

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

**WRIT PETITION NO.6397 OF 2019**

Gayabai Govind Kamble  
Died Through Legal Heirs  
Ramesh Govind Kamble and Others ...Petitioners

Versus

Sayabai Venkati Mane  
Died Through Legal Heirs  
Uttam Venkati Mane And Others ...Respondents

Mr. V.D. Gunale, Advocate for the petitioners.  
Mr. P.V. Mandlik, Senior Advocate h/f. Mr. P.P. Mandlik, Advocate  
for respondents.

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**[CORAM : NITIN B. SURYAWANSHI, J.]**

**DATE : 19<sup>th</sup> APRIL, 2023**

**ORDER :**

1. The petitioners are aggrieved by the order passed by learned Ad-hoc District Judge-2, Latur, below Exhibit-1 in Civil Miscellaneous Application No. 235 of 2018, thereby holding that the civil miscellaneous application is maintainable and is filed within limitation.

2. This order was challenged in Writ Petition No 6397 of 2019, which was allowed and order dated 27.03.2019 is quashed and set aside and civil miscellaneous application No. 235/2018 was dismissed.

3. The petitioners challenged the decision of this Court by filing Civil Appeal No. 2416 of 2022, which was allowed and matter is remanded back to this Court for fresh consideration on merits. Hence, the matter is heard on merits.

4. Indisputably, in Land Acquisition Reference No. 87 of 2007, petitioners and respondents arrived at compromise and filed compromise deed before the District Court, where the reference was pending. After verifying the compromise deed, District Court accepted the compromise and passed compromise decree on 17.08.2007, wherein calculation of amounts to be received by the parties to the compromise is given.

5. The compromise was acted upon, respective parties withdrew their share of compensation, as per the compromise decree. Thereafter, petitioners filed Land Acquisition Reference No. 267 of 2012 and 268 of 2012. Respondents filed Land Acquisition Reference No. 265 of 2012 and 266 of 2012. Admittedly, references filed by the petitioners are decided on 14.12.2016, whereas references filed by the respondents for enhancement are still pending.

6. By filing Writ Petition No. 7613 of 2018, respondents challenged the compromise decree. This Court (Coram: Ravindra V. Ghuge, J.) passed the following order:

*"1. The petitioners are the L.Rs. of Sayabai who was signatory to the compromise deed in LAR No.87/2007. Sayabai has signed on each page of the compromise terms dated 17/08/2007. Based on the same, the LAR Court passed an order on 17/08/2007 apportioning the compensation amount to the beneficiaries including Sayabai who received Rs. 2,96,016/-. The said amount has been paid to Sayabai.*

*2. These L.Rs. Petitioners have preferred this petition on 07/03/2018 contending that Sayabai was misled into signing the agreement.*

*3. At this juncture, the learned Advocate for the petitioners prays for leave to withdraw this petition.*

*4. Considering the above, this petition is dismissed as withdrawn."*

7. Thereafter, respondents filed Civil Miscellaneous Application No. 235 of 2018, under section 151 read with Order 23 Rule 3 of Code of Civil Procedure for setting aside the

compromise decree in Land Acquisition Reference No. 87/2007 contending that the said decree is obtained by fraud. According to them, they came to know about fraud, when they received notices in the execution proceeding filed by the petitioners.

8. By filing detail say at Exhibit-13, Petitioners opposed the said application.

9. The District Court after hearing the parties on maintainability of the civil miscellaneous application held that, said application is maintainable and it is within limitation. This order is challenged by the petitioners in the present petition.

10. Heard Mr. V.D. Gunale advocate for the petitioners and Mr. P.V. Mandlik, Senior Advocate holding for Mr. P.P. Mandlik for respondents. Perused the memo of petition, annexures thereto and the impugned order.

11. Learned advocate for the petitioners assailed the impugned order contending that there is no document placed on record by the respondents to support their allegation of fraud. Compromise decree passed in the year 2007 is challenged in the

year 2018 i.e. after a period of more than 11 years. Hence, on the ground of limitation also, said proceeding is not maintainable. According to him, District Court has abruptly come to a conclusion that the application is within limitation, without there being supporting reasons. He further submits that the District Court ought to have held that the proceeding of civil miscellaneous application is not maintainable. He therefore, prays for quashing and setting aside of the impugned order.

In support of his submissions he relied on K. Sriniasappa and Ors. Vs. M. Mallamma and Ors., AIR 2022 SC 2381, Ranganayakamma and Ors. Vs. K.S. Prakash (D) By L.Rs. And Ors., (2008) 1 SCC 673, Pushpa Devi Bhagat (D) th. LR. Sadhna Rai Vs. Rajinder Singh and Ors., AIR 2006 SC 2628, Jagtar Singh Vs. Pargat Singh and Ors., (1996) 11 SCC 586, Satish Vs. Manisha Satish Yadav and Ors., MANU/MH/3074/2022, Byram Petsonji Vs. Union Bank of India and Ors., AIR 1991 SC 2234 and Gurpreet Singh Vs. Chatur Bhuj Goel, AIR 1998 SC 270.

12. Per contra, learned Senior Advocate for the respondents by relying upon averments made in the application and documents in the form of award, notices issued prior to the

award, gift deed executed in favour of Sayabai and the compromise decree supported the impugned order. He submits that prima facie, it is apparent that while obtaining compromise decree fraud is played. He therefore submits that opportunity needs to be given to the respondents to prove their contention of fraud.

13. I have duly considered the rival submissions and the material placed on record by learned advocates for the parties and I am of the view that, reasonable and fair opportunity needs to be given to the respondents to prove their case of fraud, by leading evidence.

14. In the citations relied upon by the learned advocate for the petitioners it is consistently held that, '*terms of compromise decree cannot be avoided, unless allegation of fraud has been proved.*' To prove the allegation of fraud, opportunity needs to be given to the respondents to lead evidence. It is settled legal position that fair trial is a fundamental right and opportunity of being heard is important facet of right to fair trial.

15. In the light of above, there is no merit in the challenged raised by the petitioners to maintainability of Civil Miscellaneous Application No. 235 of 2018.

16. Another argument of the petitioners that the District Court has erred in holding that 'the application is within limitation', is liable to be accepted. There is no supporting reasons recorded by the District Court while arriving at said finding. Though, in the impugned order it is observed that advocate of the applicant has not mentioned any specific date on which the applicant came to know about pending execution proceeding, it is erroneously held that since the proceedings are filed in the year 2017, three years period has not expired since then. Since the said finding is abruptly arrived at by the District Court, without assigning any reason, the same is unsustainable in law and facts of the present case.

17. Resultantly, writ petition is partly allowed.

18. The finding of the District Court that Civil Miscellaneous Application No. 235 of 2018 is filed within limitation is hereby quashed and set aside, by maintaining the finding of maintainability of the dispute.

19. The issue of limitation is kept open for decision of the District Court.

20. This Court has not expressed any opinion on merits of pending application.

21. All the contentions of respective parties on merits are kept open. Parties are at liberty to lead evidence before the District Court in support of their respective contentions.

**[NITIN B. SURYAWANSHI, J.]**