

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

WRIT PETITION NO. 8784 OF 2018

- 1) Baban s/o Govind Gund,
Age; 68 years, Occ. Agril.
 - 2) Mohan s/o Govind Gund,
Age; 62 years, Occ. Agril,
- Both R/o Kunthephal (Watephal)
Tq. Ashti, Dist. Beed.

...PETITIONERS

V E R S U S

- 1) The State of Maharashtra
(Revenue Department of
Maharashtra, Mumbai,
Through; Secretary Mantralaya,
Mumbai - 32.
(Through the Government Pleader
High Court of Bombay,
Bench at Aurangabad)
- 2) Babasaheb s/o Chandrabhan Kohek,
Age; 40 years, Occ; Agril,
R/o; Kunthephal (Watephal)
Tq.Ashti, Dist. Beed.
- 3) Murlidhar s/o Chandrabhan Kohek
Age; 55 years, Occ; Agri.
R/o; Kunthephal (Watephal)
Tq. Ashti, Dist. Beed.
- 4) Kamalabai Ramdas Darekar,
Age; 60 years, Occ; Household,
R/o; Gayakawadi, Tq. Karjat,
District; Ahmednagar.

- 5) Vijaya Dilip Andhale,
Age; 40 years, Occ; Household,
R/o; Wadgaon Tadoli,
Tq. and Dist. Ahmednagar.
- 6) Indu Vitthal Misal,
Age; 38 years, Occ; Household,
R/o; Hatolan, Tq. Ashti,
District; Beed.
- 7) Meena Suresh Gund,
Age; 30 years, Occ; Household,
R/o; Kunthephal (Watephal)
Tq. Ashti, Dist. Beed.

...RESPONDENTS

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Mr. Ram B. Deshpande, learned Advocate for Petitioners
Mr. S.P. Tiwari, learned A.G.P. for Respondents-State
Mr.N.C.Graud, learned Advocate for Respondents No.2 to 7

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CORAM : SANDEEP K. SHINDE, J.

Reserved on : 19.06.2021
Pronounced on : 22.06.2021

JUDGMENT :

1. This petition under Article 227 of the Constitution of India challenges the compromise decree drawn in RCS No. 345 of 2017 ('Suit' for short) of Civil Judge, Junior Division, Ashti, District Beed.
2. Respondent No. 2 instituted the said suit against respondents No. 3, 4, 5, 6, and 7 for partition and possession of the suit

land bearing Gut No. 113 and Gut No. 13/A/1. The suit was compromised on 08th April, 2017; whereafter, the decree was drawn in the terms thereof. The petitioners herein were not parties to the suit and obviously, to the decree.

3. The petitioners/claimants would assert that the decree has been obtained by fraud, misrepresentation in collusion and by suppressing the material facts. The petitioners would assert that they are in possession of the suit land Gut No. 13/A/1 and the proceedings pending between the petitioners and the contesting respondents relating to Gut No. 13/A/1, were not disclosed to the Court. In support of this contention, the learned counsel for the petitioners has relied on the revenue proceedings No. 2017/ROR/29/B, instituted by respondent No. 3 and others, against the petitioners, and the order passed in this proceeding, wherein, Revenue Officer had concluded that the petitioners were found in the possession of the land Gut No. 13/A/1.

4. Learned counsel would argue that one Deelip Gajanan Chaudhari and his wife (defacto purchasers of Gut No. 13/A/1 had instituted a Regular Civil Suit No. 17 of 2001, against the petitioners seeking a decree for perpetual injunction in relation to Gut No. 13/A/1. He would invite my attention to the order dated 27th June, 2001, passed in the said suit, wherein, the learned Civil Judge Junior Division, Ashthi,

was pleased to hold the possession of the petitioners in the suit land Gut No. 13/A/1. Relying on the aforesaid orders, the learned counsel for the petitioners would submit that the compromise decree drawn in the said suit, stands vitiated by fraud. It is submitted that the respondents, on the basis of the compromise decree, may dispossess the petitioners from Gut No. 13/A/1 and thus seeks to quash the compromise decree drawn in RCS No. 345 of 2017.

5. Heard Mr.Ram B. Deshpande, learned counsel for the petitioners, Mr. S.P. Tiwari, learned A.G.P. for respondents-State and Mr.N.C.Graud, the learned counsel for respondents No.2 to 7, at some length. With the assistance of the counsels for the parties, I have also perused the material on record.

6. Prima-facie the petition is misconceived and not maintainable.

7. The issue as to the maintainability and remedy available to the petitioners is concerned, it may be stated that the petitioners were not party to the agreement/compromise decree between the plaintiffs and defendants and therefore, he cannot take recourse of proviso to Rule 3 of Order XXIII of C.P.C. for redressal of their grievances. Neither they have right to institute a suit which is barred under Rule 3A of Order XXIII of C.P.C. In the circumstances, in my view, only remedy available to him is

to institute a suit, to protect his rights, if any, in the suit property. Insofar as, the powers of this Court to interfere with the order recording compromise is concerned, the petitioners have relied on the judgment of Apex Court in the case of **A.A. Gopalakrishnan v. Cochin Devaswom Board and Ors. - AIR 2007 Supreme Court 3162.**

In the cited case by an order passed by the High Court, the temple board was directed to take possession of the temple property from the respondents. The board entered into compromise with respondents, to give up their rights in the property in question, in lieu of respondents giving possession of another property and got the compromise, decree passed. This decree was challenged by an aggrieved devotee, who was not party to the suit. In view of these set of facts, the Hon'ble Apex Court has held that the powers contained in Rule 3A will not come in the way of High Court, examining the validity of the compromise decree. In the context of these facts the Apex Court interfered with the compromise decree. Yet in the case in hand, the petitioners were not party to the compromise decree, drawn in a suit for partition, and therefore, even if, the parties to the suit did not disclose, proceedings instituted against the petitioners in respect of the suit property, that itself would not amount either to 'suppression of facts', leading to a collusive decree. In consideration of the facts aforesaid and for the reasons stated, the petition is dismissed.

8. Though I have not entertained the petition, it may be stated that the orders passed by the Civil Court, Junior Division, Ashti, District Beed in RCS No. 17 of 2001 and the order passed by the Revenue Officer in ROR proceedings, as also a panchanama dated 30.07.2018, prima-facie shows that the petitioners' were in possession of the suit land.

9. Petition is dismissed.

(SANDEEP K. SHINDE)
JUDGE

mahajansb/