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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 711 OF 2022

Shrikrishna Laxman Chaudhari

PETITIONER

VERSUS

Chitrarekha Balmukund Chaudhari and Another RESPONDENTS

.....

Mr. R. S. Deshmukh, senior advocate i/b Mr. Rahul P. Dhase,
Advocate for the petitioner

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 1st FEBRUARY, 2022

ORDER :

1. This petition, filed under Article 227 of the Constitution of India, challenges order dated 12th August, 2021 passed by the learned Second Joint Civil Judge, Senior Division, Jalgaon below Exhibit-63 in Special Civil Suit No. 71 of 2013 thereby rejecting the application filed by the petitioner.

2. Open N. A. Plot No. 30, admeasuring 278.71 square meter situated in Pimprala Shivar within the limits of Jalgaon Municipal Corporation (for short "the suit plot") was originally owned by Shantabai Laxman Khadke. Shantabai expired issue-less on 1st January, 2006. Her sister in law, Rukminibai Laxman Kale succeeded the suit plot. Name of Rukminibai was entered into

revenue record in respect of the suit plot. On 25th July, 2006, Rukminibai entered into an agreement to sale of the suit plot with the petitioner. Rukminibai expired on 14th September, 2007. Respondent No.2 is the son of deceased Rukiminibai.

3. The petitioner filed Special Civil Suit No. 131 of 2009 against respondent No.2, seeking specific performance of contract entered into between the petitioner and Rukminibai. The matter was settled before the Lok Adalat on 16th September, 2012 and in terms of the settlement, award was passed by the Lok Adalat on the same day. Pursuant to the Award, sale deed of the suit plot was executed by respondent No.2 in favour of the petitioner.

4. In view of the said sale deed, name of the petitioner was recorded in the revenue record of the suit plot.

5. Respondent No.1 filed Special Civil Suit No. 71 of 2013 against the petitioner and respondent No. 2 for setting aside compromise decree passed in Special Civil Suit No. 131 of 2009, claiming that the same was obtained by fraud and staking her claim to the suit plot on the basis of Will executed in her favour, by original owner Shantabai.

6. In this suit, the petitioner filed application Exhibit-63

seeking dismissal of the suit contending that the suit for declaration to set aside compromise decree is barred by Rule 3-A of Order XXIII of the Civil Procedure Code (for short "CPC"). Said application came to be rejected by the trial court by order dated 12th August, 2021. This order is impugned in the present writ petition.

7. Mr. R. S. Deshmukh, learned senior advocate for the petitioner strenuously submitted that in the light of the decision in ***"Triloki Nath Singh V/s Anirudh Singh"* AIR ONLINE 2020 SC 491**, the suit filed by respondent No.1 challenging compromise decree is not maintainable, since order XXIII, Rule 3-A of the CPC bars such suit.

8. Admittedly, in Special Civil Suit No. 131 of 2009, it was the contention of the parties therein that mother of respondent No.2 was owner of the suit plot and she had executed agreement to sale in favour of the petitioner. Respondent No.1, who has filed Special Civil Suit No. 71 of 2013, was not a party to the said suit or to the compromise. Respondent No.1 is praying for setting aside the compromise decree on the ground of fraud. She is also staking her claim to the suit plot on the basis of the Will executed by the original owner of the suit plot.

9. This Court in ***"Razia Sultana K Ahmed V/s Abdul Rashid Abdul Rehman Yusuf"***, 2021 (3) ABR 831 and ***"Ramkrishna Shridhar Choube & Others V/s Court Receiver and Others"***, 2011 (2) Mh.L.J. 473, has held that provisions of Rules 3 and 3-A of Order XXIII of the CPC are not meant for third party and third parties can approach the court in their own right and seek an appropriate declaration.

10. In view of the above ratio, it is clear that provisions of Rule 3-A of Order XXIII of the CPC are not applicable to the stranger to the compromise decree.

11. Rule 3-A of Order XXIII of the CPC bars the suit filed for setting aside decree on the ground that compromise, on the basis of which decree is based, was not lawful. In ***"Gopalkrishnan V Cochin Devaswom Board, AIR 2007 SC 3162"***, it is held that *"the bar contained in R 3-A will not come in the way of the High Court examining the validity of a compromise decree, when allegations of fraud / collusion are made against a statutory authority, which entered into such compromise."* It is, thus, clear that the compromise decree can be challenged on the ground of fraud.

12. ***"Triloki Nath Singh"*** (*supra*), is distinguishable on the facts, as in that case, a compromise decree passed by the High Court

was challenged on the ground of fraud by the purchaser of the suit property therein, by filing a civil suit before the trial court. Therefore, the Apex Court held that he can only claim through his predecessor to the extent of rights and remedies available to his predecessor in reference to the compromise decree and he cannot challenge the compromise decree passed by the High Court before the Civil Court.

13. In the case in hand, admittedly, respondent No.1, who has filed Special Civil Suit No. 71 of 2013 was not a party to the compromise. She is claiming the suit plot on the basis of will executed by the original owner in her favour. Thus, she is a stranger to the compromise decree and, therefore, she is entitled to challenge the compromise decree passed by the trial court, on the ground of fraud. The ratio in "*Triloki Nath Singh*" (*supra*) is, therefore, not applicable to the facts of the present case.

14. In view of the aforesaid reasons, this Court is of the view that respondent No.1 being a stranger is entitled to challenge the compromise decree on the ground of fraud and stake her claim to the suit plot on the basis of the will executed by the original owner in her favour.

15. There is no error, illegality or perversity in the order passed by the Trial Court. There is no substance in the challenge raised in the writ petition by the petitioner. Writ petition is, therefore, dismissed. No costs.

[NITIN B. SURYAWANSHI]
JUDGE

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