

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

WRIT PETITION NO. 2351 OF 2009

Madhav s/o Venatrao Patil
age 63 years, occ. Agriculture
r/o Wanwada, Tq. Ausa
Dist. Latur.

.. PETITIONER

VERSUS

1. Janardhan s/o Venkatrao Patil
age 58 years, occ. Agriculture
r/o Wanwada, Tq. Ausa
dist. Latur.
2. Trambak s/o Venkatrao Patil
age 48 years, occ. Agril.
r/o Rajewadi, Tq. Ausa
Dist. Latur.
3. Keshavrao s/o Venkatrao Patil
age 61 years, occ. Agril.
r/o Wanwada, Tq. Ausa
Dist. Latur.
4. Sandipan s/o Venkatrao Patil
age 54 years, occ. Agril,
r/o Rajewadi, Tq. Ausa
Dist. Latur

.. RESPONDENTS

Mr. B.R. Surwase, advocate for petitioner.
Mr. M.L. Dharashive, advocate for respondents.

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**CORAM : S. B. SHUKRE, J.
DATE : 19th JANUARY, 2017.**

ORAL JUDGMENT :

1. Heard.
2. The question involved in this writ petition is as to whether any amendment under the garb of clerical or typographical error could be made

to the compromise reached between the parties, which forms a basis of decree passed by the Civil Court and confirmed by the High Court as well as the Hon'ble Supreme Court, or not.

3. It needs no elaboration to state that the Court can exercise its powers under section 152 of the Code of Civil Procedure for correcting arithmetical or clerical errors provided, the mistakes are committed by the Court. Such a power need not be exercised by the Court to correct the mistakes of the parties and that too, by presuming that the parties have agreed that they have committed mistakes. However, if the parties agree that such mistakes are committed and have no objection to correction of those mistakes, the Civil Court, by invoking its inherent powers can correct such mistakes so as to render effective justice between the parties.

4. Here is a case wherein there were mistakes in the compromise deed filed before the Court of Civil Judge, Junior Division, Ausa, by some of the parties to Regular Civil Suit No. 446/1986. The suit was filed by respondent no. 2, original plaintiff, against one Vyankatrao as defendant no. 1, Rukminibai as defendant no. 2, both are since deceased, Keshav as defendant no. 4 (respondent no. 3 in the present petition), Janardhan as defendant no. 5 (respondent no. 1 in the present petition), Sandipan as defendant no. 6 (respondent no. 4 in the present petition) and, Madhav as defendant no. 3 (present petitioner). This suit was decreed on the basis of compromise and the decree was confirmed by the Hon'ble Apex Court. After such confirmation of decree, an application was filed by defendant no. 5

Janardhan that in the compromise deed it was wrongly mentioned that the share was to be given to defendant no. 4 Keshav and that, actually that share was to be given to defendant no. 5, Janardan. It was also contended that land bearing gat no. 328 was wrongly mentioned and the number should have been 388. It was therefore, prayed that these mistakes in the compromise deed be corrected. The learned Civil Judge, after hearing all the parties to the compromise, including the present petitioner, who had serious objection for allowing the objection, allowed the application on the ground that these mistakes were typographical and that the parties to be affected thereby had given their consent.

5. There is no doubt about the fact that if change in the names of defendants was to be allowed, the party which would have directly affected was original defendant no. 4 Keshav and, the party which would have been directly benefited was original defendant no. 5 Janardan, as between these two defendants, there was an agreement about effecting such change in the compromise deed. However, objection was taken by present petitioner and original defendant no. 3. It was his contention that several properties are involved and respective shares of the parties in all these properties are required to be carved out and, the matter would not come to an end only by allowed original defendant Janardan to get the share of original defendant no. 4 Keshav. It was also his contention that if original defendant no. 4 Keshav was interested in giving his share to original defendant no. 5 Janardan, he could have done it at the time of execution when the shares of all the parties were determined and final decree in that regard was passed.

It was also his contention that allowing some of the parties to make such changes in the compromise deed would only affect rights of the concerned parties as there would be some imbalance while carving out specific shares to be allotted to each of the parties who have reached compromise in between themselves.

6. One thing is certain that the change sought to be effected to the compromise deed in respect of interchange between defendant no. 5 and defendant no. 4 as regards the properties allotted to them, it could not have been done without consent of all the parties to the compromise deed. If some of the parties are saying that this is likely to adversely affect their interest and right, the same deserves to be respected atleast when the final decree is passed and specific shares are directed to be carved out. In the present case, admittedly, final decree has not been passed. Therefore, without consent of the petitioner, the learned Civil Judge could not have invoked his powers under section 152 r/w s. 151 of the Code of Civil Procedure in allowing correction in the compromise deed. The impugned order, therefore, to this extent cannot stand in the eyes of law and deserves to be quashed and set aside accordingly.

7. As regards correction permitted to be made in respect of gat number of the land, the learned counsel for petitioner submits that petitioner has no objection and that the property which should have been subject matter of the compromise deed was gat no. 388 and not gat no. 328 and therefore, to this extent, he would not challenge the impugned order.

8. In the result, writ petition is partly allowed. The impugned order to the extent it directs interchange between defendant no. 4 and defendant no. 5 in the compromise deed is quashed and set aside with liberty to defendants 4 and 5 to raise their claims in this regard at the time of execution of the decree by making mutual adjustment. Parties to bear their own cost. Rule made absolute in above terms.

(S. B. SHUKRE)
JUDGE

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