

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1789 OF 2019

PRATIBHA MANGAL KULKARNI
VERSUS
DINESH VASANT KULKARNI AND OTHERS

Mr.C.V.Korhalkar and Mr.R.N.Chavan, Advocates for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 11/12/2019

PER COURT :

1. The petitioner, who is the original plaintiff in RCS No.40/2014 and was not a party to RCS No.170/2016, is aggrieved by the settlement made between the litigating sides in mediation vide order dated 04/01/2017 in RCS No.170/2016.

2, Contention is that the petitioner is married to Shri Mangal Vasant. As she was childless and came from a humble background, the husband and the in laws used to harass her. An oral partition took place on 09/03/2014 and a portion of the land in Gat No.280 to the extent of 40R , in Gat No.288 to the extent of 20R and Gat No.284 to the extent of 20R were promised to the petitioner. Since the relatives went back on the promise, she filed RCS No.40/2014 on 16/03/2014 i.e. on

the 7th day from the purported oral agreement. The said suit is still pending.

3. Grievance is that all the close relatives came together in RCS No.170/2016. The husband of the petitioner was defendant No.1. A compromise *purshis* was filed on 04/01/2017 in mediation and the learned Judge passed an order on the same date by which a compromise decree was issued. The petitioner submits that the said compromise decree is invalid and not binding on her as she was not arrayed as a defendant and she is not given any share. She concedes that her husband has got a share.

4. The learned Advocate for the petitioner fairly states that the petitioner has preferred an application in RCS No.40/2014 seeking an amendment to introduce a prayer of declaration that the said compromise decree is not binding on her. Due to lack of instructions, he is unable to state as to what was the fate of the said application.

5. In my view, until the right of the petitioner is established in the 2014 suit, the impugned compromise decree cannot be interfered with on the basis of conjectures and surmises. The claim of the petitioner as well as her request to amend the plaint and seek a direction in the 2014 suit, is available to her. This petition, therefore, need not be entertained

and stands disposed off by keeping open all legal remedies available to the petitioner.

(Ravindra V.Ghuge, J.)