



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13511 OF 2023

Bhanudas Sahadu Sable And Another
VERSUS
Balusahadu Sable And Others

- Ms. M. V. Narwade, Advocate for the Petitioners
- Mr. P. B. Shirsath, Advocate for the Respondents

CORAM : R.M. JOSHI, J
DATE : DECEMBER 03, 2024

PER COURT :

1. Petitioner/Plaintiff in RCS No. 294/2021 has filed this Petition being aggrieved by the rejection of the application Exh. 5 for injunction and stay of the compromise decree passed in RCS No. 328/2008 which is said to have been obtained by fraud.

2. There is no dispute about the fact that RCS No. 328/2008 was filed for partition. Petitioner herein was Defendant no. 1 therein. A compromise took place between the parties. The said suit was decreed in terms of said compromise in the year 2012. In the year 2021, RCS No. 294/2021 is filed by the Defendant No. 1 therein taking exception to compromise decree. An application for staying said decree is also preferred.

Since said application is rejected, present Petition is filed.

3. Learned Counsel for the Petitioner submits that since compromise decree is challenged by the Petitioner before the Trial Court on the ground that the same is obtained by fraud, it was obligatory on the Trial Court to stay decree passed in RCS No. 328/2008. It is her submission that if the names of the Respondents are mutated in the revenue record on the basis of the said decree, prejudice and irreparable loss will be caused to the Petitioners/Plaintiff.

4. Learned Counsel for the Respondent supported the impugned order. A specific statement is made that the names of the Respondents are already mutated in the revenue record on the basis of the compromise decree.

5. The facts, as they appear from record, at least *prima facie* indicate that this is not the case wherein there is allegation against Respondents that the signatures of the Petitioner is forged on the compromise decree. Now what is sought to be contended by the Petitioner is that one of the terms of the said

compromise decree is not with his consent (clause c, page no. 31).

6. The compromise decree is sought to be challenged after about eight years. Needless to say that unless at least *prima facie* finding is recorded by the Court that compromise decree is obtained by fraud, the question of staying the decree does not arise. If the course of action sought to be adopted by the Petitioner is accepted, then it would amount to give a license to the disgruntled parties to the suit/proceeding to retract from the compromise even after lapse of any number of years and to keep other side entangled in litigation to exert pressurize.

7. Perusal of the impugned order shows that there is no *prima facie* case made out by the Petitioner/Plaintiff to indicate that the compromise decree is obtained by fraud, as such, rejection of Exh. 5 is fully justified. No interference, therefore, required in the impugned order for want of perversity therein. Hence, Petition stands dismissed.

(R.M. JOSHI, J.)