

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.532 OF 2019

Narayan Sambhaji Korde (since deceased)
through his LRs and Others .. Petitioners.

Versus

Ishwarlal Babulal Galbal And Ors .. Respondents.

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Mr. Rajendra S. Deshmukh, Senior Advocate i/by Mr. Devang R. Deshmukh, Advocate for the Petitioners.

Mr. Kshitij H. Surve, Advocate for the Respondent Nos. 1 and 2.

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CORAM : SHARMILA U. DESHMUKH, J.

DATED : JANUARY 23, 2023.

PER COURT :

1. Heard Mr.Deshmukh, learned Senior Counsel appearing for the Petitioner and Mr Kshitij Surve, learned counsel appearing for the Respondents.

2. The petition challenges the order dated 8th August, 2018 passed in Misc. Civil Application No.175 of 2016, preferred by the petitioners seeking cancellation of the compromise recorded on 27th August,2019 in Regular Civil Suit No.436 of 2006.

3. RCS No.436 of 2006 was filed by the Respondents herein, seeking declaration, possession and injunction in the year 2006 against 14 defendants which came to be subsequently withdrawn as against the Respondent Nos.5, 7, 8 and 10 on 26th

August, 2009, and compromise terms were entered into which were accepted by the trial Court on 27th August, 2009. In the year 2011, the petitioners filed RCS No.503 of 2011 seeking to set aside the compromise which were entered into on 27th August, 2009 and by a reasoned order dated 26th November, 2012, the suit was disposed of as not maintainable and thereafter, MCA No.175 of 2016 was preferred by the petitioners for cancellation of compromise decree.

4. Learned Senior Counsel submits that the compromise which were entered into was not a lawful document, as the petitioners were in possession of the property as protected tenants and as such, the sale deed which had been executed could not have been executed. He would further submit that in the said proceedings, the evidence was led by the petitioners and not by the respondents. He would further urge that the compromise is liable to be set aside, as the petitioners are illiterate-villagers and were not aware about the contents of the said compromise decree.

5. For the reasons indicated hereinafter I am not inclined to interfere with the impugned order.

6. The petitioners have come with a case that they are protected tenants of the suit premises, which position is not stated in the compromise decree and as such, it is not expected of the trial Court to satisfy itself as regards the lawfulness of the compromise terms by taking into consideration the aspect of protected tenancy. Mr. Deshmukh has not been able to demonstrate that the said fact

was brought to the notice of the Trial Court while considering the compromise terms. In case of a compromise within the meaning of Order XXIII Rule 3, the Court has to be satisfied that compromise which were entered into between the parties, is lawful compromise and on the basis of the terms of the compromise, the trial Court, in my opinion, has rightly come to a satisfaction that the compromise is legal and has accepted the same.

7. It appears that, the petitioners are now seeking to resile from the said compromise deed and has sought to put forward the claim of protected tenancy. What is to be particularly noted is that in the cross-examination, the petitioners' witness has admitted that till date he has not been seen any certificate about his father being a protected tenant of the suit premises. Mere illiteracy cannot a ground to set aside the lawful compromise particularly when the petitioners were represented by a counsel and subsequently the petitioners have filed RCS No.503 of 2011 and hence it cannot be said that the petitioners were ill informed about their rights.

8. As such the Petition fails and is accordingly dismissed.

(SHARMILA U. DESHMUKH, J.)