

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2912 OF 2024

Baban Namdeo Bhondve

.. Petitioner

Versus

Dattatray Narayan Bhondve & Ors.

.. Respondents

.....

- Mr. Kishor Patil a/w Mr. Yatin Yeole i/by Sidheshwar N. Biradar for
Petitioner

.....

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 1, 2024

P. C.:

1. Heard Mr. Patil, learned Advocate for Petitioner.
2. Present Writ Petition takes exception to the judgment & order dated 07.12.2022 allowing Misc. Civil Application No. 23/2014 filed by the Applicant along with certain other non-Applicants who were the original Plaintiffs as also some of the original Defendants. Though the original Suit was filed by seven Plaintiffs, objection to the execution of the decree was taken in the year 2014 by Defendant No. 1 only, and the same is decided by the impugned judgment dated 07.12.2022.
3. Mr. Patil has drawn my attention to paragraph No. 10 of the impugned judgment wherein it is clearly recorded that pursuant to the compromise decree effected before the Lok Adalat in the year 2009, measurement of the property had taken place in the year 2010 by

following the due process of law by the Taluka Inspector of Land Records (**TILR**) / Tahsildar and the survey, measurement map and Taba Pawti along with panchnama was duly prepared. In that regard, he has drawn my attention to the documents at page Nos. 72 & 86. He would submit that by virtue of the impugned order passed in the year 2022, the compromise decree effected before the Lok Adalat has been completely vitiated and the settled decree has been opened in execution proceedings decided 10 years later. He would submit that despite the parties having participated in the survey and measurement of the suit property which was partitioned, it cannot be now claimed that demarcation to the extent of share of only one of the Applicant has not been done correctly after he has also consented for the same. All that this Court is now required to see is whether the mandate of the decree / compensation effected before the Lok Adalat was substantially complied with or otherwise and the effect of such compliance allowing Defendant No. 1 to reopen the settled compromise decree in execution.

4. An arguable case is made out by Mr. Patil for issuance of notice and immediate stay of any steps to be taken as a consequence of the impugned order dated 07.12.2022. Accordingly stay of order dtd 07.12.2022 is granted.

5. In view of the above and in view of what is noted before the learned Trial Court in paragraph No. 10 of the impugned order, I am directing the Petitioner to implead the concerned TILR / Tahsildar as Respondent herein so as to enable this Court to take the appropriate information from the TILR with respect to demarcation of the allotted share of the Applicant / Defendant No. 1 out of Survey No. 139/3. Leave to amend is granted. Amendment to be carried out forthwith. Re-verification stands dispensed with.

6. Issue notice to the Respondents made returnable on 22.03.2024. Humdast permitted. In addition to Court's notice, Petitioner is directed to serve amended copy of the Petition along with copy of this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date. After receiving the notice, Respondents to file affidavit-in-reply on or before the next date, if so desired with an advance copy to the Advocate for Petitioner.

7. Respondents are directed to remain present either themselves through his Advocate on the next adjourned date. It is made clear that if Respondents remain absent despite service on the next adjourned date, this Writ Petition shall be heard and disposed of at the stage of admission in the absence of the Respondents.

8. Stand over to **22nd March, 2024.**

Amberkar

[MILIND N. JADHAV, J.]

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by RAVINDRA
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