

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1943 OF 2020

Sumanbai Bhausaheb Matkar

.... Petitioner

Versus

Kondabai Bhausaheb Matkar
and others

.... Respondents

Ms. M.V. Narwade, Advocate h/f Mr. V.P. Narwade, Advocate for
the Petitioner

Mr. R.R. Karpe, Advocate for Respondent Nos.1 to 3

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 29th AUGUST, 2023

ORDER :

1. Leave to correct the prayer clause.
2. By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner challenges the compromise decree dated 27/02/2019 passed by the learned District Judge-1, Newasa in Regular Civil Appeal No.46 of 2018, wherein the petitioner was respondent No.1.
3. It is the contention of the petitioner that Regular Civil Suit No.245 of 2001 was filed by the petitioner/plaintiff for partition. It was decreed on 14/01/2003. Respondent No.3/defendant No.3 challenged the said judgment and decree by filing Regular Civil Appeal No.46 of 2018. During the

pendency of the appeal, compromise was arrived at between the parties to the appeal with the intervention of relatives and villagers. The said compromise terms were reduced in writing and signed by all the parties, and those were placed before the Appellate Court. The Appellate Court by order dated 27/02/2019. has allowed the appeal in terms of compromise terms, and directed to draw the decree accordingly. Regular Civil Appeal was disposed of as compromised.

4. The petitioner, who was allotted land Gut No.306, approached the *Talati* to record her name to the portion of land from the said Gut, which has fallen to her share. At that time, she was informed by the Tahsildar that 2 Hectare land was acquired from Gut No.306 by the Government for resettlement. The petitioner then realized that the land which was allotted to her share is already acquired by the Government. The petitioner, therefore, filed the present petition contending that fraud is played on her, while recording the compromise, and therefore, the compromise is liable to be quashed and set aside.

5. Heard the learned advocate for the petitioner, learned advocate for respondent Nos.1 to 3. Respondent Nos.

4 and 5, though duly served none appears for them. Perused the writ petition memo, annexures thereto, impugned order, and the citations relied upon by the learned advocates for the petitioner and respondents.

6. Learned advocate for the respondent Nos. 1 to 3 raised the preliminary issue of maintainability of the present petition by relying on *Pushpa Devi Bhagat (Dead) Through L.Rs. Sadhna Rai (Smt.) Vs. Rajinder Singh and others, (2006) 5 SCC 566*.

7. Learned advocate for the petitioner, in reply, has placed reliance on *State of Punjab and Anr. Vs. Jalour Singh and Ors., AIR 2008 SC 1209* and *Banwari Lal Vs. Smt. Chando Devi (through L.R.) and another, AIR 1993 SC 1139*.

8. In *Pushpa Devi Bhagat* (supra), the Apex Court, after considering the provisions of Order XXIII Rule 3-A and Section 96 of the Code of Civil Procedure, has held;

"17.
 (i)
 (ii)
 (iii)"

(iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 of Order 23.

Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree, is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made.

9. In ***Banwari Lal*** (supra), it is held;

"13. When the amending Act introduced a proviso along with an explanation to Rule 3 of Order 23 saying that where it is alleged by one party and denied by other that an adjustment or satisfaction has been arrived at, "the Court shall decide the question", the Court before which a petition of compromise is filed and which has recorded such compromise, has to decide the question whether an adjustment or satisfaction

had been arrived at on basis of any lawful agreement. To make the enquiry in respect of validity of the agreement or the compromise more comprehensive, the explanation to the proviso says that an agreement or compromise "which is void or voidable under the Indian Contract Act..." shall not be deemed to be lawful within the meaning of the said Rule. In view of the proviso read with the explanation, a Court which had entertained the petition of Compromise has to examine whether the compromise was void or voidable under the Indian Contract Act. Even Rule 1(m) of Order 43 has been deleted under which an appeal was maintainable against an order recording a compromise. As such a party challenging a compromise can file a petition under proviso to Rule 3 of Order 23, or an appeal under Section 96(1) of the Code, in which he can now question the validity of the compromise in view of Rule 1A of Order 43 of the Code.

10. The principle which is settled by the aforesaid decisions is that the only remedy available to the party to a consent decree to avoid such consent decree is to approach the Court which recorded the compromise and made a decree in terms of decree, and establish that there was no compromise, and the Court which has recorded the

compromise has to examine whether the compromise was void or voidable.

11. In this view of the matter, the petitioner has to approach the Appellate Court to challenge the compromise decree on the ground of fraud.

12. In *State of Punjab and Anr Vs. Jalour Singh and Ors, AIR 2008 SC 1209*, the Apex Court has held that, "*where an award is made by Lok Adalat in terms of a settlement arrived at between the parties, (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court, and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/or Article 227 of the Constitution, that too on very limited grounds.*"

There cannot be a dispute about the aforesaid legal position.

13. Taking into consideration the challenge raised by the petitioner in the present petition, it is necessary to relegate

the petitioner back to the Appellate Court, which has recorded the compromise decree.

14. In the result, the writ petition is partly allowed.

15. The petitioner to approach the appellate Court, which has passed the consent decree and file application challenging the consent decree on the ground of fraud.

16. If such application is filed by the petitioner within four weeks from the date of receipt of writ of this order, the Appellate Court shall decide it on its own merits by giving opportunity of hearing to the parties, expeditiously and in any case from one year from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI]
JUDGE