release deed therein was the relinquishment of the right of the co-owner/releasor and it was held therein that the co-ownership need not be only through inheritance but can also be through purchase. It was also noted that in determining that the document is a release or gift/conveyance, the nomenclature used to describe the document or the language which the party may choose to employ in framing the document is not a decisive factor. What is decisive is only the character of the transaction intended by the executants. One

of the test applied in the judgments relied by the learned Single Judge was that when relinquishing of right by the co-owner is only in favour of one of the co-owners and not against all, the document would be one of the gifts/conveyances and not of release.

23. We may note from the decision of the Delhi High Court in the case of Tripti Kaushil vs. Sub Registrar Vi-A, Delhi and Another [2020 SCC OnLine Del 2748], relied upon the learned Single Judge referred to in Paragraph '7.3' of the judgment impugned the test laid down therein in Paragraph '30', which reads as under:-

"30. From a reading of the above judgments, the test to determine whether an instrument can be considered as a Release/Relinquishment Deed can be summarized as under:-

- a. In determining whether the document is a release or Gift/Conveyance, the nomenclature used to describe the document or the language which the party may choose to employ in framing the document, is not a decisive factor. What is decisive is the actual character of the transaction intended by the executants;
- b. Determination of the nature of the document is not a pure question of law;
- c. Where a co-owner renounced his right in a property in favour of the other co-owner, mere use of word like "consideration" and "transfer" would not affect the true character of the transaction;
- d. What is intended by a Release Deed is the relinquishment of the right of the co-owner;
- e. Co-ownership need not be only through inheritance, but can also be through purchase;
- f. Where the relinquishment of the right by the co-owner is only in favour of one of the co-owner and not against all, the document would be one of Gift/Conveyance and not of "release".

23. Having exhaustively gone through the judgment impugned and the decisions relied upon by the learned Single Judge, we may note that the release or relinquishment deeds, in the instant case are of two properties purchased by Mr. Mukeshbhai Hirabhai Patel, one in the name of HUF and another in his individual name.

24. Coming to the concept of Hindu Undivided Family (HUF), it is a settled principle of Hindu law that there lies a legal presumption that every Hindu family is joint in food, worship and estate and in the absence of any proof of division, such legal presumption continues to operate in the family. The legal presumption is of the existence of jointness in the family properties and in absence of any positive steps taken to effect a partition, the properties constitute Hindu Undivided Family property. If a joint family possessed property, which was admittedly joint, the presumption would be that the property continues to be

joint and the burden would lie upon the member who claims it as his separate property to prove that there was a partition and he got it on such partition. When existence of a joint family is not disputed, the property held by the family would obviously assume the character of joint family property, strengthening the above presumption based on admitted facts as to jointness.

25. The normal condition of a joint family is one of jointness. The presumption of union is the greatest in case of father and sons. However, when coparceners have separated, there can be no presumption as to jointness. This is more particularly so when separate enterprise has been set up and there is lack of evidence of source of funds for such venture. However, there is no presumption that a family, because it is joint, possesses joint property and the burden of proving it rests on the party asserting it. Strong evidence is required to show that the property is joint, no presumptive value can be attributed in absence of clinching evidence as to jointness. To render the property joint, the plaintiff must prove that the family was possessed of some property with the income of which the property could have been acquired or from which the presumption could be drawn that all the property possessed by the family is joint family property or that it was purchased with joint family funds, such as the proceeds of sale of ancestral property or by joint labour. Where it is established or admitted that the family possessed some joint property which from its nature and relative value, may have formed the nucleus, from which property may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without aid of the joint family. However, no such presumption would arise, if the nucleus is such that with its help, the property claimed to be joint could not have been acquired. In order to give rise to the presumption, the nucleus must be such that with its help, the property claimed to be joint could have been acquired. The presumption that the properties in the hands of individual coparcener is a coparcenary property would arise only if family nucleus is proved. In absence of proof of nucleus, the members would only be co-sharers and on death, such property would devolve by inheritance and not by survivorship.

26. It is, thus, an established concept that the mere existence of joint family cannot raise a presumption that such family owns property jointly. A person asserting the existence of joint family property has to prove nucleus with which such property could be acquired. It is only then that such property could be presumed to be joint and onus of proving self-acquisition would shift to the person asserting as such. The initial burden of jointness having been discharged, the onus of self-acquisition would be shifted and would have to be proved that the property claimed as self-acquisition was purchased without the aid of joint family nucleus. (See—Mulla-Hindu Law, 23rd Edn. Article 231 "Presumption as to co-parcenary and self acquired property" pp. 346 and 347)

27. In a recent judgment of the Apex Court in Bhagwat Sharan v. Purushottam, [(2020) 6 SCC 387], it was noted in paragraphs '10' to '13' as under :-

"10. At the outset we may note that a lot of arguments were addressed and judgments were cited on the attributes of HUF and the manner in which it can be constituted. In view of the facts narrated above, in our view, a large number of these arguments and citations need not be considered. The law is well settled that the burden is on the person who alleges that the property is a joint property of an HUF to prove the same. Reference in this behalf may be made to the judgments of this Court in *Bhagwan Dayal v. Reoti Devi* [*Bhagwan Dayal v. Reoti Devi*, AIR 1962 SC 287] . Both the parties have placed reliance on this judgment. In this case, this Court held that the general principle is that a Hindu family is presumed to be joint unless the contrary is proved. It was further held that where one of the coparceners separated himself from other members of the joint family there was no presumption that the rest of coparceners continued to constitute a joint family. However, it was also held that at the same time there is no presumption that because one member of the family has separated, the rest of the family is no longer a joint family. However, it is important to note that this Court in *Bhagwati Prasad Sah v. Dulhin Rameshwari Kuer* [*Bhagwati Prasad Sah v. Dulhin Rameshwari Kuer*, 1951 SCC 486 : 1951 SCR 603], it held as follows : (SCC p. 491, para 10)

"10. ... Except in the case of reunion, the mere fact that separated coparceners chose to live together or act jointly for purposes of business or trade or in their dealings with properties, would not give them the status of coparceners under the Mitakshara law."

11. The Privy Council in *Randhi Appalaswami v. Randhi Suryanarayanamurti* [*Randhi Appalaswami v. Randhi Suryanarayanamurti* , 1947 SCC OnLine PC 42 : ILR 1948 Mad 440] held as follows : (SCC OnLine PC)

"... The Hindu law upon this aspect of the case is well settled. Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property."

The aforesaid view was accepted by this Court in *Shrinivas Krishnarao Kango v. Narayan Devji Kango* [*Shrinivas Krishnarao Kango v. Narayan Devji Kango*, (1955) 1 SCR 1 : AIR 1954 SC 379].

12. In *D.S. Lakshmaiah v. L. Balasubramanyam* [*D.S. Lakshmaiah v. L. Balasubramanyam*, (2003) 10 SCC 310] this Court held as follows : (*D.S. Lakshmaiah case* [*D.S. Lakshmaiah v. L. Balasubramanyam*, (2003) 10 SCC 310] , SCC p. 317, para 18)

"18. The legal principle, therefore, is that there is no presumption of a property

being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available."

Similar view was taken in *Rukhmabai v. Lala Laxminarayan* [*Rukhmabai v. Lala Laxminarayan*, (1960) 2 SCR 253 : AIR 1960 SC 335] and *Appasaheb Peerappa Chamdgade v. Devendra Peerappa Chamdgade* [*Appasaheb Peerappa Chamdgade v. Devendra Peerappa Chamdgade*, (2007) 1 SCC 521] . The law is thus well settled that the burden lies upon the person who alleges the existence of the Hindu Undivided Family to prove the same.

13. Normally, an HUF can only comprise of all the family members with the head of the family being karta. Some property has to be the nucleus for this joint family. There is cleavage of opinion as to whether two brothers of a larger group can form a joint family. But assuming that such a joint family could have been formed by Madhav Prashad and Umrao Lal the burden lies heavily on the plaintiff to prove that the two of them joined together to form an HUF. To prove this, they will have to not only show jointness of the property but also jointness of family and jointness of living together."

28. Hindu Undivided Family is treated as a "person" under Section 2(31) of the Income Tax Act, 1961 and is a separate entity for the purposes of assumption under the said Act. HUF has its own Permanent Account Number (PAN) and can file a separate tax return. A separate joint Hindu family business can be created since it is an entity separate from its members. Deductions under Section 80 and other exemptions can be claimed by the HUF in its income tax return. HUF can take an insurance policy on the life of its members. Normally, HUF (Hindu Undivided Family) consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. The HUF can be created by a male Hindu along with his wife and children and it can get certain relaxations in computation of taxes. A Hindu family can come together and form a HUF by creating a family union and pulling in assets to form a HUF, which has its own PAN and files returns independently of its members. To create HUF, at least two coparceners are required. Under Hindu law, undivided property refers to the property that belongs to HUF and is collectively owned by all its members. The Karta is the head of the Hindu undivided family and is the senior most male member. HUF, thus, is a distinct legal entity and can own property in its name. It is allowed to earn income in its own name. The property or income in the name of HUF goes to the common pool, i.e. joint family nucleus. It is, however, permissible for the Karta of the HUF or the senior most male member of the HUF to put any property acquired by him individually in the common pool or the family nucleus for the benefit of all members of the HUF.

29. In the instant case, HUF claimed to have been constituted by the father of the original petitioner comprised of a senior male member, viz. father, his wife and two children, viz. a son (who is the original petitioner) and a daughter. One of the properties was Survey no.11/1 acquired in the name of the father as Karta of the HUF property as is shown from the Sale deed no.792 dated 24.02.2000. It is, thus, permissible to draw an assumption that the said purchased property was for the benefit of HUF and was brought into the family nucleus for the benefit of all members of the HUF. Admittedly, the aforesaid property was initially mutated in the name of father, the senior most male member of the HUF. It seems that the revenue entry was made in the year 2015, whereafter, a release deed dated 27.12.2016 was executed by the daughter relinquishing her right in favour of the son, viz. her brother (the petitioner herein) in respect of two properties.

30. The respondent authorities seek to impose stamp duty on the basis that as per Sections 2(g) read with Section 5 and Article 49(b) as contained in Schedule-I of the Gujarat Stamp Act, 1959, if the owner of the property is alive and the names of other persons are mutated in the revenue records, such an incident would amount to transfer and entail levy of stamp duty.

31. It is the case of the State appellant that in case of a self-acquired property, if a person wants to transfer the said property during his life time, it would amount to "conveyance" within the meaning of Section 2(g) of the Act and, therefore, Article 49(b) in Schedule-I of the Stamp Act would be attracted. Such revenue entry would be treated to be an instrument as the sale deed whereby new rights and liabilities have been created and, as such, would be treated to be an instrument of conveyance. It was argued before the learned Single Judge and also before us on behalf of the appellants that the term "document" would also include electronic record and, therefore, be an "instrument" which transfers limited rights and has to be charged under Article 20 of Schedule-I of the Stamp Act, such an instrument is liable to stamp duty, as such, treating as conveyance under Article 20 of the Stamp Act.

32. Considering these contentions of the learned Assistant Government Pleader appearing for the State appellant, pertinent is to note that once it was established by the original petitioner that one of the property in question (namely Survey no.11/1) was purchased by his father as Karta of the HUF property, it would draw a legal presumption that it was brought into the family pool (nucleus) for the benefit of all members of the HUF. The mere fact that the name of the father was recorded in the revenue records after the sale from the year 2000 till 2015 would not make any difference, inasmuch as, the property Survey no.11/1 brought into the family nucleus could have continued to be recorded in the name of the Karta of the HUF in the revenue records. The recital in the Sale deed that the land was purchased as Karta of the HUF would be relevant.

33. The original petitioner has come out with the categorical case that the aforesaid property in question was purchased by his father, viz. Mr. Mukeshbhai

Patel as Karta of HUF and was, thus, brought into the family nucleus as HUF property. This stand of the original petitioner could not be disputed by the learned Assistant Government Pleader appearing for the State respondents either before the learned Single Judge or before us by bringing any cogent contrary material on record.

34. It is also settled law that joint family property brought into the family nucleus is to be used for the benefit of all the members of the HUF. It also cannot be disputed that HUF could be created by the father comprising of himself, his wife and children. The fact that the one of the property in question (Survey no.11/1) was purchased by Mr. Mukeshbhai Patel, Karta of HUF out of his own income would not be relevant once the property was purchased as Karta of HUF and brought into the family nucleus. The HUF being a separate legal entity, the land in question (Survey no.11/1) could have been continued in the revenue record in the name of the Karta of HUF, who is the senior most male member of the joint Hindu family. Even after death of the Karta or the father, the property would continue as HUF property unless there was a division or partition amongst the coparceners, members of the HUF.

35. In the instant case, during the lifetime of the father, the names of other family members, i.e. other members of HUF were mutated in the revenue records. However, the fact remains that the mutation entries cannot by themselves be an evidence of severance. The mutation of the property in the name of co-sharer or co-sharers will not confer any right upon such person over the entire property nor it entitles the co-sharer to sell, transfer or otherwise deal with the property, more so when there is no dispute about the fact of creation of HUF and that the property (land Survey no.11/1) purchased having been brought into the family nucleus by execution of the sale deed in the name of Karta of HUF. The property in question (namely Survey no.11/1) in spite of the mutation entry in the name of members of the HUF including Karta, i.e. the senior most member, continues to remain a property belonging to a Hindu undivided family (HUF).

36. Apart from the revenue entry, there is nothing on record that there was a severance of the joint Hindu family and there did not exist any joint Hindu family with the mutation entries, which may have reflected the names of all coparceners, viz. the members of the joint Hindu family.

37. Moreover, once it can not be disputed that there was a HUF comprising of father, his wife and two children, it is evident that even the mutation entry can be said to be only the recognition of the existing shares of the coparceners, i.e. members of the HUF in the properties in question. It is settled law that the declaration of the share, right and interest of the coparceners or the members of the HUF in the joint Hindu family property cannot be treated as creation of new right or interest in favour of the members whose names were entered in the revenue records in the year 2015. The revenue entry with respect to Survey no. 11/1, for inclusion of names of wife and two children during the lifetime of the

Karta of HUF cannot be treated as "conveyance" within the meaning of Article 20 of Schedule-I to the Stamp Act to levy stamp duty as per Article 49(b) of Schedule-I. The act of the stamp authorities in imposing stamp duty by treating the revenue entry of Survey no.11/1 as a deed of conveyance within the meaning of Section 2(g) read with Article 20 and 49(b) in Schedule-I of the Gujarat Stamp Act, 1958, therefore, is found to suffer from a manifest error of law.

38. Proceeding further, as noted hereinabove, it is well settled principle that in order to determine the nature of an instrument, neither the nomenclature nor the language which the parties may choose to employ in framing the document is decisive. In each case, what is decisive is the actual nature and the character of the transaction intended by the executant. Normally, the intention of the executant is to be gathered from the language used in the instrument, where the purpose underlying execution of the document fits in with the nature of the document as it purports to be, it would not be appropriate to treat it as an instrument of a different nature. However, where it is found that the executant could enter into the transaction specified in the document but then he chooses to describe it as an instrument of a nature which he is not competent to execute, it will be open to the Court to ignore the said description and to determine the correct head under which the document would fall.

39. In the instant case, the instrument which is sought to be treated as a Deed of conveyance is the mutation entry made in the year 2015, which can in no manner be treated as the Deed of transfer for creation of new rights and interest in favour of the persons whose names are mutated in the revenue records. The three persons whose names were mutated in the revenue records in the year 2015 were already members of the Hindu Undivided Family in whose favour Survey no.11/1 was purchased by the Karta of the joint Hindu family. It is, thus, neither possible nor permissible for the Court to hold that the instrument, which is the mutation entry of the property namely Survey no. 11/1 in question, is to be treated as an instrument of a different nature and not an actual nature and character of the instrument, which is mutation entry in the revenue records. It is also well settled principle of law that the mutation entry by itself does not confer any right, title or interest in favour of a person whose names are recorded in the revenue records, if not supported by any right acquired in the property in a legal manner. They are only reflection of the prima facie title, right and interest of the persons whose names are recorded in the revenue records and are rebuttable whenever the occasion arises.

40. We, therefore, reach at an irresistible conclusion that mere entry of the name of the members of the HUF in the revenue records during the lifetime of the Karta, would not be the proof of severance of the HUF or the mutation entry of Survey no.11/1 cannot be said to be an instrument of transfer or conveyance within the meaning of Section 2(g) read with Article 20 and Article 47(b) of the Stamp Act. The said property remained the joint family property of the HUF,

inspite of the said entry.

41. Insofar as the stamp duty levied on document no. 18491 of 2016 with respect to Survey no.11/1 for deficit stamp duty for entering the names of family members in the property as co-owners during the lifetime of the original owner, we may note that though in the oral argument, it was submitted by the learned Assistant Government Pleader that the sale deed for purchase of Survey no.11/1 was not executed under the name of HUF, rather it was in the individual name of Mukeshbhai Hirabhai Patel but the record say otherwise. At this juncture, pertinent is to note that the averments in the additional affidavit dated 01.02.2024 filed by the original petitioner, viz. Shalin Mukeshbhai Patel bringing on record the complete copies of the sale deeds dated 24.02.2000 and a copy of the correction deed dated 17.06.2000 in respect of one of the sale deed no. 791 to which no reply has been filed on behalf of the said appellant. We may also note that the said documents were appended to the Writ petition and were not disputed. Along with the aforesaid affidavit, two sale deeds bearing nos. 792 and 791 with respect to lands bearing Survey nos.11/1 and 11/2 executed in the name of Mukeshbhai Hirabhai Patel, the father of the petitioner herein have been brought on record wherein it is mentioned that the aforesaid lands in question were purchased by Mukeshbhai Hirabhai Patel as Karta of HUF.

42. We may also take note of the Correction deed dated 17.06.2000 for correction in the sale deed dated 24.02.2000, registration no.719 with respect to land bearing Survey no.11/2 wherein it is noted that the said sale deed was executed in the name of Karta of HUF. It may be also noted that two sale deeds were executed in the name of Mr. Mukeshbhai Patel, the father of the original petitioner dated 24.02.2000, viz. Sale Deed No. 792 for the lands bearing Survey no.11/1 and 791 for Survey No.11/2. The Rectification deed dated 17.06.2000 was then executed for making correction in the registered sale deed no. 791 dated 24.02.2000 of sale of revenue Survey No. 11/2 of Mouje Village Zundal, Taluka Gandhinagar, District and sub-district Gandhinagar for correction of the recital in the sale deed of the purchase made by the purchaser in the capacity as Karta of HUF. It was clarified therein that by the aforesaid, the name of the purchaser was mentioned as "Mukeshbhai Hirabhai as Karta of HUF" in the sale deed ws to be corrected as the purchase was in his individual capacity. The occasion has, thus, arisen for execution of the Deed of rectification unto the purchaser. Translated version of the recital in the Rectification deed are relevant to be noted hereinunder :-

"3. The Seller had executed the registered Sale-deed vide registration number 791 on 24/02/2000, in favour of the Purchaser by name "Mukeshbhai Hirabhai Patel, Karta of HUF." But, through oversight, in the said Sale-deed, instead of the name of the purchaser as Mukeshbhai Hirabhai Patel, it is mentioned as Mukeshbhai Hirabhai Patel, Karta of HUF.

Therefore, by this Deed of rectification in Sale-deed, the name of the Purchaser shall be read and treated as "Mukeshbhai Hirabhai Patel" and the words "Karta of

HUF" are hereby removed by this Deed of Rectification. Therefore, henceforth, the name of the Purchaser, in aforementioned Sale-deed, bearing registration number 791, dated 24/02/2000, shall be read and treated as Mukeshbhai Hirabhai Patel and for the said purpose, this Deed of rectification in Sale-deed is executed.

The Seller has received Rs.4,91,580/- in words Rs.Four Lakh Ninety One Thousand Five Hundred Eighty only by two cheques, bearing No.33469, dated 25/03/2000 and No.33470, dated 25/04/2000 of the Bank Of India, Saraspur Branch from the Purchaser by signature of Mr.Mukeshbhai Hirabhai Patel in the capacity of the Proprietor of Microcare India Corporation and for the said purpose, this Deed of rectification in Sale-deed is executed.

The Seller has executed this Deed of rectification in Sale-deed after reading, understanding, willingly, with conscience, in full consciousness, non-intoxicating condition, without coercion or influence and assuring the same, the Seller has executed the Deed of Rectification in Sale-deed and made his signature in presence of Witnesses confirming the same.

This Deed of Rectification in Sale-deed is executed today on day 17th, month of June, year 2000."

43. With the execution of the above Rectification deed and the admission on the part of the petitioner, it is evident that land the bearing Survey No. 11/2 purchased vide registered Sale Deed dated 24.02.2000 was the purchase in the individual capacity of the father of the petitioner viz., Mukeshbhai Hirabhai Patel.

44. A copy of the Declaration deed dated 30.06.2018 appended with the original Writ petition as Annexure 'C' further indicates that while making declaration of his pedigree/pedhinama, Mukeshbhai Hirabhai Patel had declared four members of the HUF comprising of himself, his wife, daughter and son. As per the recital in the said Deed, it was prepared on 29.09.1999 for creation of HUF comprising of above persons which had been notarised, but was lost and, therefore, a duplicate copy was prepared on 30.09.2018 stating to be the copy of the original Deed as prepared on 29.09.1999, declaring it as the same.

45. As per the recital in the aforesaid Deed, all four members have been declared as members of the Mukeshbhai Hirabhai Patel HUF. The deed also contains the recital on the part of Mukeshbhai Hirabhai Patel as Karta to the effect that he had gifted Rs.1,000/- on 29.09.1999 to Mukeshbhai Hirabhai Patel (HUF) for the benefit of its members and that he had no right, title or interest in the said sum of Rs.1,000/- and the income from the said sum would become the income of the said Hindu Undivided Family, which was to be utilised for the benefit of the above members of the HUF. It is also noted therein that Shri Mukeshbhai Hirabhai Patel had accepted the gift of Rs.1,000/- on behalf of his HUF and further agreed to utilise the amount of gift and the income from the said amount to the benefit of the aforesaid HUF.

46. We may note that there is nothing on record that the land bearing Survey No. 11/2 purchased vide registered Sale deed no. 791 dated 24.02.2000 by Mukeshbhai Hirabhai Patel in his individual capacity as the proprietor of Micro Care India Corporation, had ever been brought into the family nucleus of the joint Hindu Family Mukeshbhai Hirabhai Patel HUF created vide Deed dated 29.09.1999.

47. As noted hereinbefore, there can be no presumption of the family possessing joint property because of the fact of being a joint family. The land bearing Survey No. 11/2 was admittedly a self-acquired property of Mukeshbhai Hirabhai Patel, father of the original petitioner. The mutation of the names of the family members, viz. wife and children of Mukeshbhai Patel, the owner, with respect to the said property can be seen as creation of new rights in favour of others and not the recognition of their existing rights. We may also note at this juncture that there is no clarity either in the Writ petition or in the memo of appeal or even in the affidavit filed on behalf of the respondent namely by the Deputy Collector, Stamp Duty, Gandhinagar that the mutation entry was also made with respect to land bearing Survey no. 11/2 in the year 2015 during the lifetime of the father of the petitioner.

48. However, any entry, if made, with respect to the land bearing Survey No. 11/2 purchased vide Sale Deed No. 791 dated 24.02.2000 would be treated as transfer for the reason that the mutation entry would be treated to be an "instrument" within the meaning of Section 2(g)(ii) read with Section 2(l) of the Gujarat Stamp Act, 1958, which state as under :-

"2.

(g) "Conveyance" includes, -

(i) xxxx

(ii) every instrument,

(iii) xxxx

(iv) xxxx

(v) xxxx

by which property, whether movable or immovable, or any estate or interest in any property is transferred to, or vested in, any other person, inter vivos, and which is not otherwise specifically provided for by Schedule I;

Explanation. - For the purposes of this clause, an instrument whereby a co-owner of any property transfers his interest to another co-owner of the property and which is not an instrument of partition shall be deemed to be an instrument by which property is transferred inter vivos"

"Section 2 (l) "instrument" includes every document by which any right or liability is, or purports to be created, transferred, limited. extended, extinguished

or recorded, but does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit policy of insurance, transfer of share, debenture, proxy and receipt;"

Explanation. - The term "document" also includes any electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000." (21 of 2000)

49. A careful reading of Section 2(g) (ii) indicates that every instrument by which property, whether movable or immovable or any estate or interest in any property is transferred to or vested in, any other person, inter vivos and which is not otherwise specifically provided for by Schedule-I would be included within the meaning of "conveyance" under Section 2(g). An "instrument" as defined under Section 2(l) includes electronic record as defined in clause (t) of sub-section (1) of Section 2 of the Information Technology Act, 2000 (21 of 2000).

50. The revenue entry of the year 2000 with respect to the land bearing Survey No. 11/2 in the name of the family members, viz. wife, daughter and son during the lifetime of Mukeshbhai Hirabhai Patel would, thus, be a reflection of the expression of the owner, viz. Mukeshbhai Hirabhai Patel for transfer of his individual right in favour of his other three family members, resulting into parting of his interest of the whole to the extent of 3/4th to other three members of his family. Shri Mukeshbhai Hirabhai Patel who was admittedly the owner of the entire property being land bearing Survey no.11/2 as a whole, had parted away with his rights reducing it to the extent of 1/4th, indicating his intention of transferring his right in favour of his family members. The fact that the mutation entries do not confer any right, title or interest in favour of the persons whose names are mutated in the revenue record, would not be relevant for the purposes of the present case, inasmuch as, to ascertain the nature of the instrument, for the purposes of the Gujarat Stamp Act, 1959 to levy stamp duty, the provisions of the Act have to be referred and relied upon. The nomenclature or nature of the instrument is not relevant, relevant is to gather the intention of the executant of the instrument, the purpose underlying execution of the document.

51. It is settled law that where it is found that the executant could have entered into transaction specified in the document, but then he chooses to describe it as an instrument of the nature, which he is not competent to execute, it will be open to the Court to ignore the said description and to determine the correct head under which the document would fall. In the instant case, the executant of the document, viz. Mr. Mukeshbhai Hirabhai Patel was competent to execute a deed of transfer for parting away his exclusive rights and creation of rights in favour of his family members in his self-acquired property, viz. land bearing Survey no.11/2, but instead of executing the transfer document, he got their names entered in the revenue records by making an application for mutation. The intention of the owner, viz. Mukeshbhai Hirabhai Patel by asking the revenue authorities to make entries of the name of his family members in the revenue

record over the land bearing Survey no.11/2 is clear for creation of new right and interest in favour of the persons whose names were mutated in the revenue records.

52. We, therefore, do not find any fault in the action of the revenue authority in treating the mutation entry as an 'instrument' of 'conveyance' within the meaning of Section 2(g) read with Section 2(l) of the Gujarat Stamp Act, 1958 read with Article 20 and Article 47(b) of the Stamp Act and levy stamp duty with regard to the land bearing Survey No. 11/2 towards deficit stamp duty for entering the names of family members in the property as co-owners during the lifetime of Mr. Mukesh Hirabhai Patel. The deficit stamp duty levied on the mutation entry with respect to the land bearing Survey no. 11/2 purchased vide sale deed no.791 dated 24.02.2000 by Mr.Mukeshbhai Hirabhai Patel in his individual capacity, therefore, is liable to be upheld.

53. Now coming to the "Release Deeds" executed on a stamp paper of Rs. 100/- dated 27.12.2016 by the daughter relinquishing her right in favour of her brother, viz. the petitioner herein. Two such documents bearing (1) No. 18488 of 2016 in respect of Survey no.11/2 and (2) No. 18491 in respect of Survey No. 11/1, termed as "Release Deed" dated 27.12.2016 presented for registration before the Sub-Registrar, Gandhinagar were impounded under the Stamp Act and the show-cause notices dated 08.05.2017 and 14.09.2018 under the signature of the Deputy Collector, Stamp Duty, Valuation Authority, Gandhinagar were served upon the petitioner stating that the Sub-registrar, Gandhinagar had impounded the documents under Section 33 of the Stamp Act in view of the Notification dated 08.05.2013. Considering the recital in the documents, the finding is that the stamp duty of Rs.100/- was inadequate and the petitioner was asked to show cause as to why stamp duty on the basis of market value of the relinquished portion of the share should not be levied. Another notice dated 15.11.2018 was served upon the petitioner in respect of both the documents stating that in view of Schedule-I Article 49 of the Gujarat Stamp Act, 1958, vide notification dated 08.05.2013, Stamp Duty of Rs. 100/- fixed is not adequate and the petitioner has to pay stamp duty as per the market value of the relinquished share of the property and further not only that he has to pay the stamp duty on the transaction of entering the name of three persons (linear descendants of the original owner Mr. Mukeshbhai Hirabhai Patel) in the aforesaid two properties as co-owners in the year 2015.

54. On consideration of the reply submitted by the petitioner, the Deputy Collector passed an order dated 02.07.2019 holding the stamp duty inadequate on both the documents namely Sale deed Nos. 18488/2016 and 18491/2016. Apart from the stamp duty, penalty under Section 39(1)(b), interest under Section 46 of the Stamp Act and registration fee on both the documents were levied, making total of the deficit stamp duty, penalty, interest and registration fee to the tune of Rs. 22,42,630/-. The appeal filed by the petitioner under Section 53(1) of the Gujarat Stamp Act, 1958 after depositing 25% of the stamp

duty in respect of both the documents has also been rejected vide order dated 04.06.2020 by the appellate authority.

55. The table showing the computation made by the stamp authorities under different heads with respect to two documents, as referred above, as extracted in the order impugned of the learned Single Judge, is extracted hereinbelow :-

Particulars

Document No/s

Rupees

Document No/s. No.

Rupees

Deficit Stamp duty for entering names of family members in the property of co-owners during lifetime. U/sec. 39(1)(b) & Sch I Art.49(b) & Art.20

18491/2016 S.No. 11/1

7,31,185.00

18488/2016

S. No. 11/2

7,87,266.00

Penalty U/s. 39(1) (b) of the Act

18491/2016 S.No. 11/1

73,000.00

18488/2016

S. No. 11/2

79,000.00

Interest U/S. 46 of the Act

18491/2016

1,26,247.00

18488/2016

S. No. 11/2

1,35,992.00

Registration fees on Release Document

18491/2016 S.No. 11/1

1,49,250.00

18488/2016

S. No. 11/2

1,60,690.00

TOTAL

--Do--

10,79,682.00

--Do--

11,62,948.00

56. It is stated in the Writ petition that as ordered by the appellate authority, on receipt of the communication dated 05.08.2020 from the office of the Sub-Registrar, the petitioner had deposited the deficit registration fee in respect of both the above noted documents by making online payment.

57. Considering the nature of the document and the fact that both the documents viz. Deed Nos.18491/2016 and 18488/2016 were executed terming them as Release deeds in favour of the petitioner by his sister, we may note that the document no., 18491/16 in respect of land bearing Survey no.11/1 may be termed as a relinquishment deed or release deed of the right of the executant as coparcener, being member of HUF, in favour of other coparceners namely other three members of the HUF. However, the status of the Deed No.18488/16, which was executed with respect to the land bearing Survey No. 11/2, which was the individual property of Mr. Mukeshbhai Hirabhai Patel father of the executant, cannot be the same. It is not known nor has been disclosed in the Writ petition or in the present appeal as to how the land bearing Survey no.11/2 came in the share of other members of the family. The nature of this document has not otherwise been explained by the petitioner in the affidavits filed by him in the Writ petition or before this Court. Thus, the right acquired by the executant of the document of the Release deed dated 27.12.2016 of the land bearing Survey no.11/2 prior to its execution is not known.

58. As noted hereinabove, there is nothing on record which would indicate or establish that Survey no.11/2 was brought into the family nucleus of Mukeshbhai Hirabhai Patel (HUF). It cannot be assumed that the executant of the Release deed no. 18488/16 had acquired or was having coparcenary interest as a member of the HUF in the land bearing Survey no.11/1 and the relinquishment is of her right as a coparcener of the HUF. For the missing link as to how the right had been acquired by the executant of the Release deed No. 18488/16 in land bearing Survey no.11/2, which was the individual property of her father Mukeshbhai Hirabhai Patel, it is not possible for us to take any exception to the finding returned by the Deputy Collector impounding the said document as a

conveyance deed and not as a deed of relinquishment of the right of the executant as a member of the HUF.

59. Moreover, on the question whether the documents in question being Deed No.18491/16 (for survey no.11/1) and Deed no.18488/16 (for survey no.11/2) are deeds of release or relinquishment of interest or deeds of conveyance for sale, we are also required to deliberate on the subject taking note of the decision of the Andhra Pradesh High Court in Kothuri Venkata Subba Rao v. State of A.P. [1985 SCC OnLine AP 127], placed before us by the learned Assistant Government Pleader. To deal with the said question, we are also required to adjudicate on the question as to whether one member of a joint Hindu family consisting of several members can irrespective of a partition of a family asset, give his own interest therein to one of the coparceners.

60. To answer this issue, we are required to take note of the decision of the Privy Council in Alluri Venkatapathi Raju v. Dantuluri Venkatanarasimha Raju [1936 SCC OnLine PC 45 : 1936 (71) MLJ 558 : 1936 (38) BOMLR 1238] where question arose about division and inheritance of a joint Hindu property. The facts of the said case are that there was a joint Hindu family comprised of common ancestor Alluri Venkataraju and his four sons, governed by the Mitakshara school of the Hindu law. A member of the joint Hindu family relinquished his interest in the family estate and went to live in another village. From thence onward, he and his descendants cut themselves off from the family. After his departure, the father and his remaining three sons continued to live together and it seems that they were living together when the father died in the year 1842. Thereafter, the three sons left their ancestral village and made their abode elsewhere. While they were living at that place they started business on a large scale, and acquired valuable properties with the profits of the business. In an unfortunate incident, one of the three sons, viz. Krishnamaraju and his son Venkataraghavaraju were drowned in the Godavari River and had died. The trial court have concurred in holding that it was the father who had died first, and his son succumbed shortly afterwards on that very day. Venkataraghavaraju, the grandson of the original owner, viz. Alluri Venkataraju survived by a widow and a daughter by his pre-deceased wife. After death of the aforesaid persons, the remaining heirs of the original owner namely Alluri Venkataraju continued to carry on the business while they did not recognise the right of Venkataraghavaraju's widow to inherit her husband's share in the estate belonging to the family, rather they provided ample maintenance to the widow and her step-daughter of Venkataraghavaraju and also the widow and daughters of Krishnamaraju, their late brother. Out of the remaining two sons, viz. Akkiraju and Ramaraju, Akkiraju died in the year 1984 and was, thus, succeeded by Ramaraju as the member of the family estate.

61. After the death of Ramaraju in the year 1903, there were dissensions between the descendants of the two brothers, which culminated in 1908, in a suit for partition of the joint estate. In the said suit brought by the grandson of

Akkiraju, not only were the other male descendants of Akkiraju and Ramaraju were joined as defendants, but Venkataraghavaraju's daughter and her two minor sons, were also impleaded as plaintiffs in the said case. The daughter of Venkataraghavaraju claimed the estate on the ground of inheritance from her father who, she said, was separate from his collaterals. This plea gave rise to an issue about jointness or otherwise of Venkataraghavaraju with Akkiraju and Ramaraju, but no evidence was adduced by the parties on that issue and the trial Court decreed partition of the estate, stating that the issue was given up by the parties. The decree of partition was affirmed by the Court of first instance and also in appeal by the High Court. The joint property was partitioned in accordance with the decree and not until 03.04.1918, things remained as such when a suit was filed by sons of Chandrayya, daughter of Venkataraghavaraju, which has led to the appeal before the High Court of Bombay in the said matter reported as Alluri Venkatapathi Raju (supra).

62. The allegation of the plaintiff in the suit was that in or about 1839, there was a separation amongst four sons of Alluri Venkatapathi Raju and the property, which was subject matter of the suit, was acquired by Krishnamaraju and his son Venkataraghavaraju and devolved, at the death of the latter, upon his daughter as his heir under the Hindu law. They urged that the judgment and decree of partition pronounced in the year 1908 was not binding upon them, and they asked for a declaration of their right to succeed, after the death of their mother, to the property specified in the plaint, which belonged to their maternal grandfather. This claim was resisted by the descendants of Akkiraju and Ramaraju on various grounds, including the plea that Krishnamaraju and his son was joint with his brothers and on the death of the father and the son in the year 1882, the estate passed to Akkiraju and Ramaraju by survivorship. This plea was upheld by the trial court and the said judgment has been reversed by the High Court.

63. In the facts and circumstances of the said case, the first question before the Privy Council was "whether there was a separation of the joint family in the lifetime of Alluri Venkatapathi Raju (the common ancestor)". It was observed that there cannot be a doubt that the father of a joint family has the power to divide the family at any time during his lifetime without the consent of his sons, and, if he makes a division, it has the effect of separating, not only the father from his sons, but also the sons inter se. In the facts of the said case, it was held that no evidence was produced to prove such a division by Alluri Venkatapathi Raju (father) and the only circumstance to which the reference has been made in the argument was migration of the eldest son Pattabhimaraju from his ancestral village to another village, severing his connection with the joint family and, thus, relinquishing his interest in the joint property. It was noted that the said member of the joint Hindu family and his descendants had nothing to do with other sons of Alluri Venkatapathi Raju (common ancestor).

64. It is in these circumstances, it was held therein that renunciation by one son

(member of HUF) merely extinguishes his interest in the estate, but does not affect the status of the remaining members qua the family property, and they continued to be coparceners as before. The only effect of renunciation was to reduce the number of the persons to whom shares would be allotted, if, and when, a division of the estate takes place. On the question severance of the joint status, referring to the law on the subject with the aid of *Appovier v. Rama Subba Aiyan* [(1866) 11 M.I.A. 75] in the words of Lord Westbury, it was noted therein that :-

"According to the true notion of an undivided family in Hindoo law, no individual member of that family, whilst it remains undivided, can predicate of the joint and undivided property, that he, that particular member, has a certain definite share. No individual member of an undivided family could go to the place of the receipt of rent, and claim to take from the Collector or receiver of the rents, a certain definite share. The proceeds of undivided property must be brought, according to the theory of an undivided family, to the common chest or purse, and then dealt with according to the modes of enjoyment by the members of an undivided family."

It was further recorded that :-

"After stating that the property ceases to be joint property, if it is held in defined shares, and that an actual partition of the property is not necessary for making the family a divided family, he makes the following observations (p. 91) :- It is necessary to bear in mind the two-fold application of the word 'division.' There may be a division of sight,, and there may be a division of property;...."

65. Noticing the above, it was observed in *Alluri Venkatapathi Raju* (supra) that it was not suggested that the brothers had ever faced a partition of their estate by metes and bounds. No document was found, which could establish a severance of the joint status. All the remaining three brothers were jointly carrying out of the business in various concerns and it was out of the profits they made that they acquired immovable properties. It was, thus, held that after death of Venkataraghavaraju in 1882, Akkiraju and Ramaraju treated all the properties as estate of the joint family and claimed to be proprietors thereof by survivorship. This would undoubtedly be an interference with the widow's right, if her husband had died as a divided member of the family. However, it was clear that she did not put forward her right to succeed to her husband's estate, but recognised that she was entitled to maintenance and accepted the arrangement by which she was granted the income of a plot of land in lieu of her maintenance. Neither the widow nor her daughter Chandrayya, even after attaining majority, nor two sons of Chandrayya took any active steps to repel the attack on their rights of inheritance until 1918, when the sons brought the present action.

66. It was concluded by the Privy Council that Venkataraghavaraju was joint in estate with Akkiraju and Ramaraju when he died in 1882 and that his interest in the estate passed by survivorship to the other coparceners and could not

descend to his heirs under the Hindu law. The plaintiff's suit, thus, has rightly been dismissed by the Trial court. The High Court has erred in holding otherwise and the decree of the trial court dismissing the suit should be restored.

67. It was, thus, held in *Alluri Venkatapathi Raju* (supra) that the only effect of renunciation by the separating member of the joint family is to reduce the number of persons, to whom the shares would be allotted, if and when, a division of the estate takes place. However, none of the surviving members would get individual rights or their rights in the estate cannot be severed, so as to separate the joint status in the estate.

68. In *Chella Subbanna v. Chella Balasubbareddi* [1945(1) M.L.J. 140 : 1945 SCC OnLine Mad 249], the question was whether one member of the joint Hindu family consisting of several members can, irrespective of a partition of the family estate, give his own interest therein to one of the other coparceneres. Referring to the decision of the Privy Council in *Alluri Venkatapathi Raju* (supra), discussed above, it was held that it would be contrary to the idea of the Hindu joint family for one coparcener to have a greater share in the estate than other coparceners while they remain joint. It is a settled law that when the members of the family hold the family estate in defined shares, they cannot be held to be joint in estate. But no definement of shares need take place, when the separating member does not receive any shares in the estate but renounces his interest therein. His renunciation merely extinguishes his interest in the estate, but does not affect the status of the remaining members quoad the family property and they continue to be coparceners as before. The only effect of renunciation is to reduce the number of persons, to whom the shares would be allotted, if, and when, a division of the estate takes place. Two legal principles noted therein are relevant to be quoted hereunder:-

"(1) When the members of a Hindu family have defined shares in the family estate they can no longer be deemed to be joint in estate, and

(2) the renunciation of one member of his interest in the family merely extinguishes that interest in favour of the continuing coparceners."

69. It was, thus, held that relinquishment by one coparcener of his interest in the family estate in favour of the members of the coparcenary does not amount to an alienation: it merely amounts to extinction of his interest in favour of the others. The gift of his interest to one of several other coparceners, however, would not mean the extinction of that interest, rather it would mean an alienation of it, inasmuch as, it is well settled that there cannot be such a gift to a stranger and it is clear that there cannot be a gift to a fellow coparcener if the family is to remain undivided.

70. Another Privy Council judgment in 6 Bom LR 925 referred therein is to note as under:-

"There is another Privy Council judgment which supports the proposition that

there cannot be a renunciation by one member of a joint family in favour of one of several other members of the family while the family remains joint. In *Wasantrao v. Anandrao*, one Madhawrao executed a release of his interest in the family property in favour of his father. The Bombay High Court held that the release must be treated, as being, not for the benefit of the father alone, but of the coparcenary and the shares were to be determined as though Madhawrao had died. This case went to the Privy Council as *Anandrao v. Wasantrao*. Their Lordships held that the governing principles had been rightly applied by the High Court and dismissed the appeal."

71. The answer to the question posed by the Court in *Chella Subanna* (supra) was that a member of a joint Hindu family governed by the Mitakshara law cannot give his interest in the family estate to one of several coparceners if they remain joint in estate. In such circumstances, he can relinquish his interest but the relinquishment operates for the benefit of all the other members.

72. In *Maddula Girish Kumar v. Commissioner of Survey, Settlements and Land Records* [1992 SCC OnLine AP 125], the Full Bench of the High Court of Andhra Pradesh was dealing with the question whether the two documents executed by the two coparceners in favour of the remaining coparceners are release deeds or deeds of conveyance in a reference made under section 57 of the Indian Stamp Act, by the Chief Controlling Revenue Authority and Commissioner of Survey, Settlements and Land Records, Hyderabad, regarding the stamp duty payable on two documents. The Full Bench had taken note of the recital in the document and then referred to the decision of the Full Bench of Madras High Court in *Subbanna v. Balasubba Reddi* (supra) and noted the definition of "conveyance" as referred to in Section 10(2) of the Indian Stamp Act, which reads as follows :-

"Conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I (or by schedule IA as the case may be)".

73. Taking note of another decision of the Madras High Court in *Board of Revenue v. Murugesu* [AIR 1955 Mad. 641] and the subsequent decision of the Special Bench of Karnataka High Court in *K. Azra Jabeen v. State* [AIR 1981 Kar. 17], it was noted that the Special Bench of Karnataka High Court held as under:-

"Therefore, whenever the partnership accounts are adjusted and properties are distributed in specie as between the partners either upon retirement of a partner or upon dissolution of a firm, and payment of cash is made to one partner, the instrument evidencing such distribution of the assets cannot be regarded as a conveyance. Having regard to these principles, the document in the present case, in our opinion, should only be regarded as a deed of dissolution of the partnership firm chargeable to duty under item 40 of the Schedule to the Stamp Act."

74. The observations in paragraph '30' of the judgment of the Full Bench in Board of Revenue vs. Murugesha (supra) were noted as under:-

"If the four co-owners out of the ten co-owners would have executed one relinquishment deed, relinquishing their rights and interest in the property owned by all of them as in the case of Board of Revenue v. Murugesha (AIR 1955 Mad. 641) (FB) such a document could have been construed to be a deed of release. In the case of Balwant Kaur v. State (AIR 1984 All. 107) (SB) two daughters, who are co-owners, relinquished their rights and interest in favour of the remaining co-owners, namely, mother and brother. But in the case on hand, each has executed separate deed, though of course in favour of the remaining co-owners. The execution of separate relinquishment deed, by individual co-owner relinquishing his share is not contemplated by the decision of the Full Bench of the Madras High Court in Board of Revenue v. Murugesha."

75. It was, thus, noted that the Full Bench of the Madras High Court in Board of Revenue v. Murugesha (supra) has held that the relinquishment deed executed by four co-owners out of 10 co-owners cannot be said to be the deed of release as the recitals in the documents (separate deeds executed by co-owners) clearly show the intention of the parties or the purpose for which and the circumstances under which transactions came into existence. The documents clearly established that they are not deeds of release.

76. In P.R. Munuswamy Naidu vs. V. Venkatesan [1997 SCC OnLine Mad 127], the Court was considering the claim of the plaintiff for partition claiming 3/8th share in the plaint items. It was noted therein that the property belonged to one Narasimhalu Naidu who had two sons Rathna Naidu and Veeraraghava Naidu. They constituted a joint family. After the death of Narasimhalu Naidu, other members continued to be joint, and they also acquired other properties from out of the income, which admittedly belonged to the family. Plaintiffs were son and grandson of Veeraraghava Naidu. Defendants were sons of Rathna Naidu and the claim was that the defendants alone were taking the income and the plaintiffs thus, sought allotment of 3/8th share. The claim of the defendants in written statement was that Narsihmalu Naidu had an elder brother by the name of Kullapa Naidu and both of them were members of the same family. Kullapa Naidu released all his shares in favour of Rathna Naidu and, therefore, the property covered by the documents at items 5 to 10 in the plaint belonged to their branch exclusively. Therefore, the plaintiff is not entitled to any right over the said items.

77. In these facts and circumstances, one of the substantial question of law, which arose in the Second appeal was whether the first appellate court was right in holding the document as Exhibit 'B6' being a release deed and not a conveyance. The question was whether Exhibit 'B6' enures to the benefit of the branch of Rathna Naidu alone or to the entire joint family. Answering the said question, it was noted in paragraphs '10' to '16', as under :-

"10. Derrett on 'Introduction to Modern Hindu Law' (1963 Edition) has stated (at

pages 250 and 251) as to what is the nature of a coparcener's interest in a family property. The relevant portion reads thus:—

"No individual member of the coparcenary can claim before partition (in which he participates) that he owns a certain definite share either of the corpus or of its income. The rights of a coparcener are (i) to be maintained; (ii) to demand partition and on account of the state of the family property; (iii) to become manager if the managership is vacant and no coparcener effectively objects; (iv) to alienate (in South Indian only) in effect his undivided interest in the joint-family property; and (v) to take, so long as he remains undivided, by survivorship so much of the interests of deceased coparceners as will serve proportionately to increase his presumptive share, which will become ascertained for the first time at partition. Thus coparceners have a community of interest and of possession of the joint-family property and are comparable with joint-tenants at English law with benefit of survivorship, save that their individual rights commence independently and by operation of law, not by transfer between parties. No one can create a coparcenary interest, any more than he can create, with a stranger, a joint Hindu Family. He can, no doubt, provide in, for example, a will that property over which he exercises a right of disposition shall be enjoyed by the transferees as if it were Mitakshara joint-family property and they were coparceners at Hindu law in respect of it; but that is a different matter."

11. In Mayne's 'Hindu Law & Usage' - 14th Edition (1996), at page 767, the learned Author says thus:-

"A gift by a coparcener of his entire undivided interest in favour of the other coparcener or coparceners will be valid whether it is regarded as one made with the consent of the other or others or as a renunciation of his interest in favour of all. Where a coparcener purported to make a gift of his share to one brother, the Supreme Court held that though ostensibly a gift, it was a relinquishment of his share and enures for the benefit of all the coparceners; the gift was construed in such a manner as to render it valid. Renunciation with a condition to pay maintenance to him is also valid. Such a renunciation can be effected by an expression of an intention to that effect, and no formality is necessary."

12. In N.R. Raghavachariar's 'Hindu Law - Principles and Precedents' - 8th Edition (1987), at page 237, it is said thus :-

"A coparcener can renounce his interest in the joint family estate. The renunciation does not result in a general partition of the family. Such a renunciation merely extinguishes his interest in that estate, but does not affect the status of the remaining members quoad the family property, and they continue to be coparceners as before, the only effect of the renunciation being to reduce the number of persons to whom shares would be allotted if, and when, a division of the estate takes place. A coparcener can renounce his interest only in favour of all the coparceners and when he renounces in favour of only one of them, the renunciation enures for the benefit of even the others,.... his

renunciation which enures for the benefit of all the other coparceners may take the form of a gift of the entire interest of a coparcener in favour of another coparcener.”

(Emphasis supplied)

13. In Mulla's 'Hindu Law' - 15th Edition (1982), at page 357, it is said thus:—

“Renunciation or relinquishment of his share.... A coparcener may renounce his interest in the coparcenary property in favour of the other coparceners as a body but not in favour of one or more of them. If he renounces in favour of one or more of them the renunciation enures for the benefit of all other coparceners and not for the sole benefit of the coparcener or coparceners in whose favour the renunciation is made. Such renunciation is not invalid even if the renouncing coparcener makes it a condition that he would be paid something towards maintenance. The renunciation or relinquishment must, of course, be genuine. If fictitious and not acted upon it would be operative as between the parties and partition can be claimed.....”

14. In a Full Bench decision of this Court reported in AIR 1945 Madras 142 = 58 L.W. 54 (Chella Subbanna and another v. Chella Balasubbareddi and others), (at page 143), it was held as follows:—

“....The relinquishment by one coparcener of his interest in the family estate in favour of the members of the coparcenary does not amount to an alienation; it merely amounts to an extinction of his interest in favour of the others. The gift of his interest to one of several other coparceners would not mean the extinction of that interest. It would mean an alienation of it. It is well settled law that there cannot be such a gift to a stranger and it is now clear that there cannot be a gift to a fellow coparcener if the family is to remain undivided.

There is another Privy Council judgment which supports the proposition that there cannot be a renunciation by one member of a joint family in favour of one of several other members of the family while the family remains joint. In 6 Bom. L.R. 925, one Madhhawrao executed a release of his interest in the family property in favour of his father. The Bombay High Court held that the release must be treated, as being, not for the benefit of the father alone, but of the coparcenary and the shares were to be determined as though Madhhawrao had died. This case went to the Privy Council as 9 Bom. L.R. 595. Their Lordships held that the governing principles had been rightly applied by the High Court and dismissed the appeal. At p497, 10th Edn. of Mayne the learned editor expresses the opinion that dicta in 11 Mad. 406 and 27 M.L.J. 272 cannot be considered good law especially after the decision of the Privy Council in I.L.R. (1937) Mad. 1. It follows from what we have said that we are in full agreement with this opinion and that additional support for it is to be found in the judgment of their Lordships in 9 Bom. L.R. 595. The answer which we give to the question referred is this: A member of a joint Hindu family governed by the Mitakshara law cannot give his interest in the family estate to one of several coparceners if they remain

joint in estate. In such circumstances can relinquish his interest but the relinquishment operates for the benefit of all the other members. The costs of this reference will be costs in the appeal.”

(Emphasis supplied)

15. In A.I.R. 1950 Madras 140 (1949) 62 L.W. 773 (Gumswami Goundan and others v. Marappa Goundan and others), the question was whether a Father can relinquish his right with a condition that the son should maintain him. In paragraph 8 of the judgment, it was held this:—

“Apararka's Commentary on Yajnavalkya is also to the same effect:

“The separation of one who is able to support himself and is not desirous of participation (may be completed) by giving some trifle.”

All these authorities envisage only the renunciation by a son and not by the father or grandfather who happens to be the head of the family as in the present case. No specific text or authority showing that the father could renounce his rights in joint family property by taking a trifling or something for his means of livelihood has been cited. But Mr. Bhashyam argues that it is open to the father to make a division of the property among his sons, either by taking a share himself or by giving up his rights. If he decides to renounce his share on condition of being paid maintenance every year, it must be understood that he was effecting a partition among his descendants and cutting himself off. According to the texts cited above, if a son can renounce his rights, it stands to reason that the father, who can compulsorily effect a partition under the Hindu law can renounce his rights after taking something for maintenance. This kind of renunciation can be interpreted in various ways. It may be a gift by the father of his share to the sons; it may amount to an alienation of his share or an effacement of his rights. But since the Full Bench decision in Subbanna v. Balasubba Reddi, I.L.R. (1945) Madras 610: (AIR 1945 Mad. 142 F.B.), has held that an alienation or a gift of his share is not possible, the only way in which his action can be properly construed is either an effacement of his own rights by not taking anything or partitioning the property among the sons after taking maintenance. Whether his right to maintenance can be construed as a charge on the family property, does not arise for consideration here. If the sons regularly give him the maintenance the question of a charge does not arise, and therefore whether a charge exists or not need not be considered. It seems to me therefore that the renunciation of his rights in property by defendant 6, after agreeing to receive maintenance of four putties of paddy every year for his livelihood is valid and therefore defendant 6 has no longer any share in the property which can be settled upon defendants 3 to 5. The partition ought to be in equal shares between the plaintiff on the one side and defendants 1 to 5 on the other.”

(Emphasis supplied)

16. These decisions were considered in a decision of our High Court reported in

1980-I-M.L.J. 507 (Durai alias Karunanidhi v. D. Devarajalu Naidu & 10 Others) wherein V. Sethuraman, J. held thus:—

“A coparcener can make over his interest in the joint family properties, but that has to be in favour of the entire coparcenary as such. In such an event, it would be in the nature of a renunciation, so that the person who renounced would be in the same position as one who went out of the family and the other persons would continue in the coparcenary as reduced to that extent.”

It was finally held in paragraph '17' as under :-

“7. In view of the settled position of law, the conclusion is irresistible, namely, that even if the document is taken as one for consideration, the executants of Ex. B-6 are only effacing themselves from the family and to that extent, the share of the remaining coparceners is increased. The relinquishment can only be in favour of the family even if the document is only for consideration. The finding of the lower Appellate Court is, therefore, correct, and accordingly the Second Appeal is dismissed. No Costs.”

78. Having considered the above noted decisions, we may record that the principle pertaining to relinquishment or release deed is that the relinquishment of his share by one of the coparceners in favour of the remaining members does not alter the status of the joint family. The releasor alone separates himself from the family while others continue as members of an undivided family. Mitakshara treated the estate of coparceners as held in entirety without recognition of shares and defined partition as the adjustment of diverse rights regarding the whole by distributing them in particular portions of the aggregate. The relinquishment by a coparcener does not require either the adjustment of diverse rights or the division of wealth in definite portions. It only results in the extinction of his rights in the family properties and his separation from the family. That being so, it cannot be predicated that relinquishment of an interest by one of the coparceners in the family estate tantamount to partition of the joint family wealth. To put it differently a partition of the family property involves definement of shares, whereas a release by a member of an undivided family does not require the ascertainment of shares of each of the members though the releasor separates himself. The separation of one member, who renounced his share, does not necessitate a distribution of the joint family property in definite portions. His renunciation merely extinguishes his interest in the estate but does not in any way affect the status of the remaining members quoad the family property.

79. It is well settled that each coparcener in theory is entitled to enjoy the entire property in part or in whole. Relinquishment of right in favour of all other coparceners of a joint Hindu family, thus, would enhance the share of the remaining coparceners.

80. In Kothuri Venkata Subba Rao v. State of A.P.[1985 SCC OnLine AP 127], the judgment relied by the learned Assistant Government Pleader, the property in

question was jointly owned by 10 individuals as co-owners. The question before the Court was to determine the nature of four documents executed by four co-owners, each relinquished their 1/10th share in favour of other co-owners for consideration. The said deed was held to be a deed of conveyance but not a deed of release and chargeable under Article 20 of Schedule IA of the Stamp Act. It was held that the recitals in the deed clearly show that each of the four executants had relinquished under each instrument his 1/10th share in favour of the remaining six co-owners and not in favour of all the co-owners.

81. It was noted that for the release to be effective and operative must be in favour of all the persons interested in the property and not in favour of few. The principles laid down by the Full Bench of the Madras High Court in Board of Revenue v. Murugesu (supra), necessary for treating a document, executed by one of the co-owners of the property for which the other co-owners have interest as a release deed, are relevant to be noted hereinunder :-

"The document proceeded on the footing that the five persons, namely, the three executants and the two persons in whose favour the instrument was executed, who were carrying on business of that firm owned the property as co-owners, the executants being entitled to a three fifths share and the other two being entitled to the remaining two fifths share. It is not the case of any one that there was a division of the property by metes and bounds and in accordance with the said shares. In such circumstances, the document in and by which the co-owner purports to abandon or relinquish his claim to the share to which he would be entitled would be in the nature of a release within Article 44".

82. Considering the above, pertinent is to note that out of two properties purchased by Mukeshbhai Hirabhai Patel, the land bearing Survey no.11/1 admittedly, was purchased in the capacity as Karta of HUF and the same having brought in the family pool, each of the four co-sharers, namely the father, his wife, his son and daughter had become co-owners of the said property being in the family nucleus of Mukeshbhai Hirabhai Patel HUF. The release deed dated 27.12.2016 executed by the daughter in favour of her brother, one of the members of the HUF, cannot be said to be a deed of relinquishment of her right in favour of her brother, inasmuch as, it was not relinquishment of right of the daughter in favour of remaining members of the joint Hindu family, i.e. relinquishment would amount to creation of new right in favour of one of the members of the joint Hindu family, more than the extent of his share in the said property, which would amount to transfer. The relinquishment deed could operate only in a manner that it has resulted in increasing the shares of all the members of the joint Hindu family or decreasing the number of persons to whom the property would devolve as and when the division takes place.

83. The result is that the release deed dated 27.12.2016 executed by the daughter, i.e. sister of the petitioner herein for relinquishment of her share in Survey no.11/1, which was purchased by father as Karta of HUF, cannot be treated as a Deed of release, rather would be termed to be a Deed of conveyance

of the share of the daughter in favour of her brother, viz. the petitioner herein.

84. We, therefore, do not find any error in the decision of the Stamp authority in impounding the document no.18491/16 with respect to land bearing Survey no.11/1 termed as Release deed dated 27.12.2016, treating it as the deed of conveyance within the meaning of the Stamp Act.

85. With regard to the second document bearing No.18488/16 in respect of Revenue survey no.11/2, the land which was purchased in the individual name of Mr. Mukeshbhai Hirabhai Patel. At the cost of repetition, it may be noted that there is nothing on record to demonstrate as to how the executant of the said release deed No.18488/16 had acquired right in the said property. There is nothing on record which would indicate or establish that Survey no.11/2 was even brought into the family nucleus of Mukeshbhai Hirabhai Patel HUF. Moreover, from both angles, whether the land bearing Survey No.11/2 was the property of HUF or the individual property of Mukeshbhai Hirabhai Patel, release deed no.18488/16 cannot be said to be the Deed of relinquishment of right of the executant, rather it would be considered as an instrument of 'Conveyance' within the meaning of the Stamp Act for the reasoning given herein.

86. For the above, the decision of the Stamp authorities in impounding both the documents, viz. Deed no.18491/16 (for land bearing survey no.11/1) and Deed no.18488/16 (for land bearing survey no.11/2) as the deeds of conveyance for sale and demand of deficit stamp duty cannot be said to suffer from any error of law. The stamp duty levied on the said documents treating them as Deeds of conveyance, therefore, is affirmed. In the result, Letters Patent Appeal No.689 of 2023, preferred by the State is partly allowed setting aside the judgment and order dated 12.12.2022 passed by the learned Single Judge holding that:-

i. The mutation entry of Survey no.11/1, which was purchased by Karta of the joint Hindu family by registered Sale deed no.792 dated 24.02.2000, cannot be treated as an instrument within the meaning of Section 2(l) of the Stamp Act as a Deed of conveyance under Section 2(g) of the Gujarat Stamp Act, 1958, inasmuch as, the said entry only amounts to recognition of the right of the co-owners, namely three members of the HUF.

ii. However, the revenue entry with respect to land bearing Survey no.11/2 purchased by the sale deed no.791 dated 24.02.2000 in view of the recital in the rectification deed dated 17.06.2000, being individual property of Mr. Mukeshbhai Hirabhai Patel, has to be treated as an instrument within the meaning of Section 2(l) and conveyance within the meaning of Section 2(g) of the Gujarat Stamp Act, 1958 making it amenable to stamp duty within the meaning of the Act, inasmuch as, it amounts to creation of new right in favour of three persons whose names were mutated in the revenue record in the year 2015.

iii. For the detailed discussion hereinabove, both the release deed no. 18488/16 and release deed no. 18491/16 have to be considered as Deeds of conveyance and cannot be said to be Release deed within the meaning of the Stamp Act.

87. With the above, the judgment and order dated 12.12.2022 passed by the learned Single Judge in Special Civil Application No.387 of 2021 is hereby set aside. Letters Patent Appeal No.689 of 2023 stands allowed, subject to the observations made hereinabove. Consequently, the Letters Patent Appeal No.864 of 2023 preferred by the original Writ petitioner stands dismissed. No order as to costs.