

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

**CIVIL APPLICATION NO. 3797 OF 2019
IN
FIRST APPEAL NO. 1124 OF 2013**

**WITH
INTERIM APPLICATION NO. 62 OF 2023
WITH
INTERIM APPLICATION NO. 63 OF 2023
IN
FIRST APPEAL NO. 1124 OF 2013**

Shri Pancham Mahadev Vermaji Foundation
Mumbai.

..Applicant.

v/s.

Kuldeep Umaraosingh Ostwal & Ors.

..Respondents

Mr. Kishor Patil a/w. Mr. Sameer Mhatre for the Appellant/Applicant.
Adv. Stenna Fernandes i/b. Ashish Suryavanshi for the Respondent
Nos.4, 91 to 94.

Mr. Mayuresh Lagu i/b. Mr. Sagar Patil for the Respondent No.10
Corporation.

Mr. P.S.Dani a/w. Mr. J.K.Shah i/b. R.J.Law for the Respondent No.6.2

**CORAM : ANUJA PRABHUDESSAI, &
AMIT BORKAR, JJ.
DATED : 2nd NOVEMBER, 2023.**

P.C.

1. The Applicant seeks recall of the consent decree dated 4th May, 2018, in First Appeal No. 1124 of 2013 arising from Special Civil Suit No. 436 of 2012.

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2. The Respondent nos.1 and 2 were the Appellants and the Respondent Nos. 3 to 14 were the Respondents in the appeal and shall be hereinafter referred to as the Appellants and the Respondents respectively.

3. The subject matter of the suit was the property admeasuring 25930 sq. meters under Survey No. 204 Sub- Division 1, Survey No. 205 Sub-Division 2, Survey No. 206 Sub Division 1 and 3, Survey No. 218 Sub Division 3 and Survey No.219 Sub Division 3. 4 and 7 of Village Bhayander, District Thane. The Appellants, who were the Plaintiffs in the suit, claimed to be the absolute owners of the suit property. The dispute between the Appellants-plaintiffs and the Respondents-defendants resulted in filing a suit for declaration and injunction. The suit was dismissed by the trial Court by judgment and decree dated 25.03.2013, being aggrieved by which the Appellants-plaintiffs had filed the said appeal.

4. During the pendency of the appeal, the Appellants and the Respondents arrived at an amicable settlement and filed the consent terms. Being satisfied that the consent terms were filed by the parties willingly and out of their own volition, this Court accepted the consent

terms and disposed of the appeal with direction to draw the decree as per the consent terms.

5. The Applicant claims to be the owner of the suit property by virtue of gift deeds dated 8.2.2001 and 15.2.2002 executed in its favour by Chandrakant Nagjibhai Patel. The Applicant claims that the Appellants and the Respondents, having failed in the respective suits filed before the Trial Court, have in collusion entered into consent terms in respect of the property owned by the Applicant, without impleading it as a party to the proceedings. It is stated that the consent terms are illegal, malafide and are executed by playing fraud upon the Court.

6. It is not in dispute that the Applicant Trust had obtained loan of Rs.2.30 Crores from Pen Co-operative Urban Bank Ltd., and mortgaged the suit property as security towards the loan. The Trust defaulted in repaying the loan, and the bank proceeded to recover the amount under the provisions of SARFAESI Act, and invited offers from perspective buyers. The offer given by the Appellants was accepted and on payment of Rs.3,35,00,000/- Sale Certificate came to be issued in their favour. Learned Counsel for the Applicant concedes that the Applicant has not challenged the proceedings initiated by the Bank and the Sale Certificate issued in favour of the Appellants. The Applicant-Trust has not been able to demonstrate collusion or fraud as to justify recall of

the consent decree. The contention that the consent terms are illegal and/or are executed by playing fraud on the Court is devoid of merits.

7. Under the circumstances, the application is dismissed. Interim Applications are disposed of in view of dismissal of the application.

(AMIT BORKAR, J.)

(ANUJA PRABHUDESSAI, J.)