

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

CIVIL REVISION APPLICATION NO. 6 OF 2022

Prakash s/o. Bhagwan Deshmukh Age. 55 years, Occ. Agriculture R/o. Taroda (Bk.), Tq. & District Nanded.	.. Applicant [original Def.No.2]
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Versus

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| 1] Navnath s/o. Kishanrao Deshmukh
Age.68 years, Occ. Agriculture, | .. Respondents
[1 to 6 ori.
plaintiffs |
| 2] Anandrao s/o. Kishanrao Deshmukh
Age.64 years, Occ. Agriculture, | No.7 ori.
Def.No.1] |
| 3] Jagannath s/o. Kishanrao Deshmukh
Age.60 years, Occ. Agriculture, | |
| 4] Udhavrao s/o. Kishanrao Deshmukh
Age.52 years, Occ. Agriculture, | |
| 5] Shankarrao s/o. Kishanrao Deshmukh
Age.48 years, Occ. Agriculture, | |
| All resident of Taroda [Bk.]
Tal & Dist. Nanded. | |
| 6] Gayabai w/o. Sudhakarrao Deshmukh
Age.56 years, Occ. Household,
R/o. Kandli, Tq. Kalamnuri,
Dist.Hingoli. | |
| 7] Vishwanath s/o. Kishanrao Deshmukh
R/o. Taroda (Bk), Taluka and
District Nanded. | |

Mr.Sachin Deshmukh, Advocate for the applicant.

Mr.V.D. Hon i/b. Mr. A.V. Hon, Advocate for respondent Nos. 1 to 6.

Mr.A.I. Deshmukh, Advocate for respondent No.7.

CORAM	:	VINAY JOSHI, J.
RESERVED ON	:	28.02.2022
PRONOUNCED ON	:	03.03.2022

J U D G M E N T :-

01. Heard finally by consent of both learned Counsels at the stage of admission.

02. The revision petitioner has claimed exception to the order dated 30.11.2021 passed in RCS No.245 of 2021 on Exh.20 by learned Joint Civil Judge, Junior Division, Nanded, whereby the application for rejection of plaint in terms of Order 7 Rule 11 (d) of the Code of Civil Procedure has been rejected.

03. The facts necessary to decide this revision petition in brief are that the revision petitioner was defendant No.2 in RCS No.245 of 2021. The said suit was

filed by respondent Nos.1 to 6 (plaintiffs) seeking relief of declaration of joint ownership and possession in respect of immovable property. Likewise declaration has also been sought that compromise decrees passed in RCS No.122 of 2019 and 157 of 2019 are void and not binding on plaintiffs. Besides that the relief of perpetual injunction has been claimed. The said suit was filed against petitioner (Prakash) and respondent No.7 – Vishwanath. In said suit, petitioner Prakash has applied vide Exh.20 for rejection of plaint in terms of Order 7 Rule 11(d) of CPC. It was contended that compromise decree passed in RCS Nos.122 of 2019 and 157 of 2019 cannot be questioned by way of separate suit. Precisely it was contended that those decrees were passed in Lokadalat and therefore it cannot be questioned by filing separate suit but the remedy lies in filing writ petition. Moreover, it is contended that in view of specific bar created under Rule 3A to Order 23 of CPC, suit shall not lie to set aside decree passed by way of compromise.

04. The said application was resisted by original plaintiffs vide their reply. Having regard to the submissions and considering legal position the Trial Court held that there are no grounds for rejection of plaint under Order 7 Rule 11(d) of the CPC and accordingly rejected the application.

05. In order to understand controversy some background facts need reference. For the sake of convenience the parties are hereinafter referred as per their status in RCS No.245 of 2021 in which the impugned order has been passed. Defendant No.1 Vishwanath and defendant No.2 Prakash (revision petitioner) were cousin brothers *inter se*. Prakash filed RCS No.157 of 2019 against Vishwanath seeking declaration of ownership, possession and injunction in respect of land bearing Gat No.123. Likewise Vishwanath filed RCS No.122 of 2019 against Prakash seeking declaration of ownership and possession in respect of land Gat No.122.

06. Vishwanath and Prakash entered into compromise and they have signed consent terms in both suits. Precisely in the suit filed by Prakash (RCS No.157/2019), it was agreed that Prakash is the owner and possessor of land bearing Gat No.123. Accordingly consent terms were filed in Lokadalat on which suit was disposed in terms of settlement meaning thereby ownership and possession of Prakash over land Gat No.123 was declared. On the other hand, in another suit filed by Vishwanath (RCS No.122/2019) they have similarly entered into consent terms and accordingly suit was decreed in terms of settlement. In said suit ownership and possession of Vishwanath of land Gat No.122 was came to be declared. To simplify the matter, it can be said that two cousin brothers Prakash and Vishwanath filed suits against each other and by consent got declaration that Prakash is owner and possessor of land Gat No.123 whilst Vishwanath is owner and possessor of land Gat No.122. The settlement was arrived before panel of Lokadalat who in tern has

passed award which is having deeming effect of decree of Civil Court in terms of Section 21 of the Legal Service Authorities Act, 1987.

07. In the wake of above position, existing suit bearing RCS No.245/2021 was came to be filed by brothers and sister of Vishwanath against Prakash and Vishwanath claiming certain relief. For the sake of convenience the reliefs claimed in the suit are reproduced here-in-below :-

"1] It be declare that the plaintiffs are the joint owners and possessors of 1/7th share each along with defendant No.1 in agricultural Land gut No.123 total adm.79 R.L.R.Rs.4.03 ps. Situated at village Taroda [bk] Tq. & Dist. Nanded, bounded as on east:-land gut No.124 and 125, west:-land gut No.78 south:-land gut No.77 & 126 north:-land gut No.122.

B] It be declare that the compromise decree passed in R.C.S. No.122/2019 dated 13.07.2019 passed by Hon'ble 5th Jt.C.J.J.D., Nanded in between defendants is null, void, illegal and not binding on the plaintiffs.

C] It be declare that the compromise decree passed in R.C.S.No.157/2019 dated 13.07.2019 passed by the Hon'ble 2nd Jt.C.J.J.D. Nanded in between defendants is null, void, illegal and not binding on the plaintiffs.

D] Declare for issue of perpetual injunction restraining the defendants No.1 & 2 from causing obstructions and interference in the peaceful possession of the plaintiffs over the suit land Gut.No.123 adm.79 R. L.R. Rs.4.03 ps. Situated at village Taroda [bk] Tq.

& Dist. Nanded.

WITH

E] Issue of perpetual injunction restraining the defendants from alienating or creating third party interest over the suit land Gat No.123 adm.79 R L.R. Rs.4.03 ps. Situated at village Taroda [bk] Tq & Dst. Nanded, bounded as on east:-land gut No.124 & 125, west:-land gut No.78 south:-land Gut No.77 & 126 north :- land Gut No.122."

08. The plaintiffs (brothers and sister of Vishwanath) have pleaded that one Krisharao was their father as well as father of defendant No.1 – Vishwanath. Krishnarao was owner and possessor of land Gat No.123. After demise of Krishnarao suit land was succeeded by his sons and daughter i.e. plaintiffs and Vishwanath. As such, suit land bearing Gat No.123 was ancestral property of plaintiffs and defendant No.1 Vishwanath, in which partition has not taken place. It is pleaded that defendant No.1 – Vishwanath, who was elder son of Krishnarao was not absolute owner but had only 1/7th undivided share in said property. After demise of Krishnarao his six sons (including Vishwanath) and a daughter Gayabai became joint owner to the extent of 1/7th share each in the suit property. It is pleaded

that Vishwanath in collusion with his cousin brother Prakash, filed *inter se* suit and by way of settlement got declaration about his ownership of Gat No.123 and Prakash of Gat No.122. It is pleaded that both Prakash and Vishwanath took disadvantage of their names entered in to the land Gat No.122 and 123 and accordingly obtained compromise decree by way of practicing fraud. With such principal pleadings, siblings of Vishwanath have filed suit seeking declaration of their joint ownership and possession of 1/7th share each in land Gat No.123. So also they seek declaration that collusive decrees passed by way of settlement in RCS Nos.122 of 2019 and 157 of 2019 are null and void and not binding on them.

09. It may be recalled that in said suit filed by five brothers and one sister seeking declaration, Prakash has filed application for rejection of plaint which was came to be rejected. The plaint is sought to be rejected on the ground that the suit is "barred by any law" as contemplated under Order 7 Rule 11(d) of the Code of

Civil Procedure. The rejection is sought on two counts. Firstly that that award passed in Lokadalat cannot be questioned by way of separate suit but by filing writ petition. It is argued that in view of the dictum laid down by the Supreme Court in case of Bhargavi Constructions & Anr. Vs. Kothakapu Muthyam Reddy & Ors., 2017 AIR (SC) 4428, suit seeking challenge to the award of Lokadalat is not maintainable, as well as the law declared by the Supreme Court comes within the expression "Law" occurring in clause (d) of Rule 11 Order 7 of CPC. The learned Counsel appearing for the petitioner also relied on the decision of the Supreme Court in the case of State of Punjab & Anr. Vs. Jalour Singh & Ors., Law Finder Doc ID # 137842 to contend that the award passed by Lokadalat cannot be challenged by separate suit but only by way of writ petition.

10. In above case of Bhargavi (supra) the facts were such that a suit for specific performance was filed against some of defendants. Later on some more

defendants were added. All of them have entered into compromise and the matter was settled before Lokadalat. Later on some of the defendants though party to settlement have filed a separate suit challenging the award of Lokadalat. The case in hand is quite distinct. The plaintiffs are admittedly not party to the compromise. Therefore, the petitioner cannot muster any strength from said decision.

11. In above referred case of State of Punjab (supra) it is specifically observed that award made by Lokadalat in terms of settlement arrived at between the parties is final. If any party wants to challenge the said award passed on settlement, it may be done only by invoking petition under Article 226 or 227 of the Constitution. Said expression conveys that award is binding on the parties to the settlement as well as if a party proposes to challenge, meaning thereby a party to the compromise and not the stranger. Therefore, said ratio cannot be stretched to hold that suit by stranger

is barred.

12. In short in above referred cases, there is no dictum that a stranger to the proceeding cannot maintain a separate suit to challenge the settlement to which they were not parties.

13. The second submission is that Order 23 Rule 3A of the CPC creates a specific bar to challenge a decree passed on compromise. For that purpose reliance is placed on the decision of the Supreme Court in the case of Triloki Nath Singh Vs. Anirudh Singh (D) Thr. LRs & Ors., Law Finder Doc ID # 1714041.

14. Per contra, the learned Senior Counsel Mr. Hon appearing for original plaintiffs contended that the plaintiffs were not party to both suits in which compromise decrees were obtained. He would submit that since they were not parties to the suit, the only remedy available for them is to file separate suit seeking

declaration. It is submitted that the ratio laid down by the Supreme Court in above referred cases would bind the parties to the settlement and not to the stranger. It is contended that the plaintiffs have principally sought declaration of their joint ownership over land bearing Gat No.123, which was not the relief claimed in earlier suits. He would submit that in order to prove collusion, and their joint share, evidence is needed as several disputed question of fact are involved. In short, he has supported the impugned order passed by the Trial Court.

15. Learned Senior Counsel Mr.Hon would submit that a compromise decree is not binding on stranger but to the parties to the suit. To substantiate said contention he relied on the decision of the Supreme Court in the case of Madan Mohan Mishra Vs. Chandrika Pandey (dead) by Lrs, 2009 SAR (Civil) 372. So also reliance is placed on the decision in the case of Daljit Kaur & Anr. Vs. Kuktar Steels Pvt. Ltd. 2014 SAR (Civil) 227, which has no bearing with the issue involved herein.

16. Principally challenge to the impugned order is on two grounds i.e. suit is not maintainable to challenge the award passed by Lokadalat and secondly Rule 3A to Order 23 of the CPC specifically bars a suit against the compromise decree. Learned Counsel Mr.Sachin Deshmukh would submit that in view of decision of the Supreme Court in case of Bhargavi (supra) the term "barred by law" used in Order 7 Rule 11(d) includes not only legislative enactment but also judicial precedents. There can be no dispute about said proposition in view of clear dictum of the Supreme Court in that regard. However, the case in hand is distinguishable on fact. Herein the suit is not filed by the parties to compromise before Lokadalat but by a stranger to the suit settled at Lokadalat. The Supreme Court in above referred cases of Bhargavi (supra) and State of Punjab (supra) ruled that award passed by Lokadalat can be challenged in writ petition and not by a separate suit. Said proposition of law would not assist petitioner Prakash in any manner as

the facts in case at hands are quite distinct. There was no exposition of law that suit by stranger i.e. who was not party to compromise is not maintainable to challenge the award passed by Lokadalat. The above pronouncement would indicate that the parties to the settlement are debarred from filing separate suit in challenge of award. Therefore, being distinct fact, the submission made in that regard cannot be accepted.

17. The applicant's learned Counsel by taking shelter of Order 23 Rule 3A of the CPC has reiterated the similar submission that a separate suit to challenge the compromise decree is barred. He took me through above referred case of Triloki Nath (supra), wherein the Court has considered whether the decree passed on compromise can be challenged by stranger to the proceeding in a separate suit. The facts of said case were such that one of the parties to the compromise namely Sampatiya has entered into sale transaction with third party during pendency of the first appeal. Later-on Sampatiya has

entered into compromise in second appeal resulting into compromise decree. In the situation, the purchaser has filed a separate suit for setting aside compromise decree in which it is ruled that the suit by such stranger is not maintainable. It is specifically observed that the purchasers were claiming right, title and interest over the land through their purchaser Sampatiya who was party to the suit and compromise. In that context, it was held that a suit by stranger to set aside compromise was not maintainable. In case at hand, the plaintiffs who are brothers and sister of Vishwanath were admittedly not claiming any right through Vishwanath but put up a case that they being legal heirs of their father Krishnarao inherited undivided 1/7th share each in the property. Thus they are claiming independent right in the subject matter and therefore being distinct facts, ratio laid down in Triloki Nath' case (supra) would not apply.

18. Learned Counsel appearing for the petitioner also relied on the decision of Supreme Court in case of

M/s. Sree Surya Developers and Promoters Vs. N. Sailesh Prasad & Ors., Civil Appeal No.439 of 2022 to contend that in order to set aside consent decree, one should approach to the same Court and not by a separate suit. In said decision the Supreme Court has considered the law laid down in its earlier decision in case of Triloki Nath (supra), which I have dealt above. I may reiterate that there is no dispute that a separate suit is not maintainable to challenge the decree arrived by way of compromise. However, said rigor would apply to the parties to the proceeding and not to the stranger.

19. Reverting to the prayer of the suit, the plaintiffs are seeking declaration of their joint ownership and possessions of 1/7th share in the suit property, namely, land Gat No.123. Since the defendants have allegedly obtained collusive decrees, they have sought declaration that those compromise decreed are illegal and not binding on them. The principal relief canvassed in suit is of declaration of joint ownership

and possession. It cannot be said that the plaintiffs have no right to establish their joint ownership and possession over the suit property. Obviously, the Civil Court is the only competent forum where a person can seek declaration of his ownership and possession. It is well settled that a plaint cannot be partly rejected for which one can refer the decision of the Supreme Court in case of Sejal Glass Limited Vs. Navilan Merchants Private limited (2018) 11 SCC 780. Even if it is assumed that second prayer about seeking declaration relating to compromise decree is not maintainable, however, since partial prayer is maintainable, plaint cannot be rejected. The plaintiffs cannot be non-suited from seeking declaration of his joint ownership by rejecting plaint. Since the Civil Court is competent forum to adjudicate said part of prayer, suit is perfectly maintainable. It requires to lead evidence to establish joint ownership and possession for which the Civil Court is the forum. Having regard to above facts, the impugned order passed by the Trial Court calls no interference.

20. In view of above, revision application stands rejected.

[VINAY JOSHI,J.]