

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

964 WRIT PETITION NO. 1579 OF 2024

Harshwardhan Vithalrao Paratwagh,
Age 29 Years occupation student
resident of Dhanegaon Nanded

...Petitioner

VERSUS

1. Shantabia @ Shalini w/o Vithalrao Paratwagh
Age 56 Years Occupation Household
r/s Snehnagar, Nanded
2. Vishwaraj s/o Vithalrao Paratwagh,
Age 29 Years resident of Snehnagar, Nanded
3. Vithalrao s/o Limbaji Paratwagh,
Age 64 Years Occupation service/agriculture
r/o Snehnagar Nanded
4. Varsha d/o Bhaurao Bansode
Age 48 Years Occupation : Service
r/o Dhanegaon Nanded

...Respondents

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Ms. Ansari Asfia Nuzhat, Advocate for the Petitioner
Ms. Sunita G. Sonawane, Advocate for Respondent No.4
Ms. Surekha G. Chincholkar, Advocate for Respondent No.1.

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CORAM : ROHIT W. JOSHI, J.
DATED : 25th JULY 2025

ORAL JUDGMENT :-

1. At the outset, the learned Advocate for respondent nos.1 and 3 makes a motion that she wants to withdraw vakalatnama for respondent no.3 on the ground that respondent no.3 had asked her to withdraw appearance on his behalf.

2. The learned Advocate is discharged as Advocate for respondent no.3.

Narwade

3. The petitioner is defendant no.3 in Special Civil Suit No.14 of 2012. Respondent nos.1 and 2 are the original plaintiffs. They have filed a suit for declaration that the compromise decree passed in Regular Civil Suit No.32 of 2007 is illegal, null and void and not binding on them. Apart from this, they have also prayed for a decree for partition and separate possession claiming 1/5th share in suit properties which comprise of an agricultural land and a house property. Defendant nos.1 to 3 were parties to Regular Civil Suit No.32 of 2007 in which compromise decree dated 11.06.2007 is passed. The plaintiffs are not parties to the said suit.

4. The petitioner had filed an application at 'Exhibit 94' under Order VII Rule 11 of the Code of Civil Procedure claiming rejection of plaint in Special Civil Suit No.14 of 2012 on the ground that in view of mandate of Order 23 Rule 3(A) of the Code of Civil Procedure suit filed for challenging a compromise decree is not maintainable.

5. It is well settled that a plaint cannot be rejected in part under Order VII Rule 11 of the Code of Civil Procedure. Apart from this prayer for declaration that the compromise decree is illegal, null and void and not binding on the plaintiffs, relief for partition and separate possession is also sought. The plaintiffs are not parties to the said compromise decree and the same will not bind them and therefore even without seeking the said declaration suit for partition and separate possession will be maintainable, if the entitlement is proved by the plaintiffs. In that view of the matter without expressing any opinion as to whether the plaintiffs are entitled to file a suit with respect to prayer clause-1 regarding declaration that the compromise decree is illegal, null and void, the petition is not being entertained only on the ground that plaint cannot be rejected in part and the

objection raised in the application filed under Order VII Rule 11 only pertains to the first prayer clause and not to the second prayer clause which is the prayer for partition and separate possession. In view of the above, the petition is **rejected**.

6. It needs to be clarified that this Court has not expressed any opinion on merits of the claim either with respect to prayer clause-1 or prayer clause-2 in the suit, since the petition arises out of an application filed under Order VII Rule 11 of the CPC in which merits of the matter cannot be seen. Likewise, since, the petition is dismissed on the ground that partial rejection of the plaint is not permissible, this Court has also not expressed any opinion as regards maintainability of suit with respect to prayer clause-1.

7. Writ petition is **disposed of** accordingly.

[ROHIT W. JOSHI, J.]