



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

WRIT PETITION NO. 7240 OF 2022

PASHAMINYA AHMADMINYA AND OTHERS

VERSUS

RAJENDRA DNYANOBA PANCHAL DIED

THR LRS PAPPU AND ORS

...

Advocate for Petitioners : Mrs. Kulkarni M.A.

AGP for Respondents/State : Mr. V.S. Badakh

Advocate for Respondent Nos. 1A to 1E : Senior Counsel Mr. P. R.

Katneshwarkar i/by Rahil Kazi

Advocate for Respondent Nos. 2, 3 and 5 : Mr. S. G. Kawade

Advocate for Respondent Nos. 9 and 10 : Senior Counsel Mr. P. R.

Katneshwarkar

...

CORAM : ROHIT W. JOSHI, J.

DATE : 12th AUGUST 2025

PER COURT :

1. The present petition is filed by Defendant Nos.7, 9 and 10 in Regular Civil Suit No.19/2012 (Old Regular Civil Suit No.30/2007) which is decided by the learned Civil Judge Senior Division, Majalgaon vide judgment and decree dated 25.03.2019. The Respondent Nos. 1 to 5 are the original Plaintiffs. They had filed the aforesaid suit, seeking declaration by rectification and cancellation of sale certificate dated 16.07.1985 issued by the Respondent No.7/Collector in favour of Defendant No.4. The present Petitioners were not party to the suit initially. They have been impleaded as Defendants subsequently. The contention of the present Petitioners was that the suit property was inam land of Masjid at

Dharur. This issue is decided against the Petitioners by the aforesaid judgment.

2. Apart from this, the learned trial Court dismissed the suit vide judgment and decree dated 25.03.2019. The Respondent Nos. 1 to 5 who are the original Plaintiffs preferred appeal being Regular Civil Appeal No.18/2019, challenging the said judgment and decree. The present Petitioners did not file any cross-objection challenging the finding recorded on issue no.12 against them. It must also be stated that since there was only finding against them and no decree against them, it was not compulsory for them to file any cross-objection and correctness of finding on the said issue could be assailed by them without filing of cross-objection or substantive appeal.

3. It will also be pertinent to mention that in Clause V of the compromise pursis dated 02.11.2020, the Respondent No.1 (Appellant No.1 in Appeal) has stated that in view of the compromise, he did not want to prosecute the appeal against other Respondents in the appeal. It is further stated in paragraph no.6 that the judgment dated 25.03.2019 passed in Regular Civil Suit No.19/2012 was accepted by the Appellant No.1.

4. While the appeal was pending for adjudication, the Respondent No.1 (Plaintiff No.1) arrived at settlement with the Respondent Nos. 9 and 10 [Defendant Nos. 4(1) and 4(2) in Civil Suit and Respondent Nos. 4(1) and 4(2) in Civil Appeal]. In terms of

said settlement, the Respondent No.1 (Appellant No.1 in Civil Appeal) accepted the sale certificate dated 16.07.1985 and further that in terms of said sale certificate, the Respondent No. 1 and predecessor of Respondent Nos. 2 to 5 – Sambhaji and the predecessor of Respondent Nos. 9 to 13 – Ashok had $\frac{1}{4}$, $\frac{1}{4}$ and $\frac{1}{2}$ share respectively in the suit properties bearing Survey Nos. 186 and 187 as per the said sale certificate dated 16.07.1985. The parties accepted their respective ownership and possession, as reflected in the sale certificate dated 16.07.1985. The Respondent No.1 (Appellant No.1) prayed for disposing of the appeal to the extent of compromise only. This compromise was accepted by the learned Appellate Court i.e. learned District Judge-1, Majalgaon vide order dated 08.01.2021. It was ordered that in view of the compromise pursis the appeal was disposed of against Respondent Nos. 9 and 10 (Respondent Nos. 4/1 and 4/2 in the Appeal) and Respondent No.11 (Respondent No.4/3 in Appeal). The learned Appellate Court directed the appeal to proceed against the other Respondents in the said appeal. This order is not subject matter of challenge in the present petition. Subsequently, the Respondent Nos. 2 to 5 (Appellant Nos. 2/2 to 2/5 in Appeal) filed a pursis dated 07.05.2022 vide Exhibit-30 stating that they did not desire to prosecute the appeal against Respondent Nos. 1 to 3, 4/3 and 5 to 10 and stated that they wanted to withdraw the appeal unconditionally.

5. In view of the said pursis dated 07.05.2022, the matter was ordered to be placed before the Lok Adalat at Majalgaon. The head of

the panel of Lok Adalat, Majalgaon has passed order dated 07.05.2022 below Exhibit-1 in RCA No.18/2019, disposing of the appeal in view of compromise pursis between the Appellant No.2 and Respondent Nos. 4/1 and 4/2 at Exhibit-29 and in view of pursis for withdrawal filed by Appellant Nos. 2/2 to 2/5 at Exhibit-30. In view of the aforesaid, the appeal was ordered to be disposed of and direction was also issued to draw a decree in terms of the compromise.

6. The learned Advocate for the Petitioners states that since the appeal was being withdrawn, the Court could not have issued direction for drawing a decree. She contends that a decree can only follow a judgment when the suit and appeal is decided on merits or when a compromise is arrived at between the parties in which case, a compromise decree can be passed. The learned Advocate raises a contention that the Petitioners who are Defendants in the suit are not parties to any compromise. The compromise is only between the original Plaintiffs and the original Defendant No.4. In view of the compromise between original Plaintiffs and Defendant No.4, the order appears to be justified to the extent to which direction for drawing a compromise decree is passed, however, it must be clarified that since the compromise is between the original Plaintiffs and Defendant No.4, the compromise decree will be binding only on original Plaintiffs and original Defendant No.4. The compromise decree will not be binding on the other Defendants who are not parties to the compromise. As regards the other Defendants, the

status of Regular Civil Appeal No. 18/2019 which is disposed of vide order dated 07.05.2022, would be, “disposed of as withdrawn”.

7. With this clarification, Writ Petition is disposed of, granting liberty to the Petitioners to take recourse to such remedies for redressal of their grievance as are available in law.

8. It needs to be mentioned that only because liberty is granted by this Court to avail of appropriate remedy that will not mean that the proceeding to be initiated by the Petitioners will be maintainable in law.

9. Apart from merits of any prospective proceeding, the issue of maintainability is also kept open to be adjudicated by the concerned Authority/Court.

10. Writ Petition is disposed of in the above terms.

ROHIT W. JOSHI
JUDGE