

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.741 OF 2021**

TARACHAND KHUSHALCHAND ZADIWALE
VERSUS
RADHELAL KHUSHAL ZADIWALE AND OTHERS

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Mr. Bhushan S. Dhawale, Advocate for the Petitioner.

Mr. Dinkar G. Kamble, Advocate for Respondent Nos.1 to 16.

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**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 07th FEBRUARY, 2023.**

PER COURT:-

1. Heard.

2. The petitioner challenges the order dated 30.01.2019 passed in Special Civil Suit No.181/2011, whereby the application of respondent nos.1 to 16 under Order I Rule 10 of the Code of Civil Procedure seeking impeachment came to be allowed.

3. The facts of the case are that one Khushalchand Zadiwale had two wives namely Jamunabai and Harnabai. In the year 1983, Harnabai instituted suit bearing Special Civil Suit No.05/1983 seeking partition and separate possession of the properties of Khushalchand Zadiwale. In the said proceedings a compromise was entered into between the branches of Jamunabai and Harnabai. By the compromise deed dated 26.11.1987 the branch of Harnabai was given share in Survey No.445 and 443. The compromise deed records that the branch of Harnabai has received its share in the ancestral property and the branch of Harnabai has relinquished its right over the balance property. Subsequently, in the year 2011 dispute arose in the branch of

Jamunabai, which resulted in the suit bearing Special Civil Suit No.181/2011 being instituted by the legal heirs of one Brijlal, who was son of Jamunabai. It is the case of the plaintiff in Special Civil Suit No.181/2011 that Survey No.444, which was one of the suit property was self acquired property of the Brijlal and as far as the ancestral property was concerned, the same amounted to remaining balance plot of Survey No.445, part of which, as per compromise decree of 1987, was allotted to the Harnabai.

4. The Trial Court has allowed the application for impleadment of respondent nos.1 to 16 by observing that the present suit bearing Special Civil Suit No.181/2011 includes some additional land as well as house property which was not the subject matter of the earlier compromise entered into between the parties and that the added respondents are having interest in the properties forming part of the present litigation. In my opinion, as far as branch of Harnabai is concerned, way back in the year 1983 the proceedings were instituted for partition and separate possession in which the compromise decree was entered into between the two branches of Jamunabai and Harnabai and as per the compromise decree branch of Harnabai received her share of the ancestral property and being satisfied with her share has specifically relinquished their rights. Having relinquished their share in the balance property, the Respondents now cannot claim in the partition suit of the branch of Jamunabai. There has to be some finality attached to the compromise decree and the parties after such a long period of time cannot be permitted to resile from the compromise terms, and to reopen the past issues, which have attained finality and be impleaded in the proceedings which admittedly has been instituted by the branch of Jamunabai in

respect of the some of the self acquired property and only one property is ancestral property i.e. Survey No.445. In respect of Survey No.445, the branch of Harnabai has already been allotted a share and as such, legal heirs now cannot stand up and claim further rights after having relinquished their right in the balance property. The Trial Court has clearly fallen in the error by failing to notice that the branch of Harnabai has relinquished their rights in respect of balance property and as such, the inclusion of the additional property did not make any difference. Further the Trial Court has observed that, as to whether the added defendants having any right, title and interest in the property is the question of the Trial , whereas this was the first question which is required to be answered while dealing with the application for impleadment of the parties, as it is only the party who has right, title and interest in the property is liable to be impleaded.

5. Considering that the compromise terms were entered into and the branch of Harnabai had given up their rights in the suit property and it is not demonstrated as to how they can once again seek to claim any right in the property, the impugned order dated 30.01.2019 is not legally sustainable and is hereby quashed and set aside.

6. Writ Petition is allowed in the above terms.

(SHARMILA U. DESHMUKH)
JUDGE