



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

920 WRIT PETITION NO. 3756 OF 2022

1. Mahamad Majhar Umar Siddiqui,
2. Mohammad Mahasood Umar Siddiqui,
3. Mohammad Mushtaq Umar Siddiqui,
4. Qaisar Begum Mohammad Fahimoddin,
5. Sarbari Begum Mohammad Wahimoddin.

...Petitioners

VERSUS

Mohammad Iftexhar Umar Siddiqui.

...Respondent

...

Advocate for the Petitioners : Mrs. Sontakke Priyandra G.

Advocate for Respondent : Mr. Maniyar Irfan D.

...

CORAM : R. M. JOSHI, J.

Dated : June 25, 2024

PER COURT :-

1. This petition takes exception to order dated 14/07/2020, passed by learned Civil Judge, Senior Division, Udgir in Special Civil Suit No.44/2019, whereby the compromise arrived at between the parties was accepted and suit was decreed in terms of compromise.

2. Learned Counsel for the petitioners submits that the petitioners held from Telangana State and they are not conversant with Marathi language. It her submission that the compromise decree was in Marathi language, and hence, without understanding the contents thereof, the same was signed. It is submitted that the said compromise is contrary to the partition arrived at between the parties

in the year 2003 in respect of the properties in question. It is her submission that the learned Trial Court has committed error in passing the impugned decree on the basis of such compromise. learned Counsel placed reliance on the Judgment of Hon'ble Supreme Court in case of ***A. V. Papayya Sastry and Ors. vs. Government of A.P. and Ors., Appeal (Civil) 5097-5099 of 2004, decided on 07/03/2007.***

3. The learned Counsel for respondent opposed the said submission by contending that the proceedings bearing Misc. Application (M.A.R.J.E.) No.01/2021 is filed for raising objection to the decree passed by the learned Trial Court in the above suit and the said proceeding is still pending.

4. It is settled law that the decree obtained by fraud is can be challenged before the same Court provided the person who alleges such fraud is in possession to establish the same. In view of the pendency of proceeding challenging the said decree on the ground of fraud, present petition is not maintainable. In any case, this Court while entertaining the petition, cannot go into the disputed facts.

Such disputed facts are required to be established before the Court in a substantial proceedings and not by writ petition.

5. This Court, therefore, finds that filing of present writ petition is nothing but the abuse of process of law.

6. Hence, the petition stands dismissed with costs of Rs.5,000/- (in words rupees five thousand) payable to the respondent.

(R. M. JOSHI, J.)

vj gawade/-.