

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
CIRCUIT BENCH AT KOLHAPUR  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 849 OF 2024**

Mahadev Bapur Magdum

...Petitioner

Versus

Sattappa Babu Magdum & Others

...Respondents

Mr. Manoj Patil a/w Ms. Kalyani Mangave a/w. Mr. Akash Murudkar i/b  
Mr. S.S. Borulkar, Advocate for the petitioner  
Mr. Satyajeet Rajeshirke a/w Mr. R.S. Rane and Mr. Shubham Vasekar,  
Advocate for respondent No. 6

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**CORAM : NITIN B. SURYAWANSHI, J.**

**DATE : 12<sup>th</sup> JANUARY, 2026**

**ORDER :**

1. By this petition filed under Article 227 of the Constitution of India, petitioner/original plaintiff challenges the order dated 30.09.2023 passed by learned 5<sup>th</sup> Joint Civil Judge, Junior Division, Kolhapur, below Exhibit-21 in R.C.S. No. 39/2023.

2. Facts which are not in dispute are that;

Petitioner filed above suit for partition and separate possession of the ancestral properties described in the suit, against his brothers, sisters and other legal heirs of his father. The suit is filed on 02.01.2023. On receipt of suit summons, defendants appeared in the

suit on 24.02.2023. The matter was then posted on 17.04.2023. On that date the Presiding Officer was on leave and the matter was adjourned for filing the written statement. The matter was then kept before the Lokadalat on 30.04.2023, wherein the compromise was recorded. It is mentioned in the compromise that all the defendants/sisters have willingly relinquished their rights in the suit property.

3. Lokadalat recorded the compromise and passed the order as follows:

*"The plaintiff, defendants and their learned Advocate are present before the Lokadalat. They filed instant compromise pursis Exh. 16. The contents of compromise pursis are read over and explained to them. They have admitted the same. Hence, the compromise pursis is verify, read and record."*

4. On 19.06.2023, respondent No. 6/defendant No. 6 filed application Exhibit-17 claiming that she has not relinquished her right in the suit property and fraud is played on her while recording the compromise before the Lokadalat. She is intending to change the lawyer appointed by her and prayed for time to file vakalatnama of another advocate and to file purshis. Thereafter, on 14.07.2023, defendant No. 6 filed written statement stating that the suit may be

decreed and she may be given 1/7<sup>th</sup> share in the suit property.

5. On 14.07.2023, petitioner/original plaintiff filed his say to application Exhibit-17 stating that compromise purshis is already filed before the Lokadalat and order passed as "read and record". One month's time was given to pass the order on the compromise purshis. Defendant No. 6, therefore, has filed application Exhibit-17 by raising false contentions. The application is filed afterthought, therefore, it may be dismissed with costs. He therefore prayed that application Exhibit-17 be dismissed and order be passed on the compromise purshis filed by the plaintiff and defendants.

6. Trial Court by the impugned order rejected the say filed by the petitioner by making certain observations. Being aggrieved by the same, present petition is filed.

7. Heard the learned advocate for the petitioner and learned advocate for the respondent. Perused the memo of writ petition, grounds taken therein and the annexures thereto.

8. Learned advocate for the petitioner strenuously contends that the Trial Court has erred in passing the impugned order as detailed adjudication of Exhibit-17 was expected to be done under Order 23 Rule 3 of Code of Civil Procedure, which is not done in the

present case and therefore impugned order is liable to be quashed and set aside.

9. Learned advocate for respondent No. 6, on the other hand, supported the impugned order. Rest of the respondents have supported the petitioner.

10. At the time of issuing notice, this Court has passed a detailed order. Relevant observations are as follows:

*"4. In the Application filed below Exhibit-17 a further ground is raised that it was agreed between the parties that original Defendant No.6 shall be given her share in the suit property by the other parties. In reply to this Application, Petitioner filed his reply under Exhibit-21. This reply was taken on record by the learned Trial Court. This was in view of the fact that though compromise was agreed between the parties before the Lokadalat, the compromise decree was yet to be passed by the Trial Court.*

*5. The learned Trial Court considered the reply filed by the Petitioner and rejected the reply. The said order of rejection dated 30.09.2023 is impugned in the present Writ Petition. Adequate reasons appear to have been given in paragraph No.6 of the said impugned order for rejection. However, if the said reply is rejected by the learned Trial Court then as a sequitur to the said rejection the learned Trial Court ought to have granted the Application filed by the original Defendant No.6 under Exhibit-17. Incidentally it is seen that Application below Exhibit-17 has been disposed of in view of rejection of the*

*reply of the Plaintiff filed below Exhibit-21 without adjudication and giving any reasons.*

*6. An arguable case has been made out by Mr. Patil especially in view of the fact that Application filed below Exhibit-17 required appropriate adjudication by the learned Trial Court in view of the fact that Applicant therein had given her consent to the compromise decree and the reply filed thereto under Exhibit-21. Without effective adjudication merely rejecting the reply only filed by the Plaintiff /Petitioner before me under Exhibit-21 is not a proper course of action. Mr. Patil has vehemently contended that the compromise pursis was not only executed by all concerned parties but it was read, explained and recorded by the parties and only thereafter executed in the Lokadalat proceedings and therefore would submit that the Defendant No.6 now cannot resile from her stand and go behind the compromise pursis."*

11. In the light of above and in view of the fact that before the compromise decree is passed on the basis of consent terms recorded before the Lokadalat, respondent No. 6 has claimed that she has not relinquished her right and fraud is played on her at the time of recording compromise, it is necessary to adjudicate application Exhibit-17 on merits by giving opportunity of hearing to both the parties to lead their evidence.

12. For the aforestated reasons, writ petition is allowed.

13. Impugned order dated 30.09.2023 passed by learned 5<sup>th</sup> Joint Civil Judge, Junior Division, Kolhapur, below Exhibit-21 in R.C.S. No. 39/2023 is hereby quashed and set aside.

14. The matter is remanded back to the Trial Court for decision on application Exhibit-17 on merits and in accordance with law.

**(NITIN B. SURYAWANSHI, J.)**