BOMBAY HIGH COURT

Radhabai

Vs.

State of Maharashtra

Spl. Civil Appln. No. 175 of 1966

(Kotval, C.J., Deshmukh and Padhye, JJ.)

27.02.1969

JUDGMENT

Kotval, C. J.

1. The short question that arises for decision in this reference is whether the interpretation of the amended sub-section (7) of section 38 of the Bombay Tenancy and Agricultural Lands Act, 1958 (XCIX of 1958) (hereinafter referred to as the new Tenancy Act), in the decision of this Court in *Salubai v. Chandu*[1], is correct, and if not, what is the correct interpretation,

2. The circumstances under which the reference came to be made are as follows: One Mohanlal was a landholder of survey no. 74/3, area 9.17 acres, in village Uttar Wadhona in Yeotmal District Mohanlal had a wife Radhabai and a son Lakhanlal who was born on 29-4-1937, Mohanlal died on 15-4-1938 and on that date Lakhanlal was a minor. Lakhanlal attained majority on 29-4-1958, the age of majority in his case being twenty-one years because a guardian had been appointed. After he attained majority, the property belonging to the joint family came to be

partitioned between Radhabai and Lakhanlal. This was on 22-6-1959 and the field survey No. 74/3 came to the share of Radhabai. Thus, Radhabai became the landholder. She required the field for her *bona fide* personal cultivation and she gave a notice under section 38 (1) of the new Tenancy Act to the respondent no. 5 Uttamchand Uderaj Marwadi who was the tenant. After the notice, she applied under section 38 for possession on the ground that she required the field for her *bona fide* personal cultivation. On the date on which the Naib Tahsildar decided the application the position in law and upon the authorities was as follows: In *Manjurabai v. Pralhad*[2], a Full Bench of the Revenue Tribunal at Nagpur had on 11-12-1957 held under section 9 (9) of the Berar Regulation of Agricultural Leases Act that a partition is a transfer. On 24-6-1958 however a Division Bench of the High Court (to which one of us Kotval J. was a party) held in *Manabai v. Ramchandra*[3], under the same provision of law that the word "transfer" as used in section 9 (9) does not include a partition. It expressly reversed the decision in Manjurabai's case, 1958 Nag LJ 100 (Rev.). These cases were as stated above decided under the provisions of the Berar Regulation of Agricultural Leases Act. Before the Naib Tahsildar's decision however the Bombay Tenancy and Agricultural

[1]1966 Mah LJ 289 [3]1958 Nag LJ 453

[2]1958 Nag LJ 100

Lands Act (Vidarbha Region) Act 1958 (Act XCIX of 1958) came into force on 30-12-1958, Section 132 thereof repealed the Berar Agricultural Leases Act. Two further decisions must thereafter be noted. On 11-12-1959 a Division Bench of the High Court held in *Dayabhai v. State of Bombay*[4], under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act 1947 that the word "transfer" not being defined in that Act, must be given the same meaning as in section 5 of the Transfer of Property Act and under the Transfer of Property Act it had been held in a number of cases that "transfer" includes a partition and that therefore it must be held that under the Prevention of Fragmentation and Consolidation of Holdings Act 1947 also a partition of an agricultural holding amounts to a "transfer" within the meaning of section 27 (b) of that Act. On 23-8-1961 a Division Bench of Maharashtra Revenue Tribunal held in *Rambhau v. Bhaskar*[5], under Section 9 (9) of the Berar Regulation of Agricultural Leases Act that a partition amounts to a transfer. This decision was obviously wrong in view of the previous decision of a Division Bench of this Court in Manabai's case, 1958 Nag LJ 453. The Maharashtra Revenue Tribunal was bound to follow the decision of the High Court.

3. This was the position in law and upon the authorities when the present matter came up for decision before Mr. D. N. Kharche the Naib Tahsildar. He had of course to decide the case under the provisions of section 38 of the new Tenancy Act (99 of 1958) and could have taken the view that he was uninhibited by the previous decisions because they were decisions under the Berar Regulation of Agricultural Leases Act or the Transfer of Property Act. He did not do that. He resorted to the simple expedient of ignorinnancy (Vidarbha) Act and the reasons were, (i) The expression "by transfer" was preceded by the words "has acquired any land". The Full Bench held that in the context in which it was used, the word "acquired" had the meaning of 'acquired a title for the first time' and partition does not give a person a title or create a title in. him; it only enables him to obtain what is his own in a definite and specific form for purposes of disposition independently of the wishes of his former co-sharers. They referred in this respect to the

decisions of the Privy Council in *Girja Bai v. Sadashiv Dhundiraj*[6],

(ii) Secondly they pointed out that a conflict wonancy (Vidarbha) Act and the reasons were, (i) The expression "by transfer" was preceded by the words "has acquired any land". The Full Bench held that in the context in which it was used, the word "acquired" had the meaning of 'acquired a title for the first time' and partition does not give a person a title or create a title in. him; it only enables him to obtain what is his own in a definite and specific form for purposes of disposition independently of the wishes of his former co-sharers. They referred in this respect to the decisions of the Privy Council in *Girja Bai v. Sadashiv Dhundiraj*[7],

(ii) Secondly they pointed out that a conflict would arise between sub-section (2) and sub-section (7) of Section 38 if partition were included in the word "transfer", for, sub-sections (1) and (2) of Section 38 dealt with all tenancies, whereas sub-section (7) dealt with only a tenant who was a protected lessee, and they saw no reason why in the latter case the right was put an end to after the 1st day of August 1953, while under the proviso to sub-section (2) it was put an end to by 30th June

[4]1960 Nag LJ 416 [6] AIR 1916 PC 104 and in 1960 Nag LJ 416

[5]1961 Nag LJ 493 [7] AIR 1916 PC 104 and in 1960 Nag LJ 416

1959 (the prescribed date). On this reasoning the Full Bench held that if the word "transfer" did not include partition, then the anomaly created by the mention of the two different dates could be understood. In other words, they sought to harmonise the provisions of the unamended section.

(iii) Thirdly, they pointed out that in other parts of the Act, particularly Section 57(1) and (2) and Section 119-B, the words "partition" and "transfer" were used side by side but in contradistinction with each other. Therefore, the one could not be included in the other. It will be noticed that in the Full Bench case, the word "partition" was throughout used in the normal sense in which it is understood in the context of the Hindu Law and there was no particular or special meaning assigned to it.

9. Then came the Amending Act on 28-12-1963 which fell to be considered in Salubai's case, 1966 Mah LJ 289 . Sub-section (7) of Section 38 before its amendment merely stated:

"Nothing in this section shall confer on a tenure-holder who has acquired any land by transfer after the 1st day of August 1953, a right to terminate the tenancy of a tenant who is a protected lessee and whose right Therefore, the one could not be included in the other. It will be noticed that in the Full Bench case, the word "partition" was throughout used in the normal sense in which it is understood in the context of the Hindu Law and there was no particular or special meaning assigned to it.

9. Then came the Amending Act on 28-12-1963 which fell to be considered in Salubai's case, 1966 Mah LJ 289 . Sub-section (7) of Section 38 before its amendment merely stated:

> "Nothing in this section shall confer on a tenure-holder who has acquired any land by transfer after the 1st day of August 1953, a right to terminate the tenancy of a tenant who is a protected lessee and whose right as such protected lessee had come into existence before the transfer."

By the Amending Act, the words "or partition" were added after the word "transfer" wherever it occurred in this sub-section, thus doing away with the argument that, a partition was not a transfer. We are not concerned with a small ancillary amendment also made in the sub-section. In considering this amendment, Salubai's case. 1966 Mah LJ 289 noticed the previous decision of the Full Bench and the fact that the words "or partition" were added by legislation after the word "transfer". But the learned Judge who decided Salubai's case, 1966 Mah LJ 289 took the view that that was the only change in the sub-section and that the addition of those two words "or partition" had not affected either the structure of sub-section (7) or any other sub-section of Section 38 or any other part of the Act so far as was material and relevant in construing the effect and ambit of the change brought about by the amendment. Principally it was pointed out that the word "acquired" preceding the words "any land by transfer or partition" remained the same as before the decision of the Full Bench; and since the Full Bench had said that "acquired" meant acquired for the first time, partition must also be given a similar meaning. The learned Judge observed in para 53 at p. 310 (of Mah LJ) : (Para 51 at p. 210 of AIR):

"One of the reasons which has been accepted by the Full Bench of this Court in interpreting this unamended Section 38(7) of the Vidarbha Act was the use of the word 'acquired' in sub-section (7) which is even now retained after the amendment."

Then the learned Judge proceeded to state what was the meaning of that word and he held that having regard to the normal dictionary meaning, it meant to gain or to get as one's own (by one's own exertions or qualities). He noted that it had a secondary meaning, namely, to receive or to come into possession of, but he held that in the context and in the absence of any other amendment except the addition of the words "or partition" In sub-section (7) of Section 38, "a person who acquires a thing or property gets this right for the first time from someone else otherwise the use of the word 'acquire' is inappropriate and will not convey the correct meaning". In a later passage in para 55 (of Man LJ) : (Para 52 of AIR) he pointed out: "It would therefore appear that whenever property is said to be 'acquired' it postulates absence of pre-existing right in the property and the change as a result of acquisition must mean getting ownership of the property with all its component incidental rights."

10. Then the learned Judge proceeded to consider what was the nature of partition and he drew a distinction between two categories of partitions (i) partitions where the tenure-holder did not have any right in the property or pre-existing right in land prior to partition but got such right of ownership for the first time as a result of partition; and (ii) partitions where there is a pre-existing right in the property and any a redistribution of those rights. In view of the meaning which he felt

the Full Bench had assigned to the word "acquired" in sub-section (7) of Section 38 after amendment, the learned Judge held that in the context of that word, the word "partition" must be restricted to the former category only. He held in para 60 (of Mah LJ) : (Para 57 of AIR): "All this discussion will, therefore, show that retention of the words 'acquired land by partition' must be given their full meaning and a person cannot be said to acquire land by partition if partition is amongst the members of an undivided Hindu family who were already owners of the property. What takes place as a result of partition is the change in the mode of enjoyment." and in a later passages:

> "It is therefore clear to my mind that even after making the amendment in Section 38(7) by the addition of words 'or partition', the Legislature did not intend to bring within the mischief of the section by this amendment, the rights of those landlords who were owners of property from before and who chose to divide property as a result of partition which was only choosing a different mode of enjoyment of the property. On the other hand, what is intended to be hit even after the amendment is that class of landlords who would acquire the property for the first time as a result of partition or under the cloak of partition.....This mode of construction and inference would be permissible in view of the fact that no other change has been made in the structure of sub-section (7) of Section 38 in spite of the view taken by the Full Bench of this Court that the use of the word 'acquisition' points out to obtaining rights of ownership for the first time."

11. Now, it seems to us that in taking this view the learned Judge was greatly influenced by the nature of the arguments before him and the stand taken by counsel and perhaps by the concession which counsel made in that case. In para 59 at p. 313 (of Mah LJ) : (Para 56 at p. 212 of AIR) the learned Judge has noted: "It is not disputed that the partition may create rights for the first time in persons who had no pre-existing rights..." That in our opinion was a fundamental concession which having regard to the law, we shall presently show, does not appear to be correct. But apart from that, counsel for both the sides focussed the attention of the Court in that case only upon the Full Bench decision and its reasons and argued whether the three reasons given by the Full Bench still continued to operate despite the amendment or not and the whole decision in Salubai's case, 1966 Mah LJ 289 turne4) by counsel on either side. Secondly, it is only in the event of some doubt or difficulty in the interpretation of a statute that extraneous aid may be taken, extraneous aid being in the nature of the previous history of t rights as such protected lessee had come into existence prior to the transfer or partition after the 1st day of August 1953 if the tenure-holder has acquired any land by transfer or partition after the 1st day of August 195 "partition", the Legislature intended to exhaust all the various means by which any person could get a right or title in a legal way. \

14. Then we turn to the word "acquire". It is on that word that the decision in Salub what is his own in a definite and specific form for purposes of disposition independently of the wishes of his former co-sharers. At the same time, the Full Bench had noted in that case that the word "acquire" can also be used in the context of partition. At p. 291 para 6 (of Mah LJ) : (At p. 210,

Para 47 of AIR) this is what we have said:

> "As, therefore, in the words of the Privy Council, (the reference is to AIR 1916 PC 104) partition only enables him to obtain in a definite and specific form the land, which was his own, it cannot be said that he has acquired that land. By the process of partition, he no doubt acquires the interest of other co-sharers in that land, but the words in the sub-section are 'acquired any land'. It does not contain the words 'or any interest therein', such as are used in Section 119B. The language used in sub-section (7) of Section 38 of the Tenancy Act, therefore, itself indicates that this sub-section does not apply in cases in which a person becomes the sole owner of the land as a result of partition."

15. Now, the amended section says "acquired any land by transfer or partition", and we have already pointed out that there is no qualification of the word "partition". We also can see no reason why in the new context, the word "acquire" should necessarily be held inappropriate in the context of all partitions. The word "acquire" has clearly two meanings -a broader meaning and a narrower one, and the learned Judge has himself set forth those meanings in Salubai's case, 1966 Mah LJ 289 at p. 310, para 53 : (AIR 1966 Bombay 194 at p. 210 para 51) where he stated:

"According to the shorter Oxford Dictionary, 'to acquire' means to gain or to get as one's own (by one's own exertions or qualities). Its secondary meaning is to receive or to come into possession of." But he accepted the first of those two meanings and held:

> "The use of the word 'acquire' necessarily postulates a change of relationship vis-a-vis thing or property which is said to be acquired and which was not existing before. The notion of ownership of property implies various component rights viz., that of possession, enjoyment, destruction, alienation, exclusion and others incidental to the right of ownership. A person who acquires a thing or property gets this right for the first time from someone else otherwise the use of the word acquire is inappropriate and will not convey the correct meaning."

16. If the word "acquire" is assigned its more generic connotation, namely, that it means to receive or to come into possession of, then in the context of transfer or partition, that word can be given its full meaning without any violence to the language used. In our opinion, there was no difficulty therefore in reading the word "acquire" to convey that meaning in the new context of the amended Act, that is to say, in the context of partition. On the other hand, what the learned Judge has done is to allow the meaning of the word "acquire" to remain the same, although the context is changed and to seek to reconcile the language used by giving a new connotation to the word "partition", and in this, as we shall presently show, the learned Judge missed the whole purpose and object of the enactment. In our opinion, there was no anomaly created by the use of the word "acquire" even after the addition of the words "or partition" in sub-section (7) of Section 38. The proper construction of the amended section should be to read the word "acquire" in a wider sense which it is capable of bearing in the context of the addition of the words "or

partition", and if so read, the whole meaning of the statute becomes clear.

17. But as Salubai's case. 1966 Mah LJ 289 itself shows, the learned Judge, on reading the reasons given in the Full Bench case, felt great doubt and difficulty in construing the provisions of the amended sub-section, because, according to him. though the words "or partition" were added, the rest of the Act remained the same, and therefore did not have the effect of removing the reasons which had impelled the decision of the Full Bench. That being so, he felt that there was some cryptic meaning in the words "or partition" which had to be uncovered. It is precisely in such a case of doubt or difficulty that a Court may legitimately look to other aids to the construction of the statute, especially to its Objects and Reasons as declared when the law was passed. That this can be done is now settled law. Though no doubt in the earliest case in ***Aswini Kumar Ghose v. Arbinda Bose, AIR 1952 Supreme Court 369*** the Supreme Court stated that the Statement of Objects and Reasons is not admissible as an aid to the construction of a statute they pointed out in later cases that what they meant by the rule there laid down was that the Statement of Objects and Reasons could not be looked into as a direct aid to construction but that they coud be used "for the limited purpose of ascertaining the conditions prevaling at the time the bill was introduced, and the purpose for which the amendment was made": see ***Kochuni v. States of Madras and Kerala, AIR 1960 Supreme Court 1080*** at p. 1086-7.

18. In ***Gujarat University v. Shri Krishna. AIR 1963 Supreme Court 703*** the Supreme Court observed that the Statement of Objects and Reasons of a Statute may and do often furnish valuable historical material in ascertaining the reasons which induced the Legislature to enact a statute but in interpreting the Statute they must be ignored.

19. In ***Income-tax Commr. Patiala v. Shahzada Nand and Sons, AIR 1966 Supreme Court 1342*** the Supreme Court pointed out at p. 1347 (para 8):

> "When the words of a section are clear but its scope is sought to be curtailed by construction, the approach suggested by Lord Coke in In re: Heydon's case, (1584) 3 Co. Rep. 7a, yields better results:
> "To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope, and object of the whole Act: to consider according to Lord Coke: 1. What was the law before the Act was passed; 2. What was the mischief or defect for which the law had not provided; 3. What remedy Parliament has appointed; and 4. The reason of the remedy."

In that case, no doubt the Supreme Court applied these principles of construction to the interpretation of Section 34 (1A) of the Indian Income-tax Act after its amendment in 1956; but we can see no reason why the same principle will not operate in the construction of the present statute, especially when "its scope is sought to be curtailed by construction". Lastly, there is an

important pronouncement on this subject in ***Shivanarayan v. State of Madras, AIR 1967 Supreme Court 986*** where the expression "forward contracts" in Section 2 (c) of the Forward Contracts (Regulation) Act 1952, fell to be construed. Their Lordships observed In para 7 at p. 989:

"It is sound rule of interpretation that a statute should be so construed as to prevent the mischief and to advance remedy according to the true intention of the makers of the statute. In construing, therefore, Section 2(c) of the Act and in determining its true scope it is permissible to have regard to all such factors as can legitimately be taken into account in ascertaining the intention of the legislature, such as the history of the statute, the reason which led to its being passed, the mischief which it intended to suppress and the remedy provided by the statute for curing the mischief." In holding so, their Lordships again referred to Heydon's case, (1584) 3 Co Rep 7a (cit. sup).

20. In the present case, where the exact scope and effect of the amendment made by Act No. 44 of 1963 is in doubt and so actively disputed on either side we think that we can therefore legitimately look to the Statement of Objects and Reasons in making that amendment, and the Statement of Objects, and Reasons dated 26th September 1963 appended to the Bill (Bill No. L of 1963 published in the Maharashtra Government Gazette dated 8th October 1963, Part V. at page 309) is as follows:

"Statement of Objects and Reasons As a result of a certain judgment of the High Court, it has become necessary to amend certain provisions of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 for making the intention of the Legislature clearer in respect of those provisions. It is also considered necessary to make certain provisions so as to remove the difficulties which have been noticed during the course of implementation of the Act. The Bill seeks to carry out these amendments.

> 2. The following notes on clauses explain the provisions of the Bill: Clauses 2 and 3:Sub-section (7) of Section 38 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958. provides that nothing in that section shall confer on a tenure holder who has acquired any land by transfer after the 1st day of August 1953, a right to terminate the tenancy of a tenant who is a protected lessee and whose right as such protected lessee had come into existence before the transfer. The expression 'transfer' in this provision was intended to include partition and the Maharashtra Revenue Tribunal had also taken similar view. The High Court in 65 Bom LR 251 (FB) has, however, held that the expression 'transfer' in this provision does not include partition. As a result of this decision, many protected lessees stand in danger of being dispossessed of their lands. It has, therefore, become necessary to amend Sections 38 and 39 to make it clear that the expression 'transfer' includes 'partition' ". The reference in the second paragraph to the decision of the Maharashtra Revenue Tribunal is obviously to the decision in 1958 Nag

LJ 100 (Rev), which held that partition was inlcuded in the word "transfer". The reference to *Shrikrishna Ninaji v. Namdev Bapuji is to the Full Bench decision reported in*[8]

21. This Statement of Objects and Reasons throws a flood of light upon what was intended to be achieved by the amendment. The Full Bench decision of this Court is expressly referred to and it is stated that as a result of that decision, many protected lessees stood in danger of being dispossessed of their lands, and therefore, the amendment had become necessary. It is clear therefore that the Statement of Objects and Reasons removes that doubt or difficulty which the learned Judge experienced in Salubai's case. 1966 Mah LJ 289 for, it says in clear terms that it was the intention of the Legislature to include partition in the word "transfer" from the very start, but since the Full Bench has held that it was not so included, the Legislature was by the amendment including it. In other words, accepting the principle of the decision of the Full Bench, the amendment sought to undo the effect of that Full Bench decision. It is always open to the Legislature to thus express its real intention and set aside the interpretation put upon a statute by the Courts, and that is precisely what the Legislature intended to do in the present case.

22. Nothing is clearer than the statement made in the Objects and Reasons which preceded the passing of the Amending Act No. 44 of 1963. The intention was to include partition also within the ambit of sub-section (7) of Section 38 and it immediately suggests that the interpretation put upon the word "partition" in the context of the word "acquire" by the learned single Judge in Salubai's case 1966 Mah LJ 289 was not correct. If the interpretation put upon the word "Partition" in Salubai's case, 1966 Mah LJ 289 were to be accepted, it would nullify the whole purpose and object of the amendment. The proper construction of amendment, clearly shows that the Legislature intended to include in the word "transfer" partitions as normally understood namely, the redistribution of pre-existing rights and not the acquisition of rights by a person for the first time.

Thus, in our opinion, a correct reading of the enactment guided by Objects and Reasons themselves is sufficient to show that the decision in Salubai's case was not correct. But it has also been contended on behalf of the respondents before us that the statement in Salubai's case, 1966 Mah LJ 289 that the reasons which impelled the decision in the Full Bench case still remain is also not correct. It was also contended that the whole basis of the decision that property can be acquired in certain cases by partition without there being any pre-existing right or title in the person acquiring it is incorrect in law. In this respect, reference was made to the principle laid down by the Privy Council in *Sartaj Kuari v. Deoraj Kuari*[9]*,*

"The property in the paternal or ancestral estate acquired by birth under the Mitakshara law is, in their Lordships' opinion, 'so connected with the right to a partition' that it does not exist where there is no right to it"(the underlining (here in' ') is ours) and to the decision of the Privy Council in AIR 1916 PC 104 where Privy Council quoted with

[8]1963 Mah LJ 289 (FB)

[9](1888) ILR 10 All 272 (PC)

approval a passage from Sarkar's translation of Viromitrodaya: "For partition is made of

that in which proprietary right has already arisen consequently partition cannot properly be set forth as a means of proprietary right. Indeed, what is effected by partition is only the adjustment of the proprietary right into specific shares." It was also pointed out that even women sharers who had no right to enforce a partition but were entitled only to a share on partition got their share by virtue of only a pre-existing right and reference was made to the decision of this Court in *Rangubai Lalji v. Laxman Lalji*[10], thus showing that it is the fundamental nature of a partition that it is only a subdivision or re-distribution of rights already existing in those who get shares by partition.

23. It was also urged on behalf of the respondents that the second reason which prevailed with the Full Bench in coming to the conclusion that partition was not included in the word "transfer" in the unamended sub-section, namely, that otherwise there would be a conflict between sub-sections (1) and (2) on the one hand and sub-section (7) on the other does not really prevail especially after the amendment. Counsel took us through the previous history of the legislation particularly through the provisions of Section 9 of the Berar Regulation of Agricultural Leases Act, and he pointed out that protected lessees under those provisions enjoyed a special protection and that therefore if in sub-section (7) of Section 38 which deals only with protected lessees, a special date is fixed for giving notice to the tenure-holder which creates rights under sub-sections (1) and (2); namely, of applying for possession for his or her *bona fide* cultivation, it could be justified, even though in sub-sections (1) and (2) a different date, namely 30-6-1959 (the prescribed date) is mentioned in the proviso to Section 38(2). It was urged that all that the Legislature intended was to continue the special protection afforded to protected lessees under the Berar Regulation of Agricultural Leases Act by this special treatment in the case of protected lessees under sub-section (7) of Section 38.

24. In our opinion, it is not necessary to examine these questions or to find out whether the reasons which prevailed with the Full Bench in coming to their decision in fact exist and operate today or not. In our opinion the language of subsection (7) is initially clear and unambiguous and we can see no difficulty in giving full effect to the new words added "or partition". We have also said that we can see no basis for the distinction between partitions of one kind and another, namely, partitions which gave rights for the first time and partitions which merely redistribute pre-existing rights, nor can we see that the word "acquire" in the new context in which it is used in the amended sub-section (7) of Section 38 creates any anomaly, difficulty or doubt. But even assuming that there is any doubt, a reference to the Objects and Reasons of the Bill put the matter beyond any shadow of doubt. Therefore, irrespective of the reasons given in the Full Bench case, since the language of the statute is clear and expresses unequivocally the intention of the Legislature, that intention must be given effect to. Indeed, we note and that was pointed out by counsel for the respondents that the learned Judge himself has in one decision given effect to the amendment in the same manner that we propose to do in this case; See the decision of the Division Bench in Special Civil Applns. Nos. 78 and 79 of 1963 D/d. 28-4-1964 (Bom) by the

Division Bench consisting of Mr. Justice N. L. Abhyankar and Mr. Justice R. M. Kantawala.

[11]1966 Mah LJ 240

25. For these reasons, we are unable to accept the decision in 1966 Mah LJ 289. In our opinion after its amendment by Act 44 of 1963 partitions of every kind are now included within the ambit of sub-section (7) of Section 38 along with transfers.

26. This was the only point canvassed before us. The Division Bench in referring the case has not framed any question but has expressly stated that the original petition is being referred to us for disposal. In view of what we have said, the petition is dismissed with costs.

Petition dismissed.