

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

WRIT PETITION NO.6367 OF 2022

1. Sitaram s/o. Dattu Rane (since deceased)
through LRs.
- 1/1. Hansabai alias Navsabai Sitaram Rane,
Age : Major, Occu: Household, (since deceased)
- 1/2. Bhagwat s/o. Sitaram Rane,
Age : 70 years, Occu: Agriculture,
- 1/3. Sudhakar s/o. Sitaram Rane (since deceased)
through LRs.
- 1/3/A Manohar s/o. Sudhakar Rane,
Age : 40 years, Occu: Agriculture,
- 1/3/B Sadanand s/o. Sudhakar Rane,
Age : 36 years, Occu: Agriculture,
- 1/3/C Smt. Kamlabai Sudhakar Rane,
Age : 61 years, Occu: Agriculture,
- 1/4 Premraj alias Premchand Sitaram Rane
(Since deceased) through LRs.
- 1/4/A Sandeep Premraj Rane,
Age : 36 years, Occu: Agriculture,
- 1/4/B Hemant Premraj Rane,
Age : 32 years, Occu: Agriculture
- All above R/o. Bhalod, Tq. Yawal,
Dist. Jalgaon.
- 1/5. Murlidhar s/o. Sitaram Rane (Since Deceased)
through LRs.
- 1/5/A Jitendra Murlidhar Rane,
Age : 42 years, Occu: Agriculture,
R/o. Raj Siddhart Society,
Room No.5, First Floor,
'B' Wing, Morya Nagar, Virar,
Mumbai.
- 1/5/B Prashant Murlidhar Rane,
Age : 47 years, Occu: Agriculture,
R/o. Raj Siddhart Society,
Room No.5, First Floor,
'B' Wing, Morya Nagar, Virar,
Mumbai.
- 1/5/C Sau. Anita Ravindra Chaudhari,
Age: 42 years, Occu: Service,
R/o. 11, Tripurari Coop. Hsg. Society,

Jagtapmala, Shri Near Gajanan Maharaj
Mandir, Nashik Road,
Nasik.

1/6. Narayan Sitaram Rane (Since deceased)
through LRs.

1/6/A Khushbu Narayan Rane,
Age : 18 years, Occu: Agriculture,

1/6/B Nitin Narayan Rane,
Age : 20 years, Occu: Agriculture,

Both R/o. Bhalod, Tq. Yawal,
Dist. Jalgaon.

2. Shankar Yadav Zambre (since deceased)
through LRs.

2/1 Smt. Tarabai Shankar Zambre (since deceased)
through LRs.

2/2 Shashikant Shankar Zambre (since deceased)
through LRs.

2/2/A Smt. Gangubai Deoram Zambre,
Age : 86 years, Occu: Agriculture

2/2/B Digambar Deoram Zambre,
Age: 61 years, Occu: Agriculture,

2/2/C Jeevan Deoram Zambre,
Age : 55 years, Occu: Agriculture

2/2/D Rekha Deoram Zambre,
Age: 50 years, Occu: Agriculture,

All R/o. Bhalod, Tq. Yawal,
Dist. Jalgaon.

2/3. Deoram Shankar Zambre, (since deceased)
the legal heirs are already on record.

2/4. Smt. Bhagirathibai Digambar Chopde
(deceased daughter)

... **PETITIONERS**

VERSUS

1. Bapu Bhika Wani (since deceased)
through LRs.

1/1. Asha Sudhakar Jariwale,
Age : Major, Occu: Household,
R/o. C/o. Shri Ashok Jariwale,

Eye Hospital, Mahajan Peth,
Barhanpur, Madhya Pradesh.

1/2. Suresh Ramnath Aajnadkar (since deceased)
through LRs.

1/2/A Smt. Snehal Suresh Aajnadkar
Age : 72 years, Occu: Household,
R/o. Shahaji Raje Bhosle Nagar,
Hadapsargaon, Pune – 28.

1/2/B Ajay Suresh Aajnadkar,
Age : 51 years, Occu: Service,
R/o. Shahaji Raje Bhosle Nagar,
Hadapsargaon, Pune-28.

1/2/C Abhay Suresh Aajnadkar,
Age : 49 years, Occu: Service,
R/o. B-403, Survey No.87/1/1,
Nandini Singh Field, Takle Nagar,
Manjri, Pune-412 307.

1/2/D Pushpa Shantaram Wani (since deceased)
through LR.

1/2/D-1 Sau. Shaila Dattatraya Pitale,
Age: 72 years, Occu: Household,
R/o. House No.66,
Shastri Nagar Colony.

1/3. Shivram Kisan Tayade,
Age : 77 years, Occu: Business,
R/o. Bamnod, Tq. Yawal,
Dist. Jalgaon.

1/4 Sau. Dhondabai Shivram Tayade,
Age : 72 years, Occu: Household,
R/o. Bamnod, Tq. Yawal,
Dist. Jalgaon.

... RESPONDENTS

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Advocate for Petitioners : Mr. V.D. Salunke

Advocate for Respondent No.1/3 : Mr. R.F. Totala h/f. Mr. Swapnil Lohiya

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CORAM : MANGESH S. PATIL, J.

DATE : 24.06.2022

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. Learned advocate Mr. R.F. Totala holding for advocate Mr. Lohiya waives service for the respondent No.1/3. At the joint request of parties, the matter is heard finally at the stage of admission.

2. I have heard the learned advocates extensively.

3. Though there is a checkered and long history leading to the present Writ Petition, only the facts which are relevant for the present are being referred to.

4. The predecessor of the respondents Bapu Bhika Wani claiming himself to be the Inamdar to whom the suit properties were regranted under the Bombay Service Inam Useful to Community Abolition Act, 1953, filed a suit RCS No. 53/1969 for possession against the petitioner's predecessors Sitaram Dattu Rane and Shankar Yadav Zhambre. The matter was compromised and the suit was decreed in terms of compromise on 30.03.1978. It was admitted by them that they were not the tenants in the suit lands and also admitted that it was regranted to Bapu. They also agreed to give up possession. It was also agreed that they could purchase the suit lands by paying consideration. But they failed to pay the consideration and the compromise decree has been put to execution.

5. The present matter arises out of an order passed by the executing court on an application of couple of persons, who were subsequently added as decree holders, claiming to have purchased some

portions of the suit lands from the heirs of Bapu the decree holder, who are arrayed herein as some of the respondents. They prayed for effecting partition by sending the decree to the Collector under Section 54 of the Code of Civil Procedure.

5. The petitioners opposed that application and raised all the grounds which they had raised persistently from time to time to oppose the execution. They contended that the compromise decree was nullity as it was brought into existence by practicing fraud. Bapu was never the owner of the suit lands. Those have been in possession of Sitaram and Shankar since 1952. The Revenue Authorities had cancelled the grant in favour of Bapu. He was not entitled to claim possession on the basis of compromise decree. The executing court has refuted the petitioners' objection and directed the decree to be sent to the Collector under Section 54 of the Code of Civil Procedure for partition.

6. The whole emphasis of the learned advocate Mr. Salunke for the petitioners is on the fact that the competent authority under the Inam Abolition Act had cancelled the regrant.

7. Pertinently, these very submissions now being put up by the learned advocate Mr. Salunke were made before this Court when the parties were before this Court in a writ petition filed by the petitioners, being Writ Petition No.620/2008 which was decided by the judgment and order dated 17.10.2016. The matter had arisen after the petitioners' objection to the executability of the compromise decree was rejected by the executing court.

This Court in paragraph Nos.6 and 7 had squarely met the submission while discarding it.

8. Again, the submission of learned advocate Mr. Salunke touching the aspect of jurisdiction of civil court was also elaborately considered by this Court in paragraph Nos.8 and 9.

9. Pertinently, though the petitioners have been persistently questioning validity of the decree under execution on the ground of alleged fraud, except by raising such a plea, they never seem to have made any attempt to solicit any decision of the Court on such a question. Admittedly, the compromise decree was passed in the year 1978 and we are in the year 2022. Therefore, even for this sole reason, such a plea is not tenable.

10. All in all, all the issues that are now being raised by the petitioners and the submissions of their learned advocates were the same when they had preferred Writ Petition No.620/2008 which was dismissed by this Court on 17.10.2016. More importantly, the petitioners had challenged that judgment and order in the Supreme Court in the form of Special Leave to Appeal (C) No.8871/2017 but it was dismissed on 13.04.2017.

11. If such is the state of affairs, it is quite apparent that the petitioners are hellbent in protracting the execution proceeding repeatedly. In spite of all their grounds were turned down by this Court and the decision having reached finality, they have been still opposing the execution. Though the executing court has not referred to the decision of this Court which has reached finality right up to the Supreme Court, I find no sufficient ground to

not to subscribe to the conclusion, whereby, it has allowed the Application Exhibit 149 by discarding the petitioners' objection.

12. In the light of above, there is no merit in the Writ Petition. It is dismissed with costs. The Rule is discharged.

(MANGESH S. PATIL, J.)

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