

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

WRIT PETITION NO.14366 OF 2018

**SITARAM TULSHIRAM HADAP AND OTHERS
VERSUS
SHRIRAM NATTHU HADAP AND OTHERS**

...
Advocate for the Petitioners : Shri A. J. Patil
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CORAM : RAVINDRA V. GHUGE, J.

DATED : 22nd JANUARY, 2019.

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PER COURT :

1. The petitioners – plaintiffs are aggrieved by the order dated 26/09/2018 passed by the Trial Court, by which, application Exhibit 65 filed in RCS No. 125/2010, has been rejected.

2. Grievance of the petitioners is that RCS No. 460/1994 and 422/2001 were filed by the defendants. A counter claim was filed and a settlement took place between the father of the plaintiffs and Nathu. It is averred that the two suits were disposed off by way of a compromise and a compromise decree was issued. Based on the same, Exhibit 65 was filed to put forth certain pleadings to the extent that the said compromise

decree would not bind these petitioners and the said compromise decree be declared to be not binding. The Trial Court has rejected the said application on the ground that an incident that has occurred on 03/01/2002 is sought to be brought on record in a suit registered in 2010 vide Exhibit 65 which is filed on 01/03/2018 when the recording of oral evidence is at an advanced stage.

3. I have considered the strenuous submissions of the learned Advocate for the petitioners. I called upon the petitioners to indicate from any document which would suggest that the two suits were settled between the parties and a compromise decree was passed by the Trial Court.

4. My attention is drawn to a purshis dated 03/01/2002 signed between the plaintiff Tulshiram and others alongwith defendant Nathu and another. It is mentioned in the purshis that the property as set out in the counter claim would be handed over to Shriram Nathu. It is then pointed out that the Trial Court has passed an order on 03/01/2002. It is, however, submitted that no decree has been issued by the Trial

Court and the said suit bearing RCS Nos. 460/1994 and 422/2001 have been simply disposed off as withdrawn.

5. Considering the above, the record reveals that there is no decree issued by the Trial Court and that the concerned litigants were merely permitted to withdraw their suits. The order of the Trial Court dated 03/01/2002 indicates that the suits were simplicitor withdrawn.

6. Considering the above, I do not find that the Trial Court has committed any error in passing the impugned order rejecting Exhibit 65. These petitioners are unclear as to whether, there was any compromise decree. Moreover, they are attempting to plead an event that took place on 03/01/2002 in 2018 in a suit which was registered in 2010.

7. This petition, being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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