

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

WRIT PETITION NO. 9690 OF 2016

Ashok Natha Andhale and another ... Petitioners

Versus

Hari Karbhari Andhale and another ... Respondents

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Mr. D. B. Rode, Advocate for petitioners.

Mr. S. S. Bora, Advocate for respondent No.1.

Mr. A. S. Shinde, AGP for respondent No.2-State.

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CORAM : R. G. AVACHAT, J.

DATED : 1st OCTOBER, 2019

PER COURT :-

1. Heard learned counsel for the parties.
2. By this petition, under Article 227 of the Constitution of India, the petitioners seek for setting aside the decree passed by the learned Civil Judge, Junior Division, Parner, in Regular Civil Suit No.460 of 2008 on 12.07.2009.
3. It is the case of petitioners that they are tribal. Respondent No.1 belongs to 'Maratha' community. He filed a suit, being Regular Civil Suit No.460 of 2008 against the present petitioners for partition and

separate possession of $\frac{1}{2}$ portion of the lands comprised in *Gat* Nos.1065 and 598/15. The suit was placed before the '*Loknayaalaya*' on 12.07.2009. Santosh, son of petitioner No.2, had obtained the power of attorney of both the petitioners. In the '*Loknayaalaya*', the parties to the suit submitted terms of the compromise memo. The terms of the compromise were to be effected that parties to the suit have partitioned the suit lands among themselves. The defendants (petitioners in this petition) admitted the pleadings in the plaint. As per the terms of the compromise, the land comprising in *Gat* No.1065 was given to the share of the plaintiff - respondent No.1 herein.

4. A copy of the compromise decree is on record. Santosh signed the terms of compromise for and on behalf of the petitioners herein.

5. As stated above, it is the case of the petitioners that the respondent No.1/plaintiff is non tribal. He belongs to '*Maratha*' community. Respondent No.1 played fraud on the Court and the petitioners herein, with a view to obtain a decree in terms of compromise.

6. The petitioners are tribal. There is nothing to indicate that respondent No.1 is a tribal. He is said to have belonged to '*Mahatha*' community. As such, the compromise decree, whereunder the land in

Gat No.1065 came to be allotted/transferred to respondent No.1-plaintiff is invalid. A copy of an order passed by the Tahsildar in a proceeding, namely Adiwasi Case No.003/2016 is placed on record, declaring the transfer of the said land by virtue of the terms of compromise decree as invalid. Respondent No.1-plaintiff may have his remedy in challenging the said order before the appropriate authority.

7. Suffice it to say that the compromise decree passed in Regular Civil Suit No. 460 of 2008, is found to be in contravention of the provisions of Section 36-A of the Maharashtra Land Revenue Code, 1966. The petition, therefore, deserves to be allowed.

8. The writ petition is allowed in terms of prayer clause "C".

[R. G. AVACHAT, J.]

SMS