

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4956 of 2014

Parampujya Gagangiri Maharaj
Co-operative Credit Society Ltd., Sangamner
Taluka Sangamner Dist. Ahmednagar
through its Recovery Officer Shrihari S/o Appaji Dighe,
age 50 years occupation service

...PETITIONER

VERSUS

1. Muktabai Sopan Khemnar,
age 47 years occupation household
2. Nitin S/o Sopan Khemnar,
age 24 years occupation agriculture
3. Walmik S/o Sopan Khemnar,
age 26 years occupation Agriculture

Nos. 1 to 3 R/o Ambhore Taluka Sangamner
Dist. Ahmednagar

4. Savita Somnath Hodgar,
age 22 years occupation household
R/o village Umbri Balapur Tal. Sangamner Dist. Ahmednagar
- ...RESPONDENTS**

WITH

WRIT PETITION NO. 6792 of 2015

Walmik S/o Sopan Khemnar,
age 28 years occupation agriculture
R/o Ambhore Taluka Sangamner Dist. Ahmednagar

...PETITIONER

VERSUS

1. P.P. Gagangiri Maharaj Nagri Co-operative
Credit Society Limited, Sangamner
Taluka Sangamner Dist. Ahmednagar

2. Muktabai W/o Sopan Khemnar,
age 50 years occupation household
R/o Aambhore Tal. Sangamner Dist. Ahmednagar
3. Sopan S/o Vithoba Waghmode,
age 55 years occupation agriculture R/o as above.
4. Baburao S/o Namdeo Khemnar,
age 54 years occupation and R/o as above. ...**RESPONDENTS**

**WITH
WRIT PETITION NO. 6793 OF 2015**

1. Nitin S/o Sopan Khemnar,
age 26 years occupation agriculture
R/o Ambhore Tal. Sangamner Dist. Ahmednagar
2. Savita W/o Somnath Hodgar,
age 24 years occup. agriculture R/o Umbari Balapur
Tal. Sangamner Dist. A'nagar ...**PETITIONERS**

VERSUS

1. P.P. Gagangiri Maharaj Nagri Co-operative
Credit Society Limited, Sangamner
Taluka Sangamner Dist. Ahmednagar
2. Muktabai W/o Sopan Khemnar,
age 50 years occupation household
R/o Aambhore Tal. Sangamner Dist. Ahmednagar
3. Sopan S/o Vithoba Waghmode,
age 55 years occupation agriculture R/o as above.
4. Baburao S/o Namdeo Khemnar,
age 54 years occupation and R/o as above. ..**RESPONDENTS**

*Mr R.L. Kute, Advocate, for petitioner in W.P. No. 4956 of 2014,
respondent No.1 in W.P. No. 6792 of 2015 and 6793 of 2015*

*Mr V.V. Deshmukh, Advocate for petitioners in W.P. Nos. 6792 of
2015 and 6793 of 2015*

Mr Amol Gandhi, Adv. for respondent No.1 in W.P. No. 4956 of 2014.

Mr V.V. Deshmukh, Adv. for Respts.No.2 to 4 in WP.No.4956 of 2014

*Mr A.J. Choudhary, Adv. for Respts. No.2 to 4 in W.P. No. 6792
& 6793 of 2015 .*

CORAM : NITIN W. SAMBRE, J.

DATE : 10th November, 2017

ORAL ORDER :

Petitioner - Co-operative Society has given loan to Muktabai, respondent No.1 to the present petition, and in-default thereof, initiated recovery proceedings vide Dispute No. 814 of 2000 before the Co-operative Court, Kopargaon.

2. In the said dispute, borrower Muktabai on December 6, 2010 has given an undertaking that she will not alienate the mortgaged property, which undertaking was within the consideration of the Court, as is apparent from the endorsement made thereon.

3. Muktabai's son Sopan filed a suit for partition being Regular Civil Suit No. 460 of 2013 against Muktabai and other legal heirs in the court of Civil Judge (Senior Division), Sangamner.

4. It is claimed by the son of Muktabai i.e. borrower that he is entitled for 1/4th share in the suit property. In the pleadings in paragraph No.3, plaintiff Walmik i.e. son of Muktabai, has come out with a specific statement that the suit property is '*Stridhan*' received

by Muktabai.

5. Knowing fully well that the property is mortgaged to the petitioner - Co-operative Credit Society, Muktabai entered into a compromise with her son before the *Lok Adalat* and compromise decree came to be drawn, which is subject matter of the challenge in the present petition.

6. The learned Counsel for the petitioner submits that in view of undertaking given by Muktabai before the learned Co-operative Court in dispute No. 814 of 2000, the mortgaged property should not have been agreed to be compromised in a Partition Suit, which is not maintainable in view of the suit property being the '*Stridhan*'. According to him, the orders obtained by practising fraud in suppression can be set aside under Article 226 of the Constitution of India i.e. only remedy which is prescribed pursuant to the judgment of the Apex Court in the matter of **State of Punjab & another Vs. Jalour Singh and others (2008 ALL SCR 692)**

7. In the backdrop of above, he submits that the compromise decree passed between Muktabai and her sons and daughter needs to be quashed and set aside.

8. Per contra, learned Counsel Shri Gandhi for respondent No.1 would urge that the dispute preferred by present petitioner is already dismissed in default. According to him, after the partition as was effected pursuant to the compromise in Regular Civil Suit No.460 of 2013, the property which has come to the share of Mukabai, could be used for the purpose of recovery of debt by the petitioner. He then submits that the dispute is dismissed in default, and as such, the petition is not maintainable.

9. Leaned Counsel for respondents No. 2, 3 and 4 would urge that the property which has fallen to the share of borrower Muktabai, their mother, is sufficient to satisfy the debt of the petitioner society. It is claimed that let there be satisfaction through the share of Muktabai and, if not, then only the property of respondents No.2 to 4 can be attached.

10. Considered rival submissions. Though upon perusal of the compromise decree, terms speak that respondent Muktabai will be liable to repay entire debt, however, it is not in dispute that the property in relation which compromise decree was passed in Regular Civil Suit No. 460 of 2013, was mortgaged with the petitioner society; and in view of undertaking given on December 6,

2010 in dispute No. 814 of 2000, the same should not have been consented to be partitioned by said respondent Muktabai. By entering into compromise, respondent No.1, so also respondents No.2 to 4, knowing fully well about mortgage of the said property with petitioner, on which property charge was created pursuant to the provisions of the Maharashtra Co-operative Societies Act, should not have been partitioned the said property through compromise. The said act on the part of Muktabai and other her legal heirs though having knowledge about the pendency of the recovery proceedings, is nothing but practising fraud on the present petitioner and also the Court proceedings in dispute No. 814 of 2000 and undertaking given on December 6, 2010. In view thereof, compromise decree passed on June 23, 2013 by the *Lok Nyayalaya* in Regular Civil suit No. 460 of 2013 is held to be not binding on the present petitioner and present petitioner shall be at liberty to recover its entire dues from the property over which charge was created and which was owned by Muktabai being her '*Stridhan*'.

11. This Court also takes the judicial note of the fact that even though dispute No. 814 of 2000 is dismissed in default, same appears to be inspite of stay granted by this Court in the proceedings of the present petition.

12. Shri Kute, learned Counsel for the present petitioner, on instructions informs this Court that the appropriate proceedings will be taken out for restoration of the suit. As such, this Court deems fit and proper in the interest of justice to entertain the petition.

13. With above observations, it is held that the petitioner will be entitled to recover its dues pursuant to the charge created over the '*Stridhan*' of respondent No.1 Muktabai, which was subject matter of compromise decree dated 23rd June 2013 in Regular Civil Suit No. 460 of 2013.

14. With above observations, petition stands allowed.

15. In view of above order in Writ Petition No. 4956 of 2014, Writ Petitions No. 6792 of 2015 and 6793 of 2015 rendered infructuous, and stand dismissed accordingly.

(NITIN W. SAMBRE, J.)

pjm