



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 8573 OF 2018

1. Shri Khemaji S/o. Sonbaji Dharukar,
Aged about 63 years, Occ. : Agriculturist,
R/o. Bazargaon, Dist. Nagpur.
2. Shri Shyamrao S/o. Sonbaji Dharukar,
Aged about 60 years, Occ. : Agriculturist,
R/o. Bazargaon, Dist. Nagpur.
3. Savitribai Shrikrishna Bitne,
Aged about 58 years, Occ. : Household,
R/o. Bazargaon, Dist. Nagpur.
4. Prabatabai Balkrishna Bitne,
Aged about 55 years, Occ. : Household,
R/o. Bazargaon, Dist. Nagpur.
5. Sarswatibai Gopalrao Avdhoot,
Aged about 50 years, Occ. : Household,
R/o. Rahti (Hati), Kaddi Post, Tahsil
Karanja, Dist. Wardha.
6. Bhagyarathi Ravindra Dhadel,
Aged about 42 years, Occ. : Household,
R/o. Dhandawara, Tehsil : Hingna and
District : Nagpur.

.... **PETITIONER.**

// VERSUS //

1. Mrs. Mamta Jagdishprasad Jaiswal,
Aged about Major, Occ. Business,
2. Mr. Jagdishprasad Chandanlal Jaiswal,
Aged about : Major, Occ. : Business,

Above defendant Nos. 1 and 2 are
R/o. of Ghatate Building, Block
No.1, Ramdaspath, Nagpur.

3. Smt. Pramila Prabhakar Modi,
Aged about : Major, Occ. : Household,
4. Shri Rajkumar Prabhakar Modi,
Aged about : Major, Occ. : Not known,
5. Ku. Suchita Prabhakar Modi,
Aged about : Major, Occ. : Not Known,
Above Defendant Nos. 3 to 5 are R/o.
Bazargaon, Amravat Road, Nagpur.
6. Sau. Sunita Anilrao Bhanekar,
Aged about : Major, Occ. : Household,
R/o. Ward No.2, Loni, Tahsil : Warud
and Dist. Amravati.
7. Sau. Anita Shivling Vaidya,
Aged about : Major, Occ. : Household,
R/o. Amner, Tehsil : Warud and Dist.
Amravati.
8. Sau. Sangeeta Mallikarjun Jangam (Vibhute),
Aged about : Major, Occ. : Household,
R/o. Near Jain Mandir, Nasirbad, Jalgaon
(Khandesh), Tahsil and Dist. Jalgaon.

.... **RESPONDENTS.**

Shri S.O. Ahmed, Advocate for Petitioners.
Shri Ranjit Sardey, Advocate for Respondent Nos.1 and 2.
Shri Mahesh Rai, Advocate for Respondent Nos. 3 to 8.

CORAM : ANIL S. KILOR, J.
DATED : JANUARY 09, 2024

ORAL JUDGMENT :

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the parties.

3. The compromise decree dated 12/02/2018 passed in Regular Civil Appeal No.02 of 2017 by the Ad-hoc District Judge-1, Nagpur accepting the compromise in view of Exh.13, in between the respondent Nos. 1 and 2 and the respondent Nos. 3 to 8, is under challenge in this writ petition.

4. Admittedly, the petitioners were not party to the said compromise or to the said proceedings and as such they are the third party to the said compromise. The challenge raised to the compromise decree is on the ground that the respondents have played fraud with the Court at the time of obtaining the decree.

5. It is the case of the petitioners that the respondent Nos.3 to 8 are the legal heirs of the original owner of the land viz. Prabhakar Modi, who executed Sale Deed in respect of the land in question, firstly on 06/03/1980 and secondly on 03/04/1982 by two registered sale deeds in favour of one Smt.Chhabibai who is the vendor of the petitioners.

Smt. Chhabibai sold out the land in question in favour of the petitioners on 08/05/2003. In the revenue record, more particularly 7/12 extract from 1980 till 2003, the name of Chhabibai was shown as owner and in possession of the land in question and after 2003 it was shown in the name of the petitioners.

6. Despite the above referred facts, the respondent Nos. 3 to 8 who are legal heirs of the original owner and respondent No.5 entered into an agreement with the respondent Nos. 1 and 2 on 02/06/2009 and since they failed to execute the sale deed the respondent Nos. 1 and 2 filed a suit for specific performance on 28/01/2016 against the respondent Nos. 3 to 8.

7. The suit was partly decreed and the respondent Nos. 3 to 8 were directed to refund back the amount to respondent Nos. 1 and 2.

8. The respondent Nos. 1 and 2 thereupon filed Regular Civil Appeal No. 281 of 2017 before the Ad-hoc District Judge-1, Nagpur and during pendency of the said appeal the parties arrived at a compromise with the following terms of compromise :

“a. That the appellants & respondents wants to compromise the said matter with free will & consent, the respondents declare that the respondents are the absolute owner of the suit property.

b. That the respondents declare that they will not conveying, transpiring, creating third party interest in the said suit property till date. Also not indulge in conveying, transferring, create third party interest in the said suit property.

c. To declare that any type of deed conveyance such as agreement, sale deed. Latter of possession, Gift deeds etc. are invalid, illegal, unlawful, void & not binding on appellants.

d. That the respondents want to compromise the matter with free will & consent, respondents wants to handover/ give the possession of the suit property cum scheduled of property to the appellants.

e. That the respondents have to vacate the suit property & hand over the possession to the appellants within on month from the date of the said compromise decree.

f. That it has been agreed/ admitted, if the respondents fail to handover the vacant possession of the said suit land. The appellants are frees to take the possession of the said suit land through court of law. It is directed to the Talathi to mutate the names of the appellants on the revenue record.

g. It is agreed that if respondent fails to execute the sale deed in the event of drawing the decree, the appellants execute the sale deed through the Nazir appointed by this Hon'ble Court.

h. It is admitted by the respondents direct the Talathi/ Tahsldar to mutate the name of the appellant on the revenue record & cancel the earlier transaction if so took place between the respondent.

i. It is agreed/ admitted that whether any transactions done by the respondents in respect of the said property is become null & void.

j. It is agreed/ admitted that grant perpetual permanent prohibitory injunction in favour of the appellant, restrain the respondent there agents, servants, associates, relatives from taking the possession of the suit land, without following the due process of law.

k. The appellants & respondents have relinquished all dues claim among themselves in respect of this compromise.”

9. In light of the compromise, the learned lower appellate Court passed the compromise decree which is impugned in the present writ petition.

10. At the outset, the issue of tenability of the writ petition was raised in view of the fact that the petitioners were not party to the compromise. Thereupon, the learned counsel for the petitioners has argued that under Article 227 of the Constitution of India this Court has power of superintendence and the same is administrative as well as judicial and is capable of being invoked at the instance of any person aggrieved or may even be exercised *suo motu*. For this purpose, he has placed reliance on the judgment of the Coordinate Bench of this Court in the case of *Anubai Bhiva Turuke ..vs.. Bhagwan Shiva Turuke*, reported in **2017 SCC OnLine Bom 3564**. In this regard the Court has held thus:

“21. This brings me to question No. 2, namely, whether this is a fit case for invocation of suo motu powers under Article 227 of the Constitution of India for testing the validity of the compromise decree passed on 20.3.2013 in R.C.S. No. 110/2013. In paragraph-22 of Surya Dev Rai (supra), Apex Court has observed thus:

*“22. Article 227 of the Constitution confers on every High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to the armed forces. Without prejudice to the generality of such power the High Court has been conferred with certain specific powers by sub-Articles (2) and (3) of Article 227 with which we are not concerned hereat. **It is well-settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. (emphasis supplied)**”*

22. In paragraph-38, Apex Court sum-up the conclusions in a nutshell. Conclusions-4, 5, 6 and 7 read thus:

“(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.”

11. The learned counsel for the respondents are not disputing the facts stated herein above. However, it is pointed out that the respondent Nos.3 to 8 have preferred Civil Suit No.596 of 2019 against Smt. Chhabibai the vendor of the petitioners, challenging the sale deed executed by Prabhakar Modi in favour of Smt. Chhabibai. It is stated that the said suit is pending.

12. The pendency of the above referred suit and the challenge raised to the Sale Deed executed by Prabhakar Modi in favour of Smt.

Chhabibai sufficiently demonstrates that the respondent Nos. 3 to 8 had knowledge about the fact that Prabhakar Modi had executed a sale deed in favour of Smt.Chhabibai and despite the said fact and having knowledge that they had no title in the land in question, they entered into the compromise along with the respondent Nos. 1 and 2 and thereby committed fraud on the Court by suppressing the material facts.

13. In the facts and circumstances of the present case and considering the fact that despite having knowledge to the respondent Nos. 3 to 8 that they have no title in the land in question, they executed sale deed in favour of the respondent Nos. 1 and 2, the objection as regards maintainability of the writ petition under Articles 226 and 227 of the Constitution of India is rejected and it is held that in the peculiar facts and circumstances of this case the writ petition is maintainable.

14. In the circumstances, since there is no dispute about the fact that Prabhakar Modi transferred his title in favour of Chhabibai who in turn transferred the same in favour of the petitioners, the compromise decree between the respondent Nos.1 & 2 and 3 to 8 needs to be quashed and set aside. Accordingly, I pass the following order :

- i) The Writ Petition is allowed.

- ii) The impugned judgment and decree dated 12/02/2018 passed by the Ad-hoc District Judge-1, Nagpur in Regular Civil Appeal No.281/2017 and impugned judgment and order dated 13/02/2017 passed by Civil Judge Senior Division, Nagpur in Special Civil Suit No.92 of 2016, are hereby quashed and set aside.

The Rule is made absolute accordingly. No order as to costs.

(ANIL S. KILOR, J)

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