

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.92 OF 1996

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|--------------------------------------|---|----------------------------|
| 1. Mrs. Moti Dinshaw Irani |] | .. Appellants / |
| 2. Mr. Jehangir Dinshaw Irani |] | Original Plaintiffs |
| <i>Versus</i> | | |
| 1. Mr. Phiroze Aspandiar Irani |] | |
| <i>Since Deceased – through LRs.</i> |] | |
| 1[a]. Ketty Firoze Irani |] | |
| 1[b]. Raiyomand Firoze Irani |] | |
| 1[c]. Sanober Firoze Irani |] | |
| 1[d]. Mehrooz Firoze Irani |] | |
| 2. Mr. Mehmood M.H. Moledina |] | |
| 3. Mrs. Shirin Ismail Umar |] | |
| <i>Since Deceased – through LRs.</i> |] | |
| 3[a]. Riyaz Ismail Omer |] | |
| 3[b]. Zia Ismail Omer |] | |
| 4. Mrs. Hamida S. Omar |] | |
| <i>Since Deceased – through LRs.</i> |] | |
| 4[a]. Zafar Sattar Omer |] | |
| 4[b]. Zahid Sattar Omer |] | |
| 4[c]. Lubna M. Azad |] | |
| 5. Mr. Vinayak Shankarrao Pingle |] | .. <i>Deleted</i> |
| 6. Mr. Vilas Shankarrao Pingle |] | .. <i>Deleted</i> |
| 7. Smt. Subhadrabai T. Bhujbal |] | .. <i>Deleted</i> |
| 8. Smt. Sushilabai S. Dhadge |] | .. <i>Deleted</i> |
| 9. Mrs. Suman Vishwanath Girme |] | .. <i>Deleted</i> |
| 10. Mrs. Asha Prabhakar Dalvi |] | .. <i>Deleted</i> |

- | | | |
|---|---|----------------------------|
| 11. Mr. Kisan @ Krishnarao Rambhau Pingle |] | .. <i>Deleted</i> |
| 12. Mr. P.A. Inamdar |] | |
| 13. Chashmeshahi Building of Flat Owners |] | .. <i>Deleted</i> |
| 14. Moghul Garden Building of Flat Owners |] | .. <i>Deleted</i> |
| 15. Oxford Hallmark Realty Partnership Firm |] | |
| Through its Partners : |] | |
| 15[A]. Aniruddha Uttam Seolekar |] | .. Respondents / |
| 15[B]. Pramod Mishrilal Dhadiwal |] | Original Defendants |

ALONG WITH

INTERIM APPLICATION NO.2371 OF 2021

INTERIM APPLICATION NO.3911 OF 2021

IN

FIRST APPEAL NO.92 OF 1996

- | | | |
|--|---|--|
| 1. Oxford Hallmark Realty Partnership Firm |] | |
| Through its Partners : |] | |
| 1[A]. Aniruddha Uttam Seolekar |] | .. Applicants / |
| 1[B]. Pramod Mishrilal Dhadiwal |] | Org. Def. Nos.15, 15A & 15B |

Mr. A.V. Anturkar, Sr. Advocate, with Mr. Tanaji Mhatugade, for the Appellants.

Mr. R.D. Soni, with Mr. V.R. Kasale, i/by Ram & Co., for the Applicants in IA/2371/2021 and IA/3911/2021 in FA/92/1996 and for Respondent Nos.15[A] and 15[B] in FA/92/1996.

Mr. Prashant Naik, with Mr. A.R. Patil, i/by Mr. Sandeep Waghmare, for Respondent No.12.

CORAM : A.S. CHANDURKAR & JITENDRA JAIN, JJ

The date on which arguments were heard : 05TH JANUARY, 2024.

The date on which Judgment is pronounced : 25TH JANUARY, 2024.

JUDGMENT : [Per A.S. Chandurkar, J.]

1. This First Appeal, filed under Section 96 of the Code of Civil Procedure, 1908, (*for short, “the Code”*), raises a challenge to the dismissal of Special Civil Suit No.611 of 1994 on 4th July 1995. The present proceedings have a checkered history and hence it would be necessary to refer to relevant factual events that have bearing on the adjudication of the present proceedings.

2. SCS No.268/1978 came to be filed by Firoz Aspandiar Irani as plaintiff no.1 and Dinshaw Khikhushroo Irani as plaintiff no.2. The plaintiffs claim to be owners of the suit property by virtue of various sale deeds executed in their favour. They sought possession of the suit lands from defendant nos.1 and 2, namely, Shankar Ganpat Pingle and Kishan @ Krishnarao Rambhau Pingle. In the said suit, as filed on 12th July 1978, possession of the suit property was sought in favour of the plaintiffs along with defendant no.3-Mahmud M. Hashim Moledina. An alternate prayer was made that in case the defendant no.3 was not willing to join the plaintiffs in seeking the relief of getting actual possession of the suit properties from defendant nos.1 and 2, then an equitable partition be effected insofar as the share of the plaintiffs was concerned. During pendency of the said suit, the plaintiffs filed an application on 27th June 1986 below Exhibit-51 under the provisions of Order VI Rule 17 of the

Code praying therein that the plaint be permitted to be amended with a view to correct the description of the suit lands. This application, however, was not pressed on 11th July 1986 and it was accordingly disposed of. On the same day, another application below Exhibit-52 was filed by the plaintiffs stating therein that the plaintiffs and the defendant no.3 desired to partition the properties that were the subject matter of the said suit. It appears that since the parties were not present, the said application came to be filed on the same day. Thereafter, on 3rd July 1986, an application below Exhibit-53 came to be filed on behalf of the plaintiffs as well as defendant no.3 along with defendant nos.4 and 6, who had been subsequently impleaded as defendants. By the said application, the parties prayed that on the basis of the document of Power of Attorney, the compromise be recorded. On the same day, the Trial Court passed an order below Exhibit-53 stating therein that it had perused the relevant documents. Since the Power of Attorney Holder for the plaintiffs as well as defendant nos.3 to 6 had admitted the contents of the compromise petition, it was read and recorded. Thereafter, on 11th July 1986, the plaintiffs filed another application through their Power of Attorney Holder below Exhibit-54 seeking amendment of the plaint on the ground that land description numbers had undergone a change.

3. During pendency of SCS No.268/1978, the original plaintiff no.2

expired on 5th July 1992. His legal heirs were brought on record as plaintiff nos.2(a) and (b). They moved an application below Exhibit-151, praying therein that the compromise sought to be recorded by preferring application below Exhibit-53 was illegal, void and invalid on the ground that it was signed by the Power of Attorney Holder with a view to defraud plaintiff nos.2(a) and (b) of their share in the suit properties. It was also prayed that the Court may not pass any order on the application that was moved below Exhibit-142 under the provisions of order XXIII Rule 1 of the Code for recording the compromise. This application came to be rejected by the Trial Court on 7th October 1995. It may be stated that this order passed below Exhibit-151 is the subject matter of challenge in Writ Petition No.5621 of 1995 filed at the instance of plaintiff nos.2(a) and (b).

4. The proceedings in SCS No.268/1978 came to be disposed of in terms of the compromise below Exhibits 52 and 53 on 18th / 20th December 1996. The decree passed in the said proceedings is the subject matter of challenge in Civil Appeal No.1022 of 2000, that has been preferred by the original plaintiff nos.2(a) and 2(b) under Section 96 of the Code. This appeal is presently pending before the District Court at Pune.

5. On 26th April 1994, the plaintiff nos.2(a) and (b) in SCS

No.268/1978 filed SCS No.611/1994 in the Court of Civil Judge, Senior Division, Pune, praying therein that the Court be pleased to declare the partition that was alleged to have taken place as mentioned in Exhibits 51, 52, 53 and 54 in SCS No.268/1978 as illegal, invalid, null and void. A further prayer was made to partition the suit properties by metes and bounds and to grant the plaintiffs 42.22% share in the suit properties. Various other ancillary prayers were also made in the aforesaid suit. It may be stated that the original plaintiff no.1 and the original defendant no.3 in SCS No.268/1978 were arrayed as defendant nos.1 and 2 in SCS No.611/1994, the other parties were also impleaded in the said suit. The defendants filed their written statements. The Power of Attorney Holder of the plaintiffs and defendant no.3 in SCS No.268/1978 had been arrayed as defendant no.12 in the present suit. The defendant no.12 raised an objection to the jurisdiction of the Trial Court to decide the said suit on the ground that the same was barred by virtue of the provisions of Order XXIII Rule 3A of the Code. On that basis, the plaintiffs, who were plaintiff nos.2(a) and (b) in SCS No.268/1978, filed an application below Exhibit-116 on 14th December 1994 praying that the Trial Court frame an issue of jurisdiction as a preliminary issue in terms of Section 9A of the Code. The defendants filed reply to the said application stating that the plaintiffs themselves could not question the jurisdiction of the Trial Court to try the suit. By an order passed on 18th January 1995, the learned Judge of the

Trial Court was pleased to frame a preliminary issue as to whether the Court had jurisdiction to try and entertain the suit.

6. The Trial Court thereafter proceeded to hear the parties on the said preliminary issue. It referred to the provisions of Order XXIII Rule 3A of the Code and also noted that in the earlier suit, being SCS No.268/1978, no decree had been drawn in terms of the compromise and that the said suit was pending. It then observed that the terms of compromise had been acted upon by the parties and mutation entries had been effected. It held that the challenge raised in SCS No.611/1994 was premature for the reason that the earlier suit in which the compromise was recorded was still pending. It accordingly held that the suit was not maintainable in view of the provisions of Order XXIII Rule 3A of the Code. SCS No.611/1994 was accordingly dismissed by holding that the Court had no jurisdiction to try the same. Being aggrieved, the original plaintiffs have challenged the decree as passed in SCS No.611/1994 in First Appeal No.92 of 1996.

7. Mr. A.V. Anturkar, learned Senior Advocate for the appellants – original plaintiffs submitted that the Trial Court committed an error in holding SCS No.611/1994 to be not maintainable. According to him, there was no valid compromise entered into between the parties to the suit so as

to attract the bar as contemplated by the provisions of Order XXIII Rule 3A of the Code. The compromise, as alleged, though shown to be between the plaintiffs and the defendant no.3, it could not be said that the same was a reason to hold that a substantive suit seeking to challenge the compromise was not maintainable. He submitted that the plaintiff no.2 had not authorized the Power of Attorney Holder to compromise the said proceedings and the Power of Attorney Holder acted beyond the power granted to him. Since the plaintiff no.2 had not signed the application at Exhibit-53 in SCS No.268/1978, the contents of that application could not bind the legal rights of the plaintiff no.2 as well as his legal representatives. It was then submitted that the provisions of Order XXIII Rule 3 of the Code would not be attracted in the facts of the case for the reason that in the said suit, the eviction of defendant nos.1 and 2 was sought. The defendant nos.1 and 2, who were contesting parties to the suit, had not joined the other parties in the compromise. Notwithstanding the application below Exhibit-53, the proceedings in SCS No.268/1978 had been pending since the prayers therein were yet to be adjudicated. He referred to various provisions of the Code to contend that a compromise, as contemplated by the provisions of Order XXIII Rule 3 of the Code, was one that would dispose of the suit in its entirety and a compromise inter se between parties having a common interest and excluding the contesting parties could not be a reason to attract the bar under Order XXIII Rule 3A

of the Code. The Trial Court misdirected itself while holding that it had no jurisdiction to try the suit merely on the ground that it was alleged that a compromise had taken place as per Exhibits 52 and 53. The suit was maintainable and hence it was necessary for the Trial Court to have entertained the same on its merits. It was thus submitted that the order dated 4th July 1995 was liable to be set aside and the suit was liable to be adjudicated on merits.

8. Mr. R.D. Soni, the learned counsel appearing for respondent no.15 opposed the aforesaid contentions and supported the order passed by the Trial Court. He submitted that the respondent no.15 had stepped into the shoes of the original owners of the property and pursuant to the agreement entered into in the year 2005 after adjudication of SCS No.268/1978 had acquired title to the suit property. The said respondents were concerned with the property bearing Survey No.81. According to him, the plaintiffs were not justified in seeking to raise a challenge to the compromise inasmuch as the plaintiff no.2, who was their predecessor, did not take any steps whatsoever to resile from the compromise during his lifetime. The same was duly acted upon and hence the Trial Court was justified in holding the subsequent suit filed by the plaintiffs to be not maintainable. He pointed out that in the first appeal, the original defendant no.3 had been deleted from the array of parties by seeking such

leave on 18th September 1996. This would indicate that the original plaintiffs were not interested in seeking eviction of the defendant no.3 and merely sought to challenge the compromise that was accepted by the predecessor of the plaintiff no.2 during his lifetime. To substantiate his contentions, the learned counsel placed reliance on the decisions in *Triloki Nath Singh Vs. Anirudh Singh (D) Thr. LRs. and Ors.*, 2020 INSC 385, as well as in *Sree Surya Developers Vs. N. Sailesh Prasad*, 2022 INSC 167. The Trial Court having found the bar under the provisions of Order XXIII Rule 3A to be attracted, rightly dismissed the suit as not maintainable. The said order did not call for any challenge.

. As regards the challenge to the orders passed below Exhibits 151 and 169 in SCS No.268/1978 by filing Writ Petition Nos.5621 of 1995 and 5627 of 1995, it was pointed out that a substantive appeal challenging the decree passed in SCS No.268/1978 was pending and hence the writ petitions were not liable to be entertained. It was prayed that all the proceedings be dismissed especially since various third party rights had been created and there was passage of substantial time after adjudication of the proceedings by the Trial Court.

9. Mr. Prashant Naik, learned counsel appearing for respondent no.12 supported the contentions raised on behalf of respondent no.15. He too submitted that the order passed below Exhibit-151 considered the entire

matter in the proper perspective and that order did not call for any interference. After the decree was passed in SCS No.268/1978, the plaintiff nos.2(a) and 2(b) had filed an appeal under Section 96 of the Code for challenging the same. Since this challenge was pending, all these points could be raised in the said proceedings and it was not necessary to grant the prayers made by the original plaintiffs in the present proceedings. The learned counsel placed reliance on the decision in *Triloki Nath Singh (supra)* to submit that in view of the provisions of Order XXIII Rule 3A of the Code, subsequent Civil Suit being SCS No.611/1994 was not maintainable. All the proceedings were liable to be dismissed.

10. On hearing the learned counsel for the parties and after perusing the respective pleadings in SCS No.611/1994, the following point arises for adjudication : *“Whether the Trial Court was legally correct in holding that the proceedings in SCS No.611/1994 were not maintainable and that the bar under the provisions of Order XXIII Rule 3A was attracted ?”*

11. Since the Trial Court has proceeded to non-suit the plaintiffs by deciding the issue of jurisdiction under Section 9A of the Code, it would be necessary to refer to the decision in *Nusli Neville Wadia Vs. Ivory Properties and Ors., 2019 INSC 1138*, that has material relevance in the present context. It was held by the Hon’ble Supreme Court therein as under :-

“20. In re : Meaning of the word “jurisdiction”

Jurisdiction is the power to decide and not merely the power to decide correctly. Jurisdiction is the authority of law to act officially. It is an authority of law to act officially in a particular matter in hand. It is the power to take cognizance and decide the cases. It is the power to decide rightly or wrongly. It is the power to hear and determine. Same is the foundation of judicial proceedings. It does not depend upon the correctness of the decision made. It is the power to decide justiciable controversy and includes question of law as well as facts on merits. Jurisdiction is the right to hear and determine. It does not depend upon whether a decision is right or wrong. Jurisdiction means power to entertain a suit, consider merits, and render binding decisions, and “merits” means the various elements which enter into or qualify plaintiff’s right to the relief sought. If the law confers a power to render a judgment or decree, then the court has jurisdiction. The court must have control over the subject-matter, which comes within classification limits of law under which the court is established and functions.”

“32. In re : “entertain the suit”

When we consider provisions in Section 9-A, the word “jurisdiction” is qualified with “to entertain the suit”, the expression used is “jurisdiction to entertain the suit”. The court has jurisdiction to entertain a suit when it has jurisdiction to receive it for consideration. If at the threshold, the court cannot consider it, it can be said that the court has no jurisdiction to entertain the case. It is like a suit is cognizable by the Revenue Court, but it is filed in civil court, the court cannot consider it nor can receive it for trial. It is like the jurisdiction to entertain the criminal appeal when the court is not having inherent jurisdiction to consider the case; it can be said that the court has no jurisdiction to entertain. When the separate statutory mechanism is provided for the consideration of a

particular dispute and jurisdiction of civil court is barred, and if it is brought before the civil court whose jurisdiction is barred, it cannot entertain such a suit and receive it for consideration. It can be said that the court has no jurisdiction to entertain such a suit. When the court cannot think over to allow itself to consider, it can be said that it has no jurisdiction to entertain. It is like a case is cognizable in a consumer forum; a civil court cannot entertain it.”

“35. The expression “entertain” means to admit a thing for consideration. When a suit or proceeding is not thrown out in limine, but the court receives it for consideration for disposal under the law, it must be regarded as entertaining the suit or proceedings. It is inconsequential what is the final decision. The word “entertain” has been held to mean to admit for consideration, as observed by this Court in *Lakshmi Rattan Engg. Works Ltd. Vs. CST*, air 1968 SC 488. The expression “entertain” means to adjudicate upon or to proceed to consider on merits as observed in *Hindusthan Commercial Bank Ltd. Vs. Punnu Sahu*, (1971) 3 SCC 124.”

“48. **In re : Jurisdiction to entertain under Section 9-A CPC**
The word “jurisdiction” in Section 9-A is qualified with expression to “entertain” the suit. Thus, it is apparent that the scope of Section 9-A has been narrowed down by the legislature as compared to the provisions contained in Order 14 Rule 2(2) by not including the provisions as to “a bar created by any other law for the time being in force”.”

“50. When we consider what colour expression “jurisdiction” has in Section 9-A, it is clearly in the context of power to entertain, jurisdiction takes colour from accompanying word “entertain” i.e. the court should have jurisdiction to receive a case for consideration or to try it. In case there is no jurisdiction, court has no competence to give the

relief, but if it has, it cannot give such relief for the reason that claim is time-barred by limitation or is barred by the principle of res judicata or by bar created under any other law for the time being in force. When a case is barred by res judicata or limitation, it is not that the court has no power to entertain it, but it is not possible to grant the relief. Due to expiry of limitation to file a suit, extinguishment of right to property is provided under Section 27 of the Limitation Act. When court dismisses a suit on the ground of limitation, right to property is lost, to hold so the court must have jurisdiction to entertain it. The court is enjoined with a duty under Section 3 of the Limitation Act to take into consideration the bar of limitation by itself. The expression “bar to file a suit under any other law for the time being in force” includes the one created by the Limitation Act. It cannot be said to be included in the expression “jurisdiction to entertain” suit used in Section 9-A. The court has to receive a case for consideration and entertain it, to look into the facts constituting limitation or bar created by any other law to give relief, it has to decide the question on merits; then it has the power to dismiss the same on the ground of limitation or such other bar created by any other law. Thus, the meaning to be given to jurisdiction to entertain in Section 9-A is a narrow one as to maintainability, the competence of the court to receive the suit for adjudication is only covered under the provisions. The word “entertain” cannot be said to be the inability to grant relief on merits, but the same relates to receiving a suit to initiate the very process for granting relief.”

12. We may also refer to a recent decision of the Hon’ble Supreme Court in *Asma Lateef & Anr. Vs. Shabbir Ahmad & Ors.*, 2024 INSC 36, wherein

the aspect of jurisdiction of a Court has been considered. In paragraph 38 of the said decision, it has been observed as under :-

“38. What follows from a conspectus of all the aforesaid decisions is that jurisdiction is the entitlement of the civil court to embark upon an enquiry as to whether the cause has been brought before it by the plaintiff in a manner prescribed by law and also whether a good case for grant of relief claimed been set up by him. As and when such entitlement is established, any subsequent error till delivery of judgment could be regarded as an error within the jurisdiction. The enquiry as to whether the civil court is entitled to entertain and try a suit has to be made by it keeping in mind the provision in section 9, CPC and the relevant enactment which, according to the objector, bars a suit. Needless to observe, the question of jurisdiction has to be determined at the commencement and not at the conclusion of the enquiry.”

13. Keeping in mind the aforesaid legal principles, in our view, the order passed by the Trial Court on 4th July 1995 in SCS No.611/1994 dismissing the suit on the ground that the Court had no jurisdiction suffers from various legal infirmities and is liable to be set aside for the following reasons :-

- (a) The Trial Court has recorded a finding that in view of the provisions of Order XXIII Rule 3A of the Code, SCS No.611/1994 was not maintainable. The provisions of Rule 3A of Order XXIII of the Code read as under :-

“3-A. Bar to suit – No suit shall lie to set aside a decree
on the ground that the compromise
on which the decree is based was not
lawful.” *(Emphasis supplied)*

The aforesaid provision indicates that no suit shall lie to set aside a decree on the ground that the compromise on the basis of which the decree is passed was not lawful. A plain reading of the aforesaid provision indicates that the earlier suit should have been disposed of by passing a decree in view of a compromise entered into between the parties. In such contingency, a subsequent suit raising a challenge that the compromise recorded in the earlier suit was not lawful would not lie. Undisputedly, in the present case the earlier suit being SCS No.268/1978 was pending when the Trial Court proceeded to decide the preliminary issue of jurisdiction in SCS No.611/1994 on 4th July 1995. SCS No.268/1978 came to be subsequently decided on 18th/20th December 1996. In fact, the Trial Court, in paragraphs 8 and 10 of the impugned order has recorded in clear terms that the earlier suit was pending when the issue of jurisdiction was being considered in the subsequent suit. It is thus clear from the record that there was no decree

passed on 4th July, 1995 based on compromise as stated to be recorded below Exhibit-53 in SCS No.268/1978, when the Trial Court proceeded to hold that the subsequent suit was not maintainable in view of the provisions of Order XXIII Rule 3A of the Code. If the earlier suit itself was pending and no decree therein had been passed, there would be no question of the provisions of Rule 3A of Order XXIII of the Code being attracted.

The matter can be viewed from another angle by perusing the reliefs sought in SCS No.611/1994. Prayer clause (a) in SCS No.611/1994 reads as under :-

“(a) that the Hon’ble Court may kindly be pleased to declare that the partition alleged to have been taken place, as mentioned in Ex. 51, 52, 53 and 54 in Special Civil Suit No.268/1978 and in the 7/12th records and the mutation entries in the Revenue records is illegal, invalid, null and void under the various provisions of law, specially the Urban Land (Ceiling and Regulation) Act, 1976 and also voidable and not bind on the plaintiffs as the same has been obtained by playing fraud upon the late Mr. Dinshaw Irani, the predecessors-in-title of the plaintiffs and consequently, to declare that the suit properties described in para 1(a), (b) and (c) above continue to be the joint properties of the plaintiffs. Defendant no.1 and defendant nos.2, 3 and 4.”

The plaintiffs had sought a declaration that the partition

“alleged to have been taken place as mentioned in Exhibits 51, 52, 53 and 54 in SCS No.268/1978” be declared as illegal, invalid, null and void and also not binding on the plaintiffs. The plaintiffs, therefore, did not and could not have sought setting aside of any decree on the ground that the compromise on which the decree was passed was not lawful for the reason that when the subsequent suit was filed, there was no decree passed recording any compromise. In absence of there being any decree in existence, the provisions of Rule 3A of Order XXIII of the Code would not be attracted.

- (b) The plaintiff nos.2(a) and 2(b) in SCS No.268/1978, who were also the plaintiffs in SCS No.611/1994, had filed an application below Exhibit-151 in SCS No.268/1978 praying that the alleged partition made by Mr. P.A. Inamdar in his capacity as the Power of Attorney Holder for the original plaintiff no.2 be declared as illegal, void and invalid. The Trial Court dismissed the said application on 7th October 1995. Even in the said order, it has not been held by the Trial Court that there was any decree passed on the basis of such compromise. In fact, the Trial Court has noted in its order passed on 7th October 1995 below Exhibit-151 that

the subsequent suit being SCS No.611/1994 came to be dismissed on the ground that the compromise could not be challenged in a separate suit. This aspect is being referred to only to indicate that the earlier suit came to be decided much after the Trial Court proceeded to hold the subsequent suit not maintainable under Order XXIII Rule 3A of the Code. Since a substantive appeal being Civil Appeal No.1022 of 2000 challenging the decree passed in SCS No.268/1978 is pending, it is not necessary to dilate further on the order passed below Exhibit-151.

From the aforesaid, it becomes clear that the Trial Court misdirected itself when it came to the conclusion that in view of the provisions of Order XXIII Rule 3A of the Code, the subsequent suit was not maintainable. Considering the nature of reliefs sought therein, which did not include a prayer to set aside any decree, such bar was not at all attracted. On the date the subsequent suit was filed, there was no jurisdictional bar to its institution much less a bar under Order XXIII Rule 3A of the Code.

14. Coming to the decisions relied upon by the learned counsel for the parties, we find that in view of our conclusion that the bar under

provisions of Order XXIII Rule 3A of the Code was not at all attracted in the facts of the present case for the reason that there was no decree passed based on compromise, it is not necessary to refer to the said decisions. The legal position that a subsequent suit questioning the lawfulness of a compromise decree is not maintainable, as held in the said decisions, is well settled. Accordingly, the point, as framed, is answered in the negative by holding that the Trial Court was not legally correct in holding the proceedings in SCS No.611/1994 to be not maintainable in view of the bar under provisions of Order XXIII Rule 3A of the Code.

15. In view of what has been held hereinabove, the following order is passed :-

- (i) The order dated 4th July 1995 passed by the learned Jt. Civil Judge, Senior Division, Pune in Special Civil Suit No.611 of 1994 is quashed and set aside.
- (ii) It is held that the said suit was not barred under provisions of Order XXIII Rule 3A of the Code when it was filed. The said suit is restored to file for its adjudication on merits.
- (iii) It is clarified that the observations made in this judgment are only for deciding the correctness and legality of the order passed on 7th October 1995 holding SCS

No.611/1994 to be not maintainable. The proceedings in Civil Appeal No.1022 of 2000 that is pending before the District Court, Pune shall be decided on its own merits and in accordance with law, without being influenced by any observations made herein.

- (iv) The First Appeal is allowed in aforesaid terms, leaving the parties to bear their own costs. Pending Interim Applications are disposed of. Decree shall be drawn accordingly.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]