

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

**CIVIL APPLICATION NO.9580 OF 2021
IN
SECOND APPEAL NO.805 OF 2017**

YOGESH PRAKASH GHODKE

VERSUS

VAISHALI W/O PRASHANT SANT AND OTHERS

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Mr. Suvid S. Kulkarni, Advocate for the applicant

Mr. P.S. Shendurnikar, Advocate for respondent Nos.1 and 2

Mr. N.D. Sonawane, Advocate for respondent Nos.3 and 4

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 16th SEPTEMBER, 2021

ORDER :

1 By this application, the applicant has prayed for recall of the order passed by this Court in Second Appeal No.805 of 2017 on 03.07.2021 and to stay the orders passed below Exhs.52 and 56 in Land Acquisition Reference No.240/2013 pending before learned Civil Judge Senior Division, Aurangabad till the decision of the objection application filed by the present applicant in the said land reference.

2 Heard learned Advocate Mr. Suvid S. Kulkarni for the applicant, learned Advocate Mr. P.S. Shendurnikar for respondent Nos.1 and 2 and learned Advocate Mr. N.D. Sonawane for respondent Nos.3 and 4.

3 It has been vehemently submitted on behalf of the applicant that one Prashant Prakash Sant had purchased 03 Acres of land in the year 2005 from one S. Sadanand G. Jagdish. Thereafter, said Prashant sold 01 acre 20 Gunthas land to one Amol Kathar by registered sale deed. Then Prashant purchased 03 acres land from one Pradeep Auti and that land is situated at Karmad, Tq. & Dist. Aurangabad. The total land which was purchased by Prashant was admeasuring 04 Acres 20 Gunthas. The present applicant was attesting witness to the sale deeds. The applicant had also purchased 03 acres of land from one P. Pandurang P. Reddy in 2005 in Karmad. The land which was purchased by Prashant from Auti was mortgaged to Bank of India and in order to clear those dues the sale deed was executed by Prashant. The applicant had sold 02 Acres of his land to one Ramkisan Bhosale and Ukirde. The applicant says that he is the cousin of Prashant and Prashant by way of oral contract promised that he would transfer 01 acre of his land by registered sale deed in favour of applicant. Thereafter, Prashant died in a road accident and the part of promise could not be performed. The said contract was within the knowledge of respondent Nos.1 to 4. They had also

assured to fulfill the promise. However, after initiation of land acquisition proceedings in 2012 the respondent Nos.1 to 4 committed breach. In fact, there was a dispute regarding disbursement and, therefore, the respondent No.1 had filed Writ Petition No.6411 of 2013 in this Court. After hearing the parties, this Court disposed of the petition on 17.12.2013 giving direction to the parties to approach Civil Court under Section 30 of the Land Acquisition Act. The dispute was then forwarded to the Civil Court by the Sub Divisional Officer. It is then stated that the applicant has filed objection in those proceedings. Even his wife has also filed her affidavit in L.A.R. No.240/2013. The respondent Nos.1 to 4 had preferred application seeking withdrawal of the amount and accordingly, it has been granted on 21.08.2021. That application given by the present applicant at Exh.38 was yet to be decided, however, the impugned order came to be passed on Exhs.52 and 56, thereby allowing the respondent Nos.1 to 4 to withdraw 100% amount. He submits that entire purport of the order passed in writ petition has been frustrated. It is stated that he was not party to the litigation held between respondent Nos.1 to 4 till the matter was carried out up to this stage. However, the parties have arrived at the compromise and the said compromise has then been recorded by this Court, thereby disposing of the Second Appeal as well as Writ Petition. Vital rights of the applicant were involved. He was objecting. The learned Civil Judge Senior Division ought to have decided

Exh.38 before passing the order below Exhs.52 and 56. The learned Advocate, therefore, prayed for recalling the order passed by this Court as it has been obtained by playing fraud upon the Court.

4 The learned Advocates for the respondents submitted that this Court had taken abundant precaution while recording the compromise. The applicant was not party to the said proceeding and, therefore, there was no question of playing fraud upon the Court.

5 At the outset, it is to be noted that the Second Appeal was filed by the original defendant/respondents after being aggrieved and dissatisfied with the Judgment and Decree dated 01.10.2016 passed by learned District Judge-4, Aurangabad, thereby allowing the Regular Civil Appeal No.16/2015 filed by the respondent Prakash reversing the Judgment and Decree dated 09.12.2014 passed by the learned Civil Judge Junior Division, Aurangabad in Regular Civil Suit No.1170/2012. During the pendency of the Second Appeal, Writ Petition No.1518 of 2018 was also filed, which was also between the parties challenging the Judgment and Decree dated 01.01.2018 passed by the learned Civil Judge Senior Division, Aurangabad and thereby allowing Exh.21 filed by the respondent No.2 therein and permitting him to withdraw the entire amount of compensation deposited by the Land

Acquisition Officer, *ex parte*, without hearing the petitioners.

6 The parties arrived at compromise and the terms are filed on record on 30.01.2021. Those terms were got verified through learned Registrar (Judicial). A detailed order has been passed by this Court in respect of taking the compromise on record.

7 At the outset, it can be said that the present applicant is not a party to the Second Appeal or the Writ Petition, that was before this Court. In fact, whether he has any right to object, is also a question, because on the basis of certain oral agreements he is claiming his interest in the land. He has not given the exact date of the oral agreement/contract. From his application it can also be seen that he never filed any suit for specific performance of the contract. No such documents have been produced on record. The affidavit, which appears to have been filed by the wife of the present applicant before the learned Civil Judge Senior Division, is also on the same line. At one place she says that the dispute is pending since 2013. Why they had not tried to get their rights established ? In fact, if he has any kind of right, which he can establish by a separate proceeding, then definitely, he would be at liberty to establish it. But since he was not a party to the proceeding and he could not have arrived at a compromise, he cannot

say that whatever compromise was recorded by this Court was the effect of alleged fraud. There is no merit in the present application. It deserves to be rejected. Accordingly, it is rejected.

(Smt. Vibha Kankanwadi, J.)

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