



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 5492/2024

1. Navalaji Hariji Mule
Aged about 64 years, Occ-President of
Bhuvaikunth Adyal Tekadi Samiti,
Bramhapuri, Resident of Adyal
Tekadi, Bramhapuri, District
Chandrapur
2. Subhash Lakshmanrao Narkhede
Aged about 69 years, Occ-Cultivation,
3. Prahlad Lakshamanrao Narkhede,
Aged about 67 years, Occ-Cultivation,

Petitioner No. 2 & 3 are resident of
Darbar Galli, Nandura Khurd, District
Buldana
4. Sau. Ushabai Yadav Kinage
Aged about 63 years, Occ-Housewife,
resident of Bangalore, Tahsil and
District Bangalore (Karnataka).
5. Subodh Ramesh Bokade
Aged about 40 years, Occ-Member of
Buvaikunth Adyal Tekadi Samiti,
Bramhapuri, District Chandrapur
resident of Adyal Tekadi, Bramhapuri,
District Chandrapur.

...PETITIONERS

VERSUS

1. Madhukar Atmaram Tundulwar
Aged about 88 years, Occ-Retried, resident

of Adyal Tekadi, Tahsil Bramhapuri, District Chandrapur

2. Prakash Jagannath Wagh
Aged about 68 years, Occ-Retired, president of Akhil Bhartiya Shri Gurudev Seva Mandal, registration no. F-162/15/11/1963, Kendriya Karyalaya, Gurukunj Ashram, Mozari, Tahsil Tivasa, District Amravati.

...RESPONDENTS

Shri A.H. Daga, Advocate for petitioners
Shri A.S. Dhore, Advocate for respondents

CORAM : SMT. M. S. JAWALKAR, J.
DATE : 02/05/2025

ORAL JUDGMENT

. **Rule.** Rule made returnable forthwith.

2. Heard learned Counsel for the petitioners and learned Counsel for respondents.

3. Preliminary objection raised by the respondents that against the order passed by District Court, Chandrapur, in RCA No. 10/2021, second appeal would lie.

4. Learned Counsel for petitioner submitted that one RCS No. 74/2013, filed by respondent No.2, against respondent No.1 and Lakshman Narkhede, who was looking after the Bhuvaikunth Samiti, Adyal Tekadi, Bramhapuri, who was passed away. Taking the advantage of the same, respondent Nos. 1 and 2 had entered into compromise deed, thereby, holds and declare that respondent No.2, is the owner of said property and is in possession of said property, on the basis of that compromise deed that compromise decree was passed. The petitioners who are member of followers of Bhuvaikunth Samiti, Adyal Tekadi, Bramhapuri, had filed the RCS No. 4/2021, for declaration that compromise decree was obtained by fraud. It is alleged that the Trial Court without issuing any notice had dismissed the RCS No. 4/2021 on the ground that suit is barred as per Order 23, Rule 3-A of the Code of Civil Procedure.

5. It is the contention of the petitioner that the Government of Maharashtra through Revenue and Forest Department had handed over the possession of lands to Bhuvaikunth Samiti, Adyal Tekadi, Bramhapuri, vide its order dated 27/04/1973. There is communication from Collector, Chandrapur,

to Divisional Commissioner, Nagpur, thereby forwarded the proposal for free the said land from property tax. On 13/09/2005, the land was handed over to Bhuvai kunth Samiti, Adyal Tekadi, Bramhapuri. In view of compromise, it is alleged that the person having no rights agreed to handover the possession and agreed to accept the ownership therein. Therefore, RCS No. 4/2021, is filed. The said suit filed by the present petitioner came to be dismissed being not maintainable, on the ground that in view of Order 23, Rule 3-A of the Code of Civil Procedure, no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

6. The Learned Counsel for petitioner vehemently argued that there was no decree either in the Trial Court in the suit filed by the petitioner nor in the appeal. As such, contention of respondent that second appeal is maintainable against the said order is having no substance. He has also relied on *Ramkrishna Shridhar Choube Vs. Court Receiver and others, 2010 SCC OnLine Bom 1844*. In support of his contention that the bar under Order 23, Rule 3-A of the Code of Civil Procedure, as regards institution of suit to have

the decree set aside applies to the parties to the suit, not applicable to the person who is not a party to the suit.

7. This Court held in above referred citation as under in para 18 & 20:

“18. Order 23 speaks of what happens between the persons who are parties to the suit. Order 23, 3A of the Civil Procedure Code will therefore have to be treated as an extension of provisions of Order 23, Rules 1, 2, 3 of Civil Procedure Code. This would mean that the restrictions as regards institution of suit to have the decree set aside would in principle apply to the parties to the suit. The bar of Order 23, Rule 3A of Civil Procedure Code would not be applicable to a person who was not a party to the suit. If it was the intention of the legislature that the bar created by Order 23, Rule 3A of Civil Procedure Code was applicable to person who was not a party to the suit, the legislature would have specifically provided so. In the absence of such bar, if a person who is not a party to the suit wants to have a decree set aside by contending that the compromise on which the decree is based was not lawful has to file suit to seek appropriate reliefs. The notice of motion is not maintainable.”

“20. There is one more reason as to why institution of suit is proper remedy. As the present applicants were not parties to the suit, what exactly transpired before the Court at the time of arriving the consent terms, would not be known to them. One will have to read the text of decree, minutes of the order, consent terms etc. If it has been the stand of the applicants that the fraud has been played on the Court and on them, they will have to

provide full particulars of fraud. Undoubtedly all concerned, who are interested in opposing such a plea will have to be given a chance to defend such allegations. Once the allegations are defended by the parties, it will result in disputed questions of fact and evidence will have to be led in support of rival contentions. Surely, this cannot be effectively done in a Notice of Motion which is taken out by the present applicants. It is for this reason also, I am inclined to observe that the institution of the suit so as to challenge the decree dated 12-5-2008 is the proper remedy.”

8. It is submitted by the learned Counsel for respondents that some of the petitioners were defendants in the suit, which was decreed on compromise. However, it is also admitted that the suit was withdrawn against those defendants. Therefore, there was no question of any knowledge about compromise arrived at between the parties i.e. respondent Nos 1 and 2.

9. Similar view taken by this Court in ***Sushilabai Wd/o Bomenshaw Byramji Vs. Kalarukh Wd/o Dpr Cassad through LRs and another, 2014 SCC OnLine Bom 26.***

10. The Hon'ble Apex Court in ***Ved Pal (Dead) through Legal Representatives and others Vs. Prem Devi (Dead) through Legal Representatives and others, (2018) 9 SCC 496***, and in ***Horil***

Vs. Keshav and another (2012) 5 SCC 525, the purpose in making reference to Order 23, Rule 3-A of the Code of Civil Procedure, is to show the legislative intent which does not allow the parties to recourse to these legal remedies to challenge the compromise once it is arrived at in the suit/appeal. The only exception is if the challenge is founded on the ground of fraud committed by the parties and obtained any judicial order, the suit in proper case may lie. Considering the law position, I am satisfied that order passed by the learned Civil Judge Junior Division, Bramhapuri, District Chandrapur, is patently illegal and cannot sustain in the eye of law. Considering the fact that the petitioners were not party to the earlier suit, which was decreed on compromise. Secondly, those who were party to the suit, suit is withdrawn against them. Therefore, there is no question of having any knowledge what is the terms of compromise, when specifically there is an allegation of fraud, it would be appropriate to file a separate suit for setting aside the decree passed in RCS No. 74/2013. The provisions of Order 23, Rule 3-A of the Code of Civil Procedure will not come in the way of filing separate suit. As such, order passed by the learned Civil Judge Junior Division, is liable to be set aside, consequently,

the order passed by District Judge in appeal. As such, I proceed to pass following order:

ORDER

- i) The writ petition is allowed.
- ii) The order passed by learned Civil Judge, Junior Division, Bramhapuri, District Chandrapur in RCS No. 4/2021, below Exh.1, dated 27/01/2021, is hereby quashed and set aside. Consequently order passed by the District Judge, District Court, Chandrapur, in RCA No. 10/2021, dated 25/06/2024, is also set aside.
- iii) Keeping all questions open, matter is remitted back to the Civil Judge Junior Division, Bramhapuri, to admit the suit on its original number and to conduct fresh trial in view of the citation referred in this judgment, as well as by granting due opportunity to both the parties.
- iv) Parties to appear before the learned Civil Judge Junior Division, Bramhapuri, on 09/05/2025.

Writ Petition stands disposed of in the above terms.

(SMT. M.S. JAWALKAR, J.)

Jayashree..