



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.90 OF 2024

Tukaram Dadarao Bansode (Dhangar) ...Applicant

Versus

Khandu Dadarao Bansode (Dhangar) & Anr. ...Respondents

Adv. Vikram Tanajirao Patil for Applicant.

Adv. Shaikh Ashraf Patel h/f. Adv. Abhijit P. Avhad for Respondent No.1.

CORAM : S. G. CHAPALGAONKAR

DATE : 8th JANUARY 2025

P.C.:-

1. Heard learned Advocate appearing for respective parties.
2. Applicant impugns order dated 17th February 2022 passed by 2nd Joint Civil Judge, Junior Division, Nilanga, District Latur in Civil Miscellaneous Application No.293 of 2015 by which compromise decree passed in Regular Civil Suit No.385 of 2008 dated 16th August 2008 is recalled and Regular Civil Suit No.385 of 2008 has been restored to original stage for decision on merit.
3. Learned Advocate appearing for Applicant submits that decree was passed on the basis of compromise terms placed on record before Trial Court. Thereafter, Civil Miscellaneous Application No.293

of 2015 was moved for recalling of the compromise decree alleging that it is obtained by exercise of fraud/misrepresentation as regards correctness of boundaries of the suit property depicted in compromise decree. Learned Advocate appearing for Applicant invites attention of this Court to further private settlement between the parties dated 9th July 2013 by which the parties agreed upon to correct the boundaries and occupy possession of the property. According to Mr. Deshmukh, in wake of such agreement, there was no necessity to recall the compromise decree.

4. Per contra, learned Advocate appearing for Respondent No.1 supports the impugned order.

5. Having considered submissions advanced, it is apparent that parties entered into the compromise and decree was passed, based on the compromise term. It cannot be disputed that at the time of recording the compromise term, the mistake occurred in the description of boundaries due to which decree was practically not executable. The aforesaid fact is fortified even by subsequent compromise dated 9th July 2013 relied by Applicant. Trial Court recorded evidence of parties even in application for recalling of the decree. The cadastral surveyor-Mr. Bhaskar Bhagade examined at Exhibit-29. He deposed that he carried measurement as per order of the Court and found that there is discrepancy in survey map which is

prepared by him and compromise filed in R.C.S. No.385 of 2008. The evidence of witness remain unchallenged, as he was not cross-examined on behalf of the Applicant.

6. In that view of the matter, it is clear that compromise decree as passed was not executable and boundaries mentioned therein were inconsistent with survey record. Trial Court after considering aforesaid aspects thought it fit to recall defective compromise decree dated 16th August 2008 and restored the suit to its original stage. In this background, no jurisdictional error is found in the impugned order.

7. Consequently, Civil Revision Application stands dismissed.

(S. G. CHAPALGAONKAR, J.)