IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13607 OF 2024

Suryaji Ganpatrao Patil And Others
VERSUS
Khanderao Babarao Patil Died Through Lrs Laxmibai Khanderao Patil And Others
...
Mr. M. K. Bhosale, Advocate for the Petitioners
Mr. S. S. Gangakhedkar, Advocate for Respondent nos.1 and 5
Mr. S. M. Jogdand and Mr. M. B. Ubale, Advocate for Respondent nos.4/1, 4/4, 7 and 8
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CORAM : AJIT B. KADETHANKAR, J.

DATED : 15TH OCTOBER, 2026

P.C. :-

. Taking exception to the order dated 06.12.2024 passed by learned District Judge-01, Biloli on an application below Exhibit-59 in Civil Miscellaneous Application No.24 of 2021, the petitioners are before this Court.

2. Mr. M. K. Bhosale, learned Advocate for the petitioners was at pains to demonstrate that since there is material assertion and denial as regards to the nature of the property, particularly whether the suit property is a tenancy property, it was incumbent on the part of the Trial Court to frame additional issue to that effect. He would submit that the Trial Court was under obligation to frame appropriate issue keeping

in mind the principles laid down in Order XIV of Civil Procedure Code. In fact the petitioners had also suggested the issue to the Trial Court. He would submit that however without reasoning, the Trial Court denied to frame the issue as regards to the nature of the property as to whether it is tenancy or not.

3. Mr. Bhosale, learned Advocate submits that the petitioners have filed the suit questioning the correctness of the compromise decree which arrived at between the respondents in the appeal. Petitioners have challenged the said decree on the point of fraud played by the parties to the appeal. His submission is that since it is established fact that the petitioners are successors of the protected tenant over the subject matter property, the jurisdiction to try the suit may not lie before the Civil Court and for which an issue needs to be cast. For that purpose, the application was filed; however, the said application came to be rejected erroneously.

4. Mr. S. S. Gangakhedkar, learned Advocate for respondent nos.1 and 5 would advocate the findings recorded by the Trial Court while rejecting the application.

5. With the able assistance of learned Advocates for the respective parties, I have perused the text of the impugned order passed by learned District Judge-1, Biloli. So far as the contention of the petitioners as regards to framing of issue on the nature of property is concerned, learned District Judge has recorded his findings at paragraph nos.6 to 8 which reads thus:

> *6. I have gone through the pleading of the parties. Basically main application is for the relief of declaration that the compromise decree obtained in RCA No.08/2009 has been obtained by fraud and therefore it is liable to be set aside.*
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> *7. In relation to the above contentions while framing the issues at Exh.58 this Court has framed issue on the point of practicing fraud upon applicant no.1 Suryaji. In my view, in fact, in this issue all the points which have been advanced by the learned Advocate for the applicants are covered.*
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> *8. So far as the question raised by learned Advocate Mr. Talnikar that issue on the point of nature of the property that is it tenancy land or ancestral property, as suggested at issues No.1 and 4 of the application in my view, it cannot be said to be the subject matter of the present application as this Court is required to see as to whether the property bearing Gut No.31 was available for the parties for compromise and that whether this Court had jurisdiction to pass decree in respect of the property bearing Gut No.31, in RCA No.08/2009, although, it was not the subject matter of the suit. Therefore, I am of the view that these two additional issues as suggested above are required to be framed.*

6. During course of hearing, Mr. Bhosale, learned Advocate for the petitioners fairly submits that in fact he had taken issue before the tenancy authority which has turned down petitioners' application under Section 98 of the Hyderabad Tenancy and Agricultural Lands Act, 1950. Petitioners submit that the findings of the authority are assailed by them before the Maharashtra Revenue Tribunal and the challenge is pending consideration.

7. In view of the aforesaid position, and particularly considering the observations recorded by the Trial Court that the issue as regards to fraud covers all the controversy, I do not find any error in the findings recorded by the Trial Court. In view of this, Writ Petition stands dismissed. However, at the instance of Mr. Bhosale, learned Advocate for the petitioners, it is clarified that the petitioners have a statutory right to prove the issue for which liability is cast upon him.

(AJIT B. KADETHANKAR, J.)

Rushikesh/2026