

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

**CIVIL APPLICATION NO.4303 OF 2022
IN
SECOND APPEAL NO. 360 OF 2000**

Madanlal Mishrilal Mundada

.... Applicant
(Orig. Plaintiff)

Versus

1. Bhausahab Pundalik Kale,
Died through LR's.

1.1. Rangnath S/o Bhausahab Kale And Ors.

... Respondents.

...
Advocate for Applicant : Mr. Gaurav L. Deshpande.
...

CORAM : MANGESH S. PATIL, J.

DATED : 01 APRIL 2022.

PER COURT :

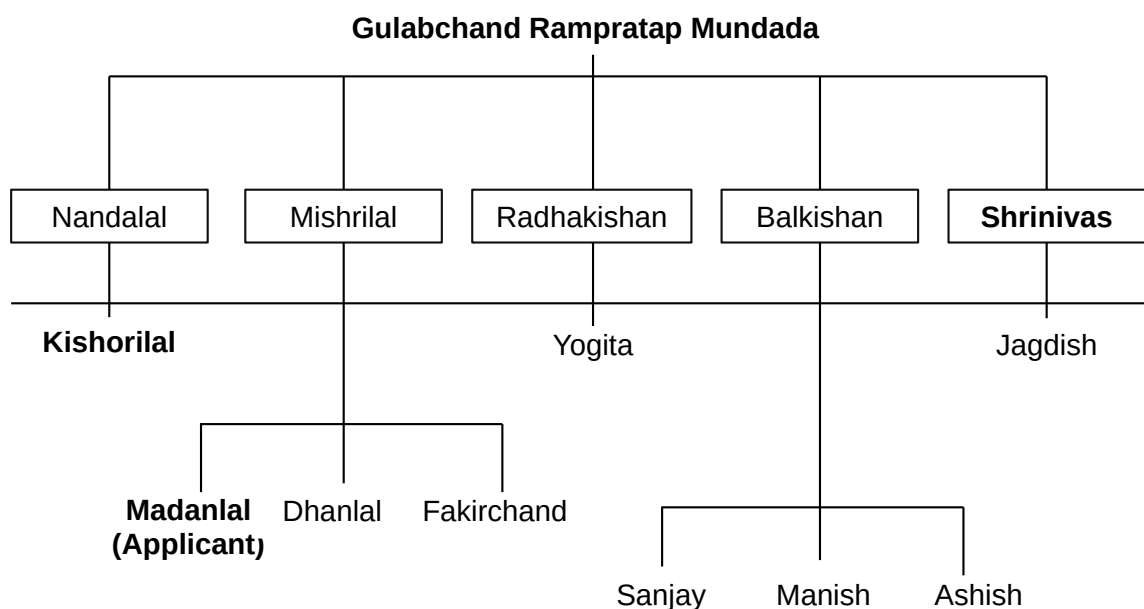
1. This is an exceptional matter wherein the applicant who is not a party to the compromise decree arrived at in Regular Civil Suit No.421 of 1992 is seeking to recall the compromise filed in Second Appeal No. 360 of 2000, dated 10 December 2020.

2. The matter appeared for the first time before me yesterday. I raised a preliminary objection as to the maintainability of this application, in view of the fact that the applicant was not a party to that compromise. In response, the learned advocate Mr. Deshpande referring to the decisions in the

matter of **M/s. Sree Surya Developers and Promoters Vs. N. Sailesh Prasad and Ors.** in civil appeal no.439 of 2022 with a connected appeal decided by the Supreme Court on the 9 February 2022 and the decision of the Supreme Court in the matter of **Triloki Nath singh Vs. Anirudh Singh (D) Through LR's. And Ors.** in civil appeal no. 3961 of 2010, dated 6 May 2020, vehemently submits that even a stranger has no right to take any exception to the compromise arrived at before the court by filing a separate suit and the only remedy to him is to approach the selfsame court where the compromise has been certified.

3. I have carefully considered the submissions and perused both the Judgments of the Supreme Court.

4. For the sake of understanding, it is necessary to reproduce the pedigree of the family of Gulabchand which is as under:



5. Regular Civil Suit No. 421 of 1992 was filed by Ramrao Changdeo Tambe, Ratan Govindram Baheti, Shriniwas Gulabchand Mundada and Kishorilal Nandlal Mundada against one Bhausahab Pundlik Kale for declaration that they were entitled to possession of the land survey no. 17 corresponding to gut no. 23 admeasuring 28 acres 10 gunthas of village Nagamthan, Taluka Vaijapur and for receiving the amount of auction price received by auctioning of the land by Tahasildar periodically. The suit was decreed holding the plaintiffs to be entitled to claim possession. The matter reached this court in second appeal no. 360 of 2000 after the decree was confirmed by the District Court in the form of an appeal by the original defendant Bhausahab Pundlik Kale. The matter was compromised between the two sides on 27 October 2020. The sum and substance of the compromise was that the parties to the suit agreed to divide the suit property in four equal portions of 2 Hector 38 Are each. Original plaintiff nos.1 and 2, i.e. Ramrao Tambe and Ratan Baheti together, LR's of the original defendant Rangnath and Badrinath together, were to take one share each, whereas, the original plaintiffs Shriniwas and Kishorilal agreed to take one share each. Further adjustment as to the portions of the land was also spelt out.

6. The applicant Madanlal Mishrilal Mundada is the grandson of common ancestor Gulabchand Mundada and a real paternal cousin of Kishorilal who was the plaintiff no.4 and nephew of Shriniwas who was

plaintiff no.3. It is now being contended by him that there was a family settlement/partition arrived at between the applicant and respondents, namely, Shriniwas and Kishorilal and the other heirs of the common ancestor Gulabchand on 3 April 1989 and it was agreed that if and when the land bearing survey no. 17 which was the subject matter of the suit would be disposed of, the sale proceeds would be divided amongst all.

7. It is now being contended that the land was a joint family property and the compromise arrived at by Kishorilal and Shriniwas was behind the applicant's back and was not binding on him. Bearing in mind the factual scenario, it is quite apparent that in R.C.S. no. 421 of 1992 only couple of heirs from different branches of common ancestor Gulabchand were the plaintiff nos.3 and 4. Other heirs of Gulabchand were not the parties to that litigation and there was nothing on the record to demonstrate that the applicant was directly or indirectly a person for and on whose behalf that litigation was being fought at. I am emphasizing this point precisely for the reason to demonstrate that the applicant was not a person who can be said to have been claiming any right in the property through any of the parties to that suit. His right has been in subsistence since before filing of the suit which was not the fact situation in the matter of **M/s. Sree Surya Developers and Promoters** (supra).

8. In the matter of **Triloki Nath Singh** (supra) also, though the appellant was not a party to the compromise, he was a purchaser of the suit property from the judgment debtor. It is therefore quite clear that since the appellant therein was claiming through a party to the suit which had entered into a compromise, it was specifically pointed out that in view of the bar contained under Order XXIII Rule 34 of CPC coupled with the fact of deletion of clause (m) from Order XLIII Rule 1 of CPC and non availability of any remedy of appeal under section 96 of the CPC, such a purchaser though he was a stranger, but claiming through a party to the suit was held to be not entitled to file a separate suit and was required to move the selfsame court where the compromise was arrived at.

9. As distinguished from the aforementioned decisions, in the matter in hand, the applicant is not a person who has derived his right, title and interest in the suit property through any party to the suit, much less during its pendency. On his own showing, it is in view of a family settlement that was arrived at amongst all the heirs of Gulabchand to which apart from him even the plaintiff nos.3 and 4 Shrinivas and Kishorilal were also parties, makes it abundantly clear that neither of them was representing his cause in the suit. If it can be demonstrated that the applicant had an independent right being the heir of Gulabchand, which right had also subsequently been recognized by virtue of a family settlement, it can certainly be said that he was a rank

stranger to R.C.S No.421 of 1992.

10. If such is the state of affairs, when the applicant's stand to take exception to the compromise is not based on any allegations regarding fraud or misrepresentation, but he intends to take exception on the basis of a pre-existing right, which he and other heirs have in the suit property, even if some of the family members had chosen to file the suit and have entered into a compromise, it would not be binding on them. If such is the state of affairs, in my considered view, the bar spelt out in the matter of **Triloki Nath Singh** and **M/s. Sree Surya Developers and Promoters** would not operate against the applicant in filing a separate suit.

11. The civil application is therefore dismissed.

(MANGESH S. PATIL, J.)