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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1411 OF 2021

Subhash Balasaheb Patil

... Petitioner

V/s.

Vimal Subhash Patil

... Respondent

SHABNOOR
AYUB
PATHAN

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Mr. Vishwanath S Talkute a/w Mr. Graham Francis, for
the Petitioner.

Mr. Tushar Sonawane i/by Mr. Prashant S Hagare, for
the Respondent.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 13, 2023

P.C.:

1. Challenge in this writ petition is to the order dated 8 January 2020 passed by the Trial Court in Regular Civil Suit No.445 of 2019 seeking declaration of ownership and consequential injunction restraining defendant from creating third party rights.
2. In the said suit before filing of examination-in-chief, the petitioner filed an application for amendment of plaint contending that the decree passed in H.M.P No.46 of 2008 and Regular Civil Suit No.276 of 2013 has been obtained by practicing fraud on the Court and collusion.
3. The said application is rejected by the Trial Court holding that the plaintiff has been taken compromise decree by playing

fraud on the Court.

4. On perusal of the plaint, it appears that the plaintiff refers to the compromise decree; however, the plaintiff has not specifically admitted that the compromise decree is validly passed. Therefore, challenge to compromise decree on the ground of collusion or fraud could not have been termed as inconsistent. Considering the facts, the application was filed before filing of affidavit in lieu of examination-in-chief, the Trial Court ought not to have allowed the application. Hence, following order is passed:

- a) The impugned order dated 8 January 2020 in Regular Civil Suit No.445 of 2019 is quashed and set aside.
 - b) The application below Exhibit 15 in Regular Civil Suit No.445 of 2019 pending before the Civil Judge, Junior Division, Malshiras is allowed.
5. The respondent is on liberty to file additional written statement to the amended plaint.
6. All contentions of the parties are kept open.
7. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)