

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

WRIT PETITION NO.4117 OF 2019

Bijabai w/o Dilip Shrikhande

Petitioner

Versus

Vikas s/o Laxmanrao Shrikhande & others

Respondents

Mr.S.S.Kazi, advocate for the Petitioner.

Mr.P.V.Langhe, advocate for Respondents No.1 & 2.

CORAM : V.K.JADHAV, J.

DATE : 15th February, 2021.

PC :

1 Heard finally at the stage of admission by consent learned Counsel for respective parties.

2 Even though the compromise was executed in the pending execution way back in the year 2015, the petitioner herein – original J.D. No.3 has challenged the said compromise on the ground of fraud. According to the petitioner, the alleged compromise did not bear her signature nor she is party to the said compromise.

3 Learned Counsel for the petitioner submits that the petitioner has specifically raised a plea of fraud. The petitioner

has not put her thumb impression on the said compromise. Though it is a suit for partition and separate possession, the petitioner is not getting any share in the said property in terms of the said compromise. The learned Counsel submits that the said compromise came to be effected behind the back of the petitioner.

4 The learned Counsel for Respondents No.1 & 2-original Decree Holders submits that the petitioner was party to the suit as well as party to the execution petition. The learned Counsel submits that on each and every page of the compromise and below the compromise, the petitioner has put her thumb impression and on page no.3 of the compromise, it has been specifically mentioned that the petitioner herein has given up her claim. The learned Counsel submits that the same is for the reason that petitioner's husband was party to the suit so also to the execution petition and since he has been allotted share in the property, the compromise is effected, as detailed above.

5 The learned Counsel for Respondents No.1 & 2 submits that as against the original judgment and decree, the husband of the petitioner namely Dilip Shrikhande, who is also party to the suit, has preferred an appeal before the District

Court and the said appeal was dismissed in default. Said Dilip Shrikhande (husband of the petitioner) has filed an application for restoration of the appeal, however, the learned District Judge has rejected the same. Being aggrieved by the same, the husband of the petitioner has preferred Writ Petition No.7955 of 2013. The said writ petition was withdrawn with the statement that the parties have arrived at amicable settlement. The said statement was made on behalf of husband of the petitioner and it has been so recorded by this Court in the order dated 24th January, 2014, while disposing of Writ Petition No.7955 of 2013. The learned Counsel submits that in all probability, the theory of alleged fraud is imaginary one and the petitioner, with some ulterior motive, has filed the present writ petition.

6 On going through the execution petition so also the compromise, it appears that the petitioner is party to the suit and execution petition so also to the compromise as J.D. No.3. It appears that husband of the petitioner is also party to the execution petition as J.D.No.2. I have carefully gone through the order dated 24th January, 2014, passed by this Court (**Coram: S.V.Gangapurwala, J.**) in Writ Petition No.7955 of 2013. It appears that husband of the petitioner has withdraw the said writ petition by making a statement that the matter has

been amicably settled between the parties. It, thus, appears that though the compromise is signed by all the parties, especially the petitioner has put her thumb impression on each and every page and further there is specific clause no.3 in the compromise noting that she has given up her claim, it appears that the petitioner with some oblique motive has preferred this writ petition. It appears that in a suit for partition and separate possession where husband of the petitioner is also party, share has been allotted to the decree holder so also J.D.Nos.1 and 2, who are the real brothers of decree holder and in view of the same, the petitioner, who happened to be the wife of J.D.No.1, has given up her claim in respect of one property, which seems to have been purchased in her name. In view of the same, I do not find any substance in this writ petition.

7 Writ Petition is hereby dismissed.

(V.K.JADHAV)
JUDGE

adb