

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
INTERIM APPLICATION NO.6407 OF 2024
WITH
INTERIM APPLICATION NO.12673 OF 2023
IN
SECOND APPEAL NO.690 OF 2014**

Shakerabanu Afsar Patel

..Applicant

In the matter between:

Shri Parshuram Gundu Taral

..Appellant

Versus

1(a) Smt. Sunita Sudhir Terwadkar & Anr.

..Respondents

...

Mr. S. G. Kudle, Advocate for Applicant.

Mr. Umesh Mankapure i/by Mr. Prasad Kale, Advocate for Respondents/Orig. Appellants.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 15th SEPTEMBER, 2025.

PRONOUNCED ON : 15th OCTOBER, 2025.

ORDER:-

1. The present application is filed seeking permission to amend prayer in Interim Application No.12673/2023.

2. Mr. Kudle, learned Advocate appearing for applicant submits that on 14.02.2024 this Court granted liberty in favour of applicant to file present application seeking amendment. Accordingly, present application is filed.

3. Mr. Mankapure, learned Advocate appearing for respondents opposes prayers in application and submits that applicant was not

party to Second Appeal No.690/2014. The Second Appeal has been disposed of on 10.07.2017, as per compromise terms recorded between parties. After disposal of Second Appeal applicant filed Interim Application No.12673/2023 seeking his addition as party/respondent no.2 in disposed Second Appeal and listing of disposed Second Appeal for final disposal. The present application seeks to replace prayers in Interim Application No.12673/2023 and incorporate new prayer to recall order dated 10.07.2017 passed in Second Appeal No.690/2014 with some allied prayers. According to Mr. Mankapure, none of application filed by applicant is maintainable in law and requires to be rejected.

4. Having considered submissions advanced by learned Advocates appearing for respective parties, it is apposite to refer to observations of Supreme Court in case of ***Triloki Nath Singh Vs. Anirudh Sing and Ors.***¹ observed in observed in paragraph nos.22 and 23 as under:

“22. Indeed, the appellant was not a party to the stated compromise decree. He was, however, claiming right, title and interest over the land referred to in the stated sale deed dated 6th January, 1984, which was purchased by him from Sampatiya judgment debtor and party to the suit. It is well settled that the compromise decree passed by the High Court in the second appeal would relate back to the date of institution of the suit between the parties thereto. In the suit now instituted by the appellant, at the best, he could seek relief against Sampatiya, but cannot be allowed to question the compromise decree passed by the High Court in the partition suit. In other words, the appellant could file a suit for protection of his right, title or interest devolved on the basis of the stated sale deed dated 6th January, 1984, allegedly executed by one of the party (Sampatiya) to the

¹ (2020) 6 SCC 629.

proceedings in the partition suit, which could be examined independently by the Court on its own merits in accordance with law. The trial Court in any case would not be competent to adjudicate the grievance of the appellant herein in respect of the validity of compromise decree dated 15th September, 1994 passed by the High Court in the partition suit.

23. In other words, the appellant can only claim through his predecessor Sampatiya, to the extent of rights and remedies available to Sampatiya in reference to the compromise decree. Merely because the appellant was not party to the compromise decree in the facts of the present case, will be of no avail to the appellant, much less give him a cause of action to question the validity of the compromise decree passed by the High Court by way of a substantive suit before the civil Court to declare it as fraudulent, illegal and not binding on him. Assuming, he could agitate about the validity of the compromise entered into by the parties to the partition suit, it is only the High Court, who had accepted the compromise and passed decree on that basis, could examine the same and no other Court under proviso to Rule 3 of Order 23 CPC. It must, therefore, follow that the suit instituted before the civil Court by the appellant was not maintainable in view of specific bar under Rule 3A of Order 23 CPC as held in the impugned judgment.”

5. Looking to aforesaid observations of Supreme Court, *prima facie*, this court holds that applicant can make prayer before this Court for recall of order passed in disposed Second Appeal No.690/2014, if he can establish that such order is obtained by misrepresentation or fraud behind his back. It is clear that applicant has no other remedy in law for redressal of his grievance. In facts of this case, this Court do not find any impediment in permitting applicant to amend prayer clause in Interim Application No.12673/2023. Hence, following order:

ORDER

a. Interim Application no.6407/2024 is allowed.

b. The appellant to carry out amendment within period of four weeks from today.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/October-2025