



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

WRIT PETITION NO.785 OF 2018

1. Vithal Rajaram Dudhbhate,
Age: 40 years, Occu: Agriculture,
R/o. Jakekooor, Taluka Omerga,
District Osmanabad.

2. Pratap Rajaram Dudhbhate,
Age: 38 years, Occu. Agriculture,
R/o. As above

... Petitioners

Versus

1. The District Collector,
Collector Office, Main Road,
Osmanabad.

2. The Tehsildar,
Tehsil Office, Main Road,
Omerga, District Osmanabad

3. Kasturabai Manik Dudhbhate,
Age: 70 years, Occu. Household,
R/o. Balaji Nagar, Omerga,
Taluka Omerga, District Osmanabad

4. Shivraj Manik Dudhbhate,
Age: 52 years, Occu. Agriculture,
R/o. As above

5. Dipali Dilip Kokle,
Age: 50 years, Occu: Household
R/o. Kasar Shirshi, Taluka Nilanga,
District Latur

6. Sunita Shivputra Pujari,
Age: 47 years, Occu. Agriculture,
R/o. Shahbad, Taluka Chitapur,
District Gulbarg (Karnataka State)

7. Shivnand Manik Dudhbhate,
Age: 42 years, Occu. Agriculture
R/o. Balaji Nagar, Omerga,
Taluka Omerga, District Osmanabad

8. Ram Mahalappa Dudhbhate,
Age: 72 years, Occu. Agriculture,
R/o. Shirur, Taluka Aland, District Gulbarg
9. Nagarbai Mhadu Dudhbhate,
Age: 62 years, Occu. Agriculture,
R/o. Jakekooor, Taluka Omerga,
District Osmanabad
10. Santosh Manik Dudhbhate,
Age: 40 years, Occu. Agriculture,
R/o. Balaji Nagar, Omerga
Taluka Omerga, District Osmanabad

...

Mr. Mohit R. Deshmukh, Advocate for Petitioners
Mrs. V. N. Patil Jadhav, AGP for Respondent Nos.1 and 2/State
Mr. Akram Inamdar, Advocate h/f Mr. S. S. Kazi, Advocate for
Respondent Nos.3 to 10

...

CORAM : MANJUSHA DESHPANDE, J.

RESERVED ON : 07th JANUARY, 2025
PRONOUNCED ON : 13th JANUARY, 2025

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.
2. By this petition the petitioners are challenging order dated 27/09/2016, passed by learned Joint Civil Judge, Junior Division, Omerga, in Regular Darkhast No.09/2005.
3. Petitioners are the original defendants in Regular Civil Suit No.325/1996, filed by respondent Nos.3 to 10. The suit was decreed on 31/01/2004, in favour of plaintiffs thereby declaring that the plaintiffs and defendant No.1 are entitled for 1/4th share each in the suit land and the suit house property. It was further declared that defendant Nos.2 and 3 (petitioners herein) will be entitled to

the share of defendant No.1. The said decree was challenged before learned District Judge, Osmanabad, by the original defendants by filing Regular Civil Appeal. The appeal came to be allowed wherein it was held that as per previous partitions the property was already given in possession of defendant No.1, therefore, there is no cause of action to seek further partition. The judgment and order passed by the District Judge, Osmanabad, was reversed in the second appeal filed by original plaintiffs thereby maintaining the decree passed by Trial Court.

The decree passed by the trial Court, having been confirmed by this Court, was put to the execution before learned Civil Judge, Junior Division, Omerga, by filing Regular Darkhast No.09/2005. The decree holders prayed for partition and separate possession of house property as well as agricultural land in terms of the decree. The executing Court passed order on 21/04/2015, observing that, so far as partition of agricultural land is concerned the separate possession and allotment of share are supposed to be effected by the Collector or any gazetted officer sub-ordinate to him. Accordingly, in view of Section 54 of the C.P.C. decree was sent to the Collector for execution.

So far as house property is concerned, the Darkhast was kept pending. Subsequent to the passing of the said order in execution proceedings, the litigating parties entered into compromise as per the terms which is at Exhibit-64, on 27/09/2016.

The terms of compromise were placed before learned Joint Civil Judge, Junior Division, Omerga, in R.D. No.09/2005. On the same day executing Court passed order below Exhibit-64 observing that,

"All the decree holders, judgment debtors and their advocates are present before the Court. Parties are identified by their respective counsel. They have filed this compromise pursis and admitted its contents and their signatures and thumb impressions on it. On verifying the compromise pursis, order is passed below Exh.1."

4. After verifying the contents of the terms of compromise and presence of the parties as well as their signatures, learned Joint Civil Judge, Junior Division, Omerga, has passed order below Exhibit-1 on 27/09/2016, wherein it is observed that the decree of partition is regarding the agricultural land B. No.193 admeasuring 2 H 4 H and house property Chalta No.434, both situated at Jakekur, Taluka Omerga. As far as the agriculture land is considered, the decree shall be executed by the District Collector, Osmanabad, since the civil Court has become *functus officio* regarding the agricultural land after passing of the decree. Hence, only thing which can be done is to send the decree to District Collector as per Section 54 of C.P.C. The compromise before this Court to the extent of agricultural land shall not be legal. However, compromise to the extent of house property Chalta No.434 is legal and valid and seems to be voluntary. Hence, admitted. The execution proceeding is disposed of in terms of compromise to the extent of house property Chalta No.434, situated at Jakekur. Accordingly, the decree is sent to the District

Collector, Osmanabad, for execution of decree regarding agricultural land B.No.193 adm. 2 H 4 R.

5. It is the contention of learned advocate for petitioner that he is aggrieved by the said order passed by the executing Court, since it is not in accordance with the terms of compromise which are placed on record by the parties to the suit. It is categorically mentioned in clause 2 of the terms of compromise that legal heirs of decree holder No.1 i.e. decree holder Nos.1A to 1F, decree holder No.2 who had expired as well as legal heirs of decree holder No.3, have relinquished their share in the agricultural property Gut No.193 admeasuring 2 H 4 R, and the house property Chalta No.434, permanently in favour of judgment debtor Nos.2 and 3.

6. Similarly in terms clause No.3 of the terms of compromise, it was decided that judgment debtor Nos.2 and 3 would pay amount of Rs.18,51,000/- to the legal heirs of decree holder No.1 as well as legal heirs of decree holder Nos.2 and 3. It is further clarified that since there were three decree holders, each of them would get 1/3rd share and accordingly, the decree holder Nos.1 and 2 have been paid Rs.6,17,000/- each and since decree holder No.3 had expired his legal heir i.e. defendant No.3A Nagarbai was also paid Rs.6,17,000/-. It is further mentioned that legal heirs of decree holder No.1 i.e. decree holder Nos.1A to 1F and legal heirs of decree holder Nos.2 and 3 have relinquished their rights in favour of

judgment debtor Nos.2 and 3.

7. It is the contention of learned advocate for petitioner that in spite of the clear terms of compromise entered between the parties, the executing Court has failed to pass a decree in accordance with the terms of compromise. To the contrary it observed that since the Civil Court has become *functus officio* regarding the agricultural land after passing of decree, the only recourse available would be to send the decree to District Collector as per Section 54 of C.P.C., for execution in respect of agricultural land. The execution proceeding is disposed of in terms of the compromise to the extent of house property only.

8. The learned advocate for petitioners submits that, the Civil Court does not become *functus officio* after passing of the decree. According to him, even after the Civil Court sends decree for apportionment of shares to the Collector as per Section 54 of C.P.C., it can verify if the Collector has acted in accordance or in contrary to the decretal mandate. Even otherwise, according to him, when the terms of compromise were entered into between the parties, the earlier order of the executing Court dated 21/04/2015 was not implemented by the Collector till the date of passing order in terms of the compromise dated 27/09/2016. Hence, according to learned advocate for petitioner the Joint Civil Judge, Junior Division, Omerga, ought to have modified the decree in terms of compromise entered into between the parties and thereafter send a fresh decree to be

executed by the District Collector as per Section 54 of C.P.C. According to him, it is not within the power of executing Court to tamper with the terms of compromise entered into between the parties, unless it is contrary to the provisions of law. It is pointed out by him that as against the shares of the decree holders, it was decided that total amount of Rs.18,51,000/- was to be given to all the decree holders in lieu of their share and accordingly each of them has already been paid Rs.6,17,000/-, which was accepted and acknowledged by decree holders by attesting their thumb impression as well as acknowledging it by their signatures on the terms of compromise. Moreover, learned Joint Civil Judge, Junior Division, has also passed order below Exhibit-64, wherein it is observed that all the decree holders and judgment debtors and their advocates are present before the Court and they are identified by the respective counsels and the contents of the compromise pursis has been admitted by them, by attesting their signature and thumb impression on it. It is only after verifying the compromise pursis order is passed below Exhibit-1.

9. Learned advocate for petitioners, in support of his contention, relies on Order 23 Rule 3 of C.P.C., which governs the compromise of suit, which reads thus,

*“3. **Compromise of suit** - Whether it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise (in writing and signed by the parites), or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter*

of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject matter of the suit].

[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]”

10. Learned advocate for petitioners has relied on the judgment of the High Court of Kerala in R.P. No.507/2014, wherein it is held that, once the Court finds that the agreement or compromise is lawful, it shall record the same and pass a decree in terms therewith. The only inquiry contemplated by the Court when the parties compromise a matter is regarding the lawfulness of the compromise or agreement. If that is found to be in the affirmative, the Court has no option, but to record the same and pass a decree in tune with the compromise or agreement. It is incumbent on the Court to make the compromise or agreement itself a part of the decree.

11. In the impugned order the executing Court has observed that Civil Court has become *functus officio* regarding agricultural land after passing of decree and has accepted the terms of compromise only to the extent of house property, which is contrary to the terms of compromise, when, in fact, the terms of compromise were in respect of agricultural land as well as house

property. The decree holders have accepted the monetary compensation by relinquishing their share in the agricultural land as well as house property in favour of the judgment debtors. Once having accepted the amount in lieu of their share in the house property as well as agricultural properties, the executing Court has totally lost sight of the fact and thus has travelled beyond the terms of compromise and passed the impugned order.

12. The learned advocate for respondent Nos.3 to 10 has opposed the writ petition by filing affidavit dated 25/10/2023. Though this writ petition has been filed in the year 2018 and notices were issued on 22/01/2018, reply affidavit was not filed by respondent Nos.3 to 10 during the intervening period. It is only after a long gap of five years the affidavit has been filed by respondents on 25/10/2023.

13. In the reply affidavit, it is contended that the compromise was recorded in respect of house property only and it was not in respect of agricultural land. It is the contention of respondents that petitioners have deceived respondents by not keeping their word 'to pay Rs.9,51,000/-' as agreed between the parties. Though it was decided that amount of Rs.18,51,000/- would be paid to defendant Nos.2 to 8, however, only an amount of Rs.9,00,000/- is received by respondents. In case the petitioners are ready to make residual payment of Rs.9,51,000/- only in that eventuality respondent Nos.2 to 8 are ready to compromise the

matter, failing which there cannot be any compromise.

14. Learned advocate for respondent Nos.3 to 10 has also relied on communication dated 12/05/2017 addressed to the Tahsildar, Omerga, by respondent Nos.3 to 10, objecting to the execution filed before the Collector, Osmanabad, under Section 54 of the C.P.C., contending that they have not received full amount as agreed in the terms of compromise. According to him immediately after the compromise was entered between the parties he has filed objection before the Tahsildar.

15. However, the fact remains that Tahsildar is merely implementing the decree and is not the competent authority who is capable of entertaining objection raised by the respondents. If at all the respondents/decreed holders had any objection as regards the compromise pursis presented in the Court, they should have filed proper proceedings objecting to the same.

16. The learned advocate for respondent admits that till date the respondents have not filed any objection or proceedings against the terms of compromise. They have not raised any dispute against the terms of compromise which was verified by the competent Court. Hence, the reliance placed by learned advocate for respondents on the communication addressed to the Tahsildar dated 12/05/2017 is of no assistance to them. Though the respondents have objected to the terms of compromise, in their reply affidavit they admit to have received part amount of

Rs.9,00,000/- and according to them they have not yet received balance amount of Rs.9,51,000/-. The said affidavit is contrary to the terms of compromise entered into and acknowledged by the parties in the compromise they admit to have received the entire amount. So also, fact remains that till date decree holders have not filed any legal proceedings disputing or objecting to the terms of compromise.

17. Thus, the only ground raised by respondents to oppose the prayers in the writ petition is that, they have not received the entire amount as per the terms of compromise. Hence, they are opposing the prayer of the petitioners.

18. Respondent Nos.1 and 2 State authorities have also filed affidavit of Naib Tahsildar, Omerga, District Osmanabad. Execution in respect of agricultural land B.No.193 admeasuring 2 H 4 R. According to him, the authority cannot go beyond the decree as they are bound by the orders passed by the Civil Court.

19. Hence, taking into consideration the order dated 27/09/2016, passed by the executing Court, respondent No.2 has refused to accept the request of petitioner to stop or defer the execution of decree and has rejected the application of the petitioner. record compromise. According to him, map was prepared to effect partition and it was sent to the circle officer to deliver actual possession as per the decree. The circle officer has issued notices to the concerned parties, which the petitioners have refused

to accept. Therefore, the circle officer prepared panchanama regarding non-acceptance of notices on 22/09/2017. After duly serving notices and following the prescribed procedure the circle officer has handed over possession to the original plaintiffs in R.C.S. No.325/2019 on 26/09/2017 and accordingly the Taba Pawati is also prepared.

20. The sum and substance of the affidavit is that the revenue authorities have executed part of the decree regarding agricultural land on 26/09/2017 itself.

21. I have heard the respective parties. After hearing the submission, as well as going through the documents placed on record, it is undisputed that terms of compromise were entered into between the parties to the suit and according to the terms of compromise the decree holders were in receipt of certain amount. After receiving the same, they had agreed to permanently relinquish their share in the house property as well as the agricultural land in favour of judgment debtors. There is a categorical declaration given by the decree holders that, they had relinquished their share in favour of judgment debtor Nos.2 and 3 in lieu of the amount received by them. Having acknowledged the terms as stated herein above, by affixing their signatures and thumb impressions which was further verified by the executing Court on the very same day i.e. 27/09/2016, the Executing Court had no other alternative but to pass a decree in terms of compromise, entered between the parties.

22. In spite of the unambiguous terms of compromise the executing Court has, failed to pass fresh decree in terms of compromise as contemplated under Order 23 Rule 3 of C.P.C. On the contrary it is observed that, Civil Court has become *functus officio* regarding the agricultural land after passing of decree. The said observation of the executing Court is contrary to what is contemplated under under Order 23 Rule 3 of the C.P.C. The only option with the executing Court was to pass a fresh decree in accordance with the compromise terms entered into between the parties. However, the executing court has committed grave error in holding that the compromise to the extent of agricultural land would not be legal. The terms of compromise are very much clear and unambiguous which provides that the decree holders had already received an amount in lieu of their shares. Therefore, it was not open for the executing Court to bifurcate the terms of compromise by allowing compromise only to the extent of house property and sending the part of decree to the District Collector.

23. Learned advocate for petitioners while challenging the order passed by the executing Court has placed reliance on the judgment of this Court in ***Mahadu Alias Mahadeo Baji Bhosale Vs. Appaji Gunbarao @ Ganpatrao Bhosale***, reported in **2003 (2) Mh.L.J. 216**, wherein it is observed that:-

"8. Having heard the learned Counsel for the petitioner, I find that the learned District Judge could not have dismissed the appeal on the ground that the Civil Court becomes functus officio

after it sends the decree for partition and cannot in any circumstances consider whether the Collector has effected partition in accordance with the decretal mandate. The reliance by the learned District Judge on the decision in the case of Lachhiram Jasram (supra) is misplaced. In the case before the Nagpur High Court the Applicant had applied under section 54 and Order XX, Rule 18 of the Code of Civil Procedure to the Court for issuing direction to the Collector to the effect that the partition should be effected in a certain manner, in particular, so as to allot as far as possible entire holdings to the share of the plaintiff. This application has been dismissed. On this fact the High Court took the view that the discretion as to the manner in which the partition is to be held lies wholly with the Collector and the Civil Court is functus officio after it declares the shares of the parties and beyond that it is not concerned with that. The Court observed that in fact the suit terminates so far as the Civil Court is concerned on the passing of the preliminary decree affecting any estate assessed to the payment of revenue to the Crown. These observations were made obviously where anticipatory directions to the Collector were sought to require him to effect partition in a particular manner. This case is not an authority for the proposition that if the Collector has effected partition contrary to the decretal mandate his action is immune from the challenge before a Civil Court. On this question a Division Bench of this Court in Ningappa Balappa and Others v. Abashkhan Gouskhan, AIR 1956 Bombay page 345, observed as follows :--

"5. It is true that it has been held in several cases that the Court is not entirely deprived of controlling the action taken by the Collector. But this control is very limited. It is to be exercised only if the Collector contravenes the decretal order or transgresses the law relating to partition or refused to execute the decree. See the cases cited at p.228 of Sir Dinshaw Mulla 's Code of Civil Procedure, 12th Edition."

9. Therefore, the learned District Judge could not have dismissed the appeal on the ground that the Civil Court had no jurisdiction to see if the Collector had acted in accordance or

contrary to the decretal mandate.”

24. The question that arise before this Court is that, whether the executing Court can travel beyond the terms of compromise entered between the parties and issue decree only in respect of part of the property which is not contemplated in the terms of compromise. Admittedly, in the present matter R.D. No.09/2005 was pending before the executing Court, and order dated 21/04/2015 was passed by the Civil Judge Junior Division, Omerga, who has sent decree to the Collector for execution as per Section 54 of the C.P.C. in respect of agricultural property to allot shares as per decree and Darkhast in respect of house property was kept pending. The parties to the suit, even during execution having consciously and willingly entered into compromise and the terms of compromise being placed before the executing Court, the executing Court was bound to issue modified decree in terms of the compromise.

25. Though the terms of compromise clearly contained clause No.2 wherein the legal heirs of decree holder No.1, decree holder No.2 and legal heirs of decree holder No.3 have relinquished their shares in respect of agricultural land as well as house property in favour of judgment debtor Nos.2 and 3, the relinquishment was made in lieu of the amount of Rs.6,17,000/- each received by them from judgment debtor Nos.2 and 3. Parties to the compromise were personally present and they have acknowledged the contents of

terms of settlement before the executing Court, which was verified and order below Exhibit-64 has been passed.

26. Hence, once having acknowledged the receipt of amount in lieu of relinquishment of shares in agricultural land and house property, it was beyond the power of the executing Court to send the decree to Collector under Section 54 of the C.P.C. for execution in respect of agricultural land only.

27. Therefore, in view of the conspectus of the matter the impugned order passed by the Joint Civil Judge, Junior Division, Omerga, deserves to be quashed and set aside by remanding the matter back to the executing Court.

28. In the result, the order dated 27/09/2016 passed below Exhibit-1 in Regular Darkhast No.09/2005 is quashed and set aside and it is directed to the executing Court to record and give effect to the compromise as per Exhibit-64 and accordingly pass the modified decree in terms of compromise.

29. Rule is made absolute. Writ petition is, accordingly, disposed of.

(MANJUSHA DESHPANDE, J.)