

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5170 OF 2022

Shirish Bhaskar Somwanshi
Age- 52 years, Occu- Agriculture,
R/o. Village Jawale, Tq. Parner,
Dist. Ahmednagar.

PETITIONER
[Original Plaintiff]

VERSUS

1. Bhaskar Balasaheb Somwanshi
Age- 73 years, Occ- Agriculture,
R/o. Village Jawale, Tq. Parner,
Dist. Ahmednagar.
2. Saraswati Bhaskar Somwanshi
Age- 70 years, Occ- Agriculture
R/o. Village Jawale, Tq. Parner,
Dist. Ahmednagar.
3. Lata Shirish Somwansi
Age- 50 years, Occ- Agriculture,
R/o. Village Jawale, Tq. Parner,
Dist. Ahmednagar.
4. Abhijit Shirish Somwansi
Age- 30 years, Occ- Business,
R/o. Village Jawale, Tq. Parner,
Dist. Ahmednagar.
5. Ram Shirish Somwanshi
Age- 25 years, Occ- Business,
R/o. Village Jawale, Tq. Parner,
Dist. Ahmednagar.
6. Satish Bhaskarrao Somwanshi
Age- 55 years, Occ- Service
R/o. Shivkrupa Niwas, Survey No. 18,
Hapsar, Tq. Haweli, Dist. Pune.

7. Chhaya Ashok Kamthe
Age- 58 years, Occ- Household
R/o. Shivkrupa Niwas, Survey No. 18,
Hapsar, Tq. Haweli, Dist. Pune. RESPONDENTS

.....
Mr. Satyajit S. Bora, Advocate for the petitioner
Mr. Mahesh R. Sonawane, Advocate for respondents No.6 and 7
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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 30th AUGUST, 2023

JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally
with the consent of the parties.

2. This petition is filed under Article 227 of the
Constitution of India for following reliefs;

"A. The Writ Petition may kindly be allowed.

B. The impugned order dated 24/03/2022 passed below Exh. 34 & 36 in Regular Civil Suit No. 190/2015 thereby refusing to grant permission for withdrawal of the suit to the Petitioner and allowing the transposition of defendant Nos. 06 & 07 as Plaintiffs may kindly be quashed and set aside;

C. The impugned order dated 07/02/2020 passed by Ld. District Judge-12, Ahmednagar in Regular Civil Appeal No. 45/2019 thereby quashing and setting aside the consent decree dated 30/03/2015 in Regular Civil Suit No. 190/2015 and remanding the matter back for trial may kindly be quashed and set aside."

3. The petitioner filed Regular Civil Suit No. 190 of 2015 for partition and separate possession, against respondents No.1 to 5. The said suit was compromised and consent decree was passed on 30th March, 2015.

4. Respondents No.6 and 7 who were not parties to the suit and compromise decree, challenged the consent decree dated 30th March, 2015 passed in Regular Civil Suit No. 190 of 2015, by preferring Regular Civil Appeal No. 45 of 2019.

5. After hearing the parties, the learned District Judge allowed Regular Civil Appeal No. 45 of 2019 and set aside the consent decree and remanded the matter back to the Trial Court.

6. After the remand, application Exhibit-34 is filed by the petitioner – plaintiff seeking withdrawal of the suit. Respondents No. 6 and 7 filed application Exhibit-36, under Order 23 Rule 1A of the Civil Procedure Code, claiming that permission should not be granted to the plaintiff to withdraw the suit and if the Court is of the view that permission needs to be granted to withdraw the suit, respondents No.6 and 7 be transposed as plaintiffs in the suit.

7. By common order dated 24th March, 2022 passed below Exhibits-34 and 36, the Trial Court allowed application Exhibit-36 and rejected application Exhibit-34. This petition impugns the order passed in Regular Civil Appeal No. 45/2019 and common orders passed below Exhibits- 34 and 36 by the Trial Court.

8. Heard learned advocate for the petitioner and the learned advocate for respondents No.6 and 7. Perused the memo of the writ petition, annexures, the impugned orders and the citations relied on by both the sides.

9. Learned advocate for the petitioner, by relying on ***"Triloki Nath Singh V/s Anirudh Singh" 2020 AIR (SC) 2111*** submits that the Appeal filed by respondents No.6 and 7 was not maintainable and when the petitioner intended to withdraw the suit, the Trial Court has erred in rejecting the said application and allowing application Exhibit-36, filed by respondents No.6 and 7, on erroneous grounds.

10. Learned advocate for respondents No.6 and 7, on the other hand, supports both the impugned orders, one passed by the learned District Judge and the common order passed below

Exhibits-34 and 36, by the Trial Court. His submission is that though it is settled legal position that suit is required to be filed by a stranger, challenging compromise decree, if it affects his rights, however, in the peculiar facts, the present suit, which is reopened by the order passed by the learned District Judge, respondents No. 6 and 7 are entitled to prosecute the same, as plaintiffs. He, therefore, submits that no fault can be found with the orders passed by the Courts below and, therefore, there is no merit in the writ petition and the writ petition may be dismissed.

11. It is clear from the ratio in "*Triloki Nath Singh*" (*supra*) that a stranger to the suit is not entitled to file appeal and the only remedy available to him is to file a separate suit. In this view of the matter, the appeal filed by respondents No.6 and 7 was not maintainable and hence the impugned order, passed by the learned District Judge is without jurisdiction and cannot be sustained. In that view of the matter, writ petition deserves to be allowed and same is allowed in terms of prayer clause 'C'.

12. At this stage, as was contended before the Trial Court by the petitioner/plaintiff that he intends to withdraw the suit i.e. Regular Civil Suit No. 190/2015, the said statement was

reiterated before this Court by the petitioner/plaintiff. Accepting that statement, petitioner/plaintiff is permitted to withdraw the suit i.e. Regular Civil Suit No. 190/2015.

13. Respondents are at liberty to file separate suit for claiming their respective rights.

Rule made absolute in the above terms.

[NITIN B. SURYAWANSHI, J.]