



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10507 OF 2022

Suryaji Ganpatrao Patil And Another
VERSUS
Khanderao Babarao Patil Died Through Lrs Laxmibai
Khanderao Patil And Others

- Mr. M. A. S. Granthi a/w Mr. M. K. Bhosale, Advocates for the Petitioners
- Mr. P. S. Talekar i/by Talekar and Asso for Respondents

CORAM : R.M. JOSHI, J
DATE : NOVEMBER 19, 2024

PER COURT :

1. Learned Counsel for both sides were heard for substantial time.

2. During the course of hearing, grievance is made by the learned Counsel for the Petitioners that the Petitioners were not given liberty of leading evidence in Civil M.A. No. 24/2021 as issues were not framed. Though learned Counsel for the Respondents has opposed the said contention by submitting that no application was moved or no attempt was made by the Petitioners to lead such evidence, this Court finds that since the issue involved therein is about

obtainment of a decree by fraud, the same goes to the root of the case and it is also relevant for the administration of justice.

3. Having regard to these facts, though no application was moved by the Petitioners herein for leading evidence before the Trial Court, by way of indulgence an opportunity is granted to Petitioner to lead evidence before Trial Court subject to payment of cost of Rs. 5,000/- (Rupees Five Thousand Only) payable to the Respondents. The said cost is pre-condition for restoration of the Application for decision afresh.

4. In view of the above, Order/Judgment dated 27.09.2022 passed by the District Judge-1, Biloli in Civil M.A. No. 24/2021 is set aside. This proceeding is relegated back to the Court for hearing and decision as per law. Learned Trial Court to frame proper issues on the first date of hearing before the Court. Trial Court is further directed to permit the parties to lead their evidence. However, having regard to the nature of proceedings and time lapsed between passing of original decree and till date, the Application be decided in any case within a period of three months from today.

Parties are directed to appear before the Court on 26.11.2024.

5. Apart from this, considering the facts of the present case that the compromise decree has been challenged after 11 years, if the suit/proceedings is found to be frivolous, the Court is at liberty to impose exemplary cost on Petitioners. Needless to say that all contentions and issues of the parties are kept specifically open.

6. In view of above, Petition stands disposed of.

(R.M. JOSHI, J.)