

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

52 WRIT PETITION NO.277 OF 2020

SAKHUBAI TRIMBAK JADHAV AND OTHERS
VERSUS
SAYYAD KAYYUM SAYYAD BASHIR AND ANOTHER

...
Advocate for Petitioners : Mr. S.C. Arora h/f Mr. Bharuka D.S
Advocate for Respondents No.1 & 2 : Mr. Raut Avinash N.

...
CORAM: ROHIT BABAN DEO, J.

Date: JANUARY 27th, 2020

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PER COURT :-

1 The petitioners are the plaintiffs in Special Civil Suit No.180/2014 brought for possession, perpetual injunction and mandatory injunction.

2 The plaintiffs - defendants No.1 and 2 purportedly entered into a compromise deed and applied to the Trial Court for recording the compromise and passing a decree in terms thereof.

3 The compromise deed reads thus:-

" **COMPROMISE DEED**

That plaintiffs and defendant No.1 and 2 have compromised the matter on following terms and conditions:-

1. That, the defendant No.1 and 2 admits that survey no.1/3 of Garkheda Aurangabad was originally owned by Shaikh Banne Shaikh Habib and the said property was purchased by Trimbak Maroti Jadhav through Sale Deed No.2707 dated 12/5/1981 and said property was given C.T.S. No.15304/46 and defendant No.1 and 2 admits the ownership

of Trimbak Maroti Jadhav now deceased.

2. That the defendant No.1 and 2 admits that Trimbak Maroti Jadhav died on 23.8.2010 and the plaintiff No.1 to 5 have become the owner of the said property as legal heirs of Trimbak Maroti Jadhav all r/o Kailashnagar, Aurangabad.

3. That the defendant No.1 and 2 admits that survey no.1/3 C.T.S.No.15304/46 Garkheda, Aurangabad is admeasuring 1674.00 sq. mtrs and plaintiff No.1 to 5 are the absolute owners of the said portion. It is also admitted that the said plot is Triangular in shape. The defendant No.1 and 2 admits that they have made construction over the said plot to the extent of 1400.00 sq.ft (130.00 sq.mtrs) of which a map is annexed which is part and parcel of compromise.

4. That the defendant No.1 and 2 who made the construction of 1400.00 sq.ft (130.00 sq.mtrs) over the C.T.S.No.15304/46 Garkheda, Aurangabad are with following boundaries:

<i>Towards East</i>	<i>:</i>	<i>Plaintiffs Construction over CTS No.15304/45(Naviwala Motors)</i>
<i>Towards West</i>	<i>:</i>	<i>Road</i>
<i>Towards North</i>	<i>:</i>	<i>Galli (Lane)</i>
<i>Towards south</i>	<i>:</i>	<i>Remaining land of Plaintiffs CTS No.15304/46</i>

5. That the defendant no.1 and 2 admits that their construction admeasuring 1400.00 sq.ft.i.e. 130.00 sq. mtrs. is to the south side and the defendants hereby admits that they will not make any construction by way of window, door, ventilation to the east side and they further admits not to use the south and east side land for TO & WAY.

6. That the plaintiffs admits that defendant No.1 and 2 on the basis of this compromise have become the owner in

possession of the plot C.T.S.No.15304/46 to the extent of 1400.00 sq. ft. i.e. 130.00 sq. mtrs and the defendant No.1 and 2 in lieu of that have paid amount of Rs.1,00,000/- (Rs. One lac. Only) to the plaintiffs as the price of the said portion and now the defendant No.1 and 2 can mutate their name in city survey record to the extent of 1400.00 sq. ft (130.00 sq.mtrs) and the plaintiff will not take any objection for mutation. Defendant No.1 and 2 however admits that plaintiffs are the owner and possessor of the remaining area of C.T.S.No.15304/46 to the extent of 1544.00 sq. mtrs and they can mutate their name in city survey record on the basis of the compromise and defendant No.1 and 2 hereby agrees not to take any objection for the same.

7. That the parties shall bear their own costs of the suit. "

4 The Trial Court has held and rightly so, that it would not be permissible to record the compromise, much less to pass a decree pursuant thereto. The Trial Court noted that defendants No.1 and 2 who claim to be the owners on the basis of unregistered sale-deed cannot be declared as owners notwithstanding that the plaintiffs are willing to recognize the ownership of the defendants No.1 and 2. The Trial Court further held that the suit plot is recorded in the name of Trimbak Maroti Jadhav, the predecessor-in-title of the plaintiffs. The Trial Court has advised the plaintiffs to obtain the heir-ship certificate and then apply for mutation. It was not necessary to make observations touching the ownership of the plaintiffs. The Trial Court could have rested by noting that the compromise cannot

be given effect to, since the declaration of the ownership of the defendants No.1 and 2 could not have been granted in the absence of any registered document.

5 In this view of the matter, I do not interfere with the order impugned.

6 The petition is dismissed.

7 It is made clear that the observations in the order impugned would not come in the way of the petitioners - plaintiffs in proving their title to the suit property.

(ROHIT BABAN DEO, J)

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