

Arjun

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

WRIT PETITION NO.473 OF 2015

Shri. Vishnu Buwaji Patil (Since Deceased) ...Petitioners
Through his heirs and legal representatives
1(a) Smt. Surekha Vishnu Patil & Ors.

V/s.

Shri. Dharamchand Poonamchand Oswal ...Respondent

**WITH
INTERIM APPLICATION NO.14974 OF 2023
IN
WRIT PETITION NO.473 OF 2015**

Shri. Vishnu Buwaji Patil (Since Deceased) ...Applicants
Through his heirs and legal representatives
1(a) Smt. Surekha Vishnu Patil & Ors.

In the matter between

Shri. Vishnu Buwaji Patil (Since Deceased) ...Petitioners
Through his heirs and legal representatives
1(a) Smt. Surekha Vishnu Patil & Ors.

V/s.

Shri. Dharamchand Poonamchand Oswal ...Respondent

**WITH
WRIT PETITION NO.474 OF 2015**

Shri. Sitaram Buwaji Patil ...Petitioners
(Since deceased)
through his heirs and legal representatives
1(a). Smt. Anandibai Sitaram Patil & Ors.

V/s.

Shri. Dharamchand Poonamchand Oswal ...Respondent

**WITH
INTERIM APPLICATION NO.14975 OF 2023
WITH
WRIT PETITION NO.474 OF 2015**

Shri. Sitaram Buwaji Patil ...Applicants
(Since deceased through his heirs
and legal representatives)
1(a). Smt. Anandibai Sitaram Patil & Ors.

In the matter between

Shri. Sitaram Buwaji Patil ...Petitioners
(Since deceased)
through his heirs and legal representatives
1(a). Smt. Anandibai Sitaram Patil & Ors.

V/s.

Shri. Dharamchand Poonamchand Oswal ...Respondent

Mr. Aniket Ranade, for the Petitioners/Applicants.

Mr. S. G. Karandikar, for the Respondent.

**CORAM : MADHAV J. JAMDAR, J.
DATED : SEPTEMBER 06, 2023**

P.C.:

1. The Applicants in both the Interim Applications are the original Petitioners and are seeking to recall the common order dated 5th August 2022 passed in Writ Petition No.473 of 2015 and Writ Petition No.474 of 2015.

2. It is the contention of the original Petitioners that their Constituted Attorney has executed the Consent Terms without informing them.

3. Mr. Ranade, learned counsel appearing for the Petitioners and Mr. Karandikar, learned counsel appearing for the Respondents state that in view of the said objection taken by the original Petitioners, now the fresh Consent Terms are executed. The fresh Consent Terms are executed by parties to the Writ Petitions and not by their Constituted Attorney. Both the learned counsel state that there is some change in the distribution of land amongst the parties than the earlier Consent Terms. Both of them state that the Consent Terms which are sought to be filed today be taken on record and earlier common order dated 5th August 2022 passed in Writ Petition No.473 of 2015 and Writ Petition No.474 of 2015 be recalled and both the Writ Petitions be disposed of in terms of the fresh Consent Terms.

4. The Petitioners/Applicants and the Respondent, in both the Petitions are present in the Court. The Consent Terms are filed by the respective Petitioners/Applicants as well as the Respondent in both the Petitions. Their signatures/thumb impressions on the Consent Terms are identified by their respective Advocates. The Petitioners/Applicants and the Respondent, in both the Petitions who are present in the Court state that the dispute between them is settled in terms of the Consent Terms. Photocopies of Aadhaar Cards of all the parties are annexed to the Consent Terms. Accordingly, the Consent Terms filed in Writ Petition No.473 of

2015 and Writ Petition No.474 of 2015 are taken on record and marked "X" for identification. The Consent Terms read as under :

- “1. The Applicants are original Petitioners claiming tenancy and Respondent is original Respondent - Landlord in Writ Petition Nos.473 of 2015 and 474 of 2015.
2. Both parties have settled their dispute amicably on following terms and conditions.
3. The Applicants/Petitioners give up their claim of tenancy in respect of property bearing Survey No.72, Hissa No.1+2A admeasuring 1-25-5 area and Survey No.85, Hissa No.7 admeasuring 0-06-0 area.
4. The Respondent admits and accepts the tenancy rights and rights as "Deemed Purchasers" of the Petitioners in respect of the following properties.

Sr. No.	Village	Survey No.	Hissa No.	Area (H. R.)	Assessment
1	Mauje Tembhari, Taluka Khalapur	25	1	0-75-0 POKH 0-02-0 ----- 0-77-0	0=78
2		4	6	0-25-3 POKH 0-01-3 ----- 0-26-6	0=30
3		10	6+7	0-07-1 POKH 0-02-5 ----- 0-09-6	0=25
4		48	2B	0-17-9 POKH 0-12-4 ----- 0-30-3	1=44
5		53	3+4 — E	0-31-0	0=37
6		62	3B	0-10-1	0=80

				POKH 0-02-5 ----- 0-12-6	
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5. Both parties state that the earlier terms and conditions of amicable settlement submitted in this Hon'ble Court are withdrawn.
6. Earlier terms and conditions of amicable settlement were not signed by the Applicants/Petitioners. The terms were signed by Power of Attorney appearing for Applicants/Petitioners.
7. Therefore the terms and conditions submitted today reflect the actual amicable settlement arrived at by the parties.
8. The consent terms therefore may kindly be taken on record and earlier order dated 05.08.2022 being common order in Writ Petition Nos.473 of 2015 and 474 of 2015 may kindly be recalled and suitably modified."

5. Thus, it is the common ground that, earlier Consent Terms filed in this Court are entered into without taking consent of the Petitioners. Both the learned counsel state that, in any case, earlier common order dated 5th August 2022 is required to be recalled as by the present Consent Terms, the parties have agreed for distribution of land which is different from the earlier Consent Terms.

6. In view of above, following order is passed :

[i] The Interim Application No.14974 of 2023 and the Interim Application No.14975 of 2023 are allowed and accordingly by consent of both the parties, earlier common order dated 5th August 2022 passed in Writ Petition No.473 of 2015 and Writ Petition No.474 of 2015 is recalled and both the said Writ Petitions are restored to the file.

[ii] Both, the Writ Petition No.473 of 2015 and the Writ Petition No.474 of 2015 are disposed of in terms of the Consent Terms dated 5th September 2023 marked "X" for identification.

7. Accordingly, the Writ Petitions are disposed of with no order as to cost.

[MADHAV J. JAMDAR, J.]