

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

918 WRIT PETITION NO.4666 OF 2019

PARASRAM PUNJABA MORE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Petitioners : Shri Vikrant S. Palsikar
AGP for Respondent - State : Shri K.S.Patil
...

CORAM : P.R.BORA, J.
DATE: 16th April, 2019

PER COURT:-

1 Heard Shri V.S.Palsikar, learned Counsel appearing for the petitioners. The petitioners are the original plaintiffs and defendants in Regular Civil Suit No.143 of 2006. The aforesaid Suit was filed by one Parasram Punjaram More, who is petitioner No.1, for partition and separate possession. The aforesaid Suit came to be compromised as per the consent terms settled by the parties. Since some mistake has occurred in calculating the shares in one of the properties i.e. Gut No.152, M.A.R.J.I. No.2 of 2017, was filed with a prayer to correct the decree accordingly. The Trial Court has however rejected the said application vide the impugned order. The Trial Court has rejected the application on two grounds; one that it was belatedly filed and second that it does not fall within the ambit of Section 153 of the Code of Civil

Procedure.

2 Perused the application at M.A.R.J.I. No.2 of 2017. It is not in dispute that the said application is filed by all the parties to Regular Civil Suit No.143 of 2006. There further appears no dispute that while reducing consent terms in writing some mistake had occurred in calculating the shares of the respective co-sharers in Gut No.152 and the said mistake was sought to be corrected by filing the application. After having gone through the contents of the application and after having heard the learned Counsel appearing for the petitioners, it is apparently revealed that some mistake had occurred while quantifying the shares in so far as Gut No.152 is concerned. Though some delay seems to have committed in approaching the Court, it does not appear that there is any malafide intention behind that. I am, therefore, inclined to allow the petition. Hence, the following order:-

ORDER

- I) The order dated 14.09.2018 passed by the Trial Court in M.A.R.J.I. No.2 of 2017, is quashed and set aside.
- II) M.A.R.J.I. No.2 of 2017 is allowed.

III) The learned Trial Court shall accordingly correct the decree passed in the aforesaid Civil Suit.

IV) Writ Petition stands disposed of with the aforesaid order.

(P.R.BORA)
JUDGE

SPT