



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

14 WRIT PETITION NO. 9398 OF 2024

**SAJABAI GOVINDRAO PATIL DIED THROUGH L.Rs.
SHESHERAO GOVINDRAO PATIL**

VERSUS

SHOBHA SAHEBRAO SATHE & OTHERS

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Advocate for the petitioner : Mr.H.B.Nandagawale h/f.
Mr.V.G.Sakolkar

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CORAM : ARUN R. PEDNEKER, J.

DATE : 02.09.2024

P.C. :

1] Heard the learned counsel for the petitioner.

2] By the present petition, the petitioner is challenging the impugned order dated 19.04.2024 passed below Exh. 126 in Regular Civil Suit No.42 of 2018, seeking permission to add the petitioner in the suit.

3] It is the case of the petitioner that the plaintiffs have filed suit for partition and separate possession against the defendants in respect of ancestral property. The petitioner is a son of sister of plaintiff's father, namely,

Sajabai. Father of defendant no.1, namely, Ramji Biradar died prior 50-60 years back. The petitioner's mother Sajabai had 1/5th share in the suit property. Panditrao had two sister namely, Sajabai and Bharatbai. Panditrao, in order to grab the property of his sisters in collusion with Shivajirao Biradar and Manik Ramji Biradar, filed suit bearing RCS No.671/1988 and same is decreed behind the back of his sisters on the basis of compromise. The petitioner's claim through their mother Sajabai whereas the original plaintiff and defendants claim the suit property from their father.

4] The petitioner filed an application before the trial Court seeking impleadment as party in the suit. The said application is resisted by the plaintiffs contending that the petitioner has not challenge the compromise and thus cannot be made party to the suit as the same is based on compromise decree. The trial Court on consideration of the material produced on record observed that its the claim of the petitioner that the father of defendant no.1 Ramji Biradar was having three sons and two daughters. All three

brothers, behind the back of sisters, namely, Sajabai and Bharatbai, obtained compromise decree in RCS No.671/1988. Both the sisters are having share in the ancestral property.

5] The trial Court has also held that the compromise decree cannot challenge after passing 12 years and that the present application for impleadment is not maintainable. Considering order 23 Rule 3A of the Civil Procedure Code, the trial Court held that no suit shall lie to set aside and decree on the ground that compromise on which the decree is based was not lawful. A bare reading of Order 23 Rule 3A of CPC shows that a separate suit challenging the compromise decree is barred. As such, the application seeking permission to add the petitioner as party has been rejected.

6] The trial Court has rightly observed that unless and until the compromise decree is set aside by the Court of competent jurisdiction, the petitioner cannot become the necessary party to the present suit, therefore, the

application filed by the petitioner is not maintainable and the same is rightly dismissed by the trial Court. No ground is made out to interfere with the impugned order.

7] However, the petitioner is at liberty to file necessary proceedings to challenge the compromise decree, if so desires and if such proceedings are filed, the concerned Court to decide the same in accordance with law, without being influenced by any observations of this Court.

8] With the above observation, the present Writ Petition is disposed of.

[ARUN R. PEDNEKER]
JUDGE

DDC