



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 216 OF 2022

Lahanbai Ramnath Jethgule

VERSUS

Bababai Karbhari Jethghule And Another

- Mr. P. V. Barde, Advocate for the Petitioner
- Mr. K. N. Shermale, Advocate for the Respondent No. 1

CORAM : R. M. JOSHI, J

DATE : OCTOBER 01, 2025

PER COURT :

1. By consent of both sides, heard finally at the stage of admission.

2. This Petition takes exception to the order dated 06.08.2021 passed in Review Application No.01/2016 by District Judge – 1, Sangamner whereby the learned First Appellate Court has set aside the order dated 10.02.2016 whereby the RCA No. 76/2007 was compromised. The First Appellate Court has restored RCA No. 76/2007 to its original stage.

3. Parties are referred to as 'Plaintiff' and 'Defendants' for the sake of convenience.

4. The facts, which led to the filing of this

Petition, can be narrated in brief as under:

a. Plaintiff filed suit against Defendant Nos.1 and 2 for declaration and specific performance of contract in respect of land admeasuring 74R. The said land belongs to Defendant No. 1, however, it was agreed to be sold to Defendant No. 2. The suit came to be dismissed after full fledged trial on giving opportunity to both sides to led their evidence. Being aggrieved by the order of dismissal, Plaintiff preferred RCA No. 76/2007. During the pendency of the Appeal, an application was moved for deletion of Defendant No. 2 i.e., Review Application from the array of the parties. This application came to be allowed. Thereafter, a compromise was arrived at between Plaintiff and Defendant No. 1 and the compromise pursis Exhibit 22 came to be filed. The First Appellate Court accepted the said compromise and allowed suit in terms of compromise.

b. Defendant No. 2, after having knowledge of the said compromise decree, filed Review Petition before the same Court i.e., First Appellate Court. It is the contention of the Review Applicant that the compromise is fraudulent and there was no right with Defendant No. 1 to enter into compromise in respect of portion of the property to the extent of 34R, which was agreed to be sold to Defendant No. 2.

c. Learned First Appellate Court accepted the said contention and allowed the review whereby the

order dated 10.02.2016 came to be set aside. Hence, this Petition.

5. Learned Counsel for the Petitioner/Plaintiff sought to take exception to the impugned order by contending that it was not open for the aggrieved party to challenge the said order, by filing review before same Court. Attention of the Court is also drawn to the contention of the parties raised in the proceedings so also in the compromise pursis. It is his submission that Defendant No. 1 has accepted factum of Plaintiff being in possession of the entire suit land i.e., 74R land and as such, it cannot be said that the compromise is by way of fraud.

6. Learned Counsel for the Respondent supported the impugned order.

7. Perusal of the record indicates that in the original suit Defendant Nos. 1 and 2 were arrayed as Defendants. Both these Defendants resisted suit and after complete trial, suit came to be dismissed. It was held by the Trial Court that the Plaintiff was not in possession of the suit property. Further there is no dispute about the fact that the land admeasuring 34R

was agreed to be sold to Defendant No.2 and as such, the presence of this Defendant was very much necessary in Appeal too.

8. Firstly, when the Defendant No. 2 was party to the original suit, there was no reason or justification for deletion of the Defendant No.2 from the array of Appeal. The series of facts as they appear from the record leads to the only conclusion that Plaintiff and Defendant No. 1 in collusion first got Defendant No. 2 deleted from array of the Respondent in the First Appeal and then compromised the suit. On the face of it, the act of these parties could be construed as fraud played upon the Court. In any case, since there was right claimed by the Defendant No. 2 in the subject property by deleting Defendant No. 2 from array of Respondent in the proceedings, the Court ought not to have allowed the compromise decree passed in terms of such compromise. All these facts are rightly taken into consideration by the First Appellate Court in the review proceedings. It was within the powers of the said Court to recall the order if it is found to have been obtained by fraud or misrepresentation.

9. Having regard to the facts of the case, the findings recorded in respect of fraud cannot be faulted with. In any case, no prejudice will cause to the Petitioner/Plaintiff by setting aside impugned order as it is open for the Plaintiff to substantiate his case on merit in RCA No. 76/2007.

10. In the result, Petitioner has failed to make out a case to cause interference in the impugned order. Hence, Petition stands dismissed.

(R. M. JOSHI, J.)