



2025:DHC:6631



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 331/2020, I.A. 7055/2020 & I.A. 9812/2020**

Date of Decision: 29.07.2025

IN THE MATTER OF:

INDERMOHAN SINGH CHADHA & ANR.Plaintiffs

Through: Mr. Gaurav Bahl, Adv.

versus

MRS NANDITA MAJUMDAR & ANR.Defendants

Through: Mr. Naresh K. Daksh, Adv. for D-1.

CORAM:**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV****JUDGEMENT****PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. The instant suit seeks for the following reliefs:

- "a) pass a decree of declaration declaring that the judgment and decree dated 31st May, 2019 as null and void;*
- b) pass a decree of permanent injunction restraining the defendants from taking further steps under the garb of judgment and decree dated 31st May, 2019;*
- c) award cost of the suit"*

2. Various assertions have been made in the civil suit to contend that the judgment and decree passed by this Court on 31.05.2019 is null and void inasmuch as the same cannot scatter the right of the third party.

3. Mr. Naresh K. Daksh, learned counsel appearing for defendant No.1 contends that the instant civil suit is not maintainable in terms of the provisions of Order XXIII Rule 3A of the Code of Civil Procedure, 1908



[‘CPC’]. He places reliance on the decision of the Supreme Court in the case of **Triloki Nath Singh v. Anirudh Singh**¹. He has also placed reliance on the recent decision passed by this Court in the case of **Vipin Wadhwa v. M/s. Prashant Enterprises and Ors.** in CS(OS) 244/2021 where besides considering **Triloki Nath Singh** and other relevant decisions, the Court has dismissed the civil suit under Order VII Rule 11 of CPC holding therein that the fresh suit which seeks for declaration of the judgment and decree rendered by the Court as null and void, is not maintainable.

4. *Per contra*, Mr. Gaurav Bahl, learned counsel appearing for the plaintiff contends that the parties to suit bearing no. CS (COMM) 255/2019 have entered into a compromise behind the back of the plaintiff herein, who is a third party. Therefore, according to Mr. Bahl, any compromise to the prejudice of the plaintiff herein cannot be the subject matter of the challenge under Order XXIII Rule 3 of CPC and, the plaintiff is rightly instituted the aforesaid civil suit.

5. I have heard learned counsel appearing for the parties and have perused the record.

6. On due consideration, the Court finds that in the case of **Triloki Nath Singh** in paragraph No.21 and 22 the Supreme Court has rendered the following pertinent findings:-

21. In the present case, the partition suit was filed in 1978 and after the decision of the trial court, the matter went in first appeal and eventually, Second Appeal No. 495/86 before the High Court. During the pendency of first appeal being continuation of the suit as stated, one of the parties to the pending proceedings, namely, Sampatiya allegedly entered into a sale deed with the appellant on 6-1-1984. Indubitably the issue regarding right, title and interest in respect of the land which was

¹ (2020) 6 SCC 629



the subject-matter of sale deed dated 6-1-1984, was still inchoate and not finally decided. In that sense, the claim of the appellant was to be governed by the decision in favour of or against Sampatiya in the pending appeal. It must follow that the alleged transaction effected in favour of the appellant by a sale deed dated 6-1-1984 ought to abide by the outcome of the said proceedings which culminated with the compromise decree passed by the High Court in Second Appeal No. 495/86 dated 15-9-1994.

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 6-1-1984, 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 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 6-1-1984, allegedly executed by one of the party (Sampatiya) to the 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 15-9-1994 passed by the High Court in the partition suit.”

7. In the aforementioned decision the Supreme Court held that while the subsequent purchaser may independently seek relief against the seller, the validity of the compromise decree, binding on the original parties, cannot be questioned by a third party not privy to it.

8. Further it is noted that the provisions of Order XXIII Rule 3A of CPC also envisage that no suit shall lie to set aside a decree on the ground that the compromise on which the decree was based is not lawful.

9. Moreover, the Court in the case of **Vipin Wadhwa** has also considered similar aspects relating to the challenge of a compromise decree under Order XXIII. In paragraph Nos.35 onwards, the Court has held as under:-



“35.As per the said Rule, no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. It has been held, as noted already, that the test of lawfulness of the compromise would essentially take into consideration the factors of voidness and voidability under the law of contract. A compromise or consent between the parties is essentially a contract between the parties wherein they determine their mutually respective rights and liabilities and thus, it must be ensured that the same is not void or voidable. If the challenge against a consent decree is based on the premise that it is void or voidable, on any of the parameters envisaged under the law of contract, it could be said that the challenge is against the lawfulness of the compromise and thus, the bar under Order XXIII Rule 3A of CPC would be attracted.

36. Now, coming to the moot question in the present dispute i.e. whether the aforesaid bar would be applicable to a stranger to the suit, it could safely be observed that it is no longer res integra.

37.The Supreme Court, in the case of **Trilokhi Nath**, wherein a similar contention was raised, held that even assuming that a stranger could assail the validity of the compromise entered into by the parties to the partition suit, only the Court, which had accepted the compromise and passed decree on that basis, could examine the same and no other Court could entertain an independent suit for the said purpose as contemplated under proviso to Rule 3 of Order XXIII CPC. The relevant extract of the said decision reads as under:-

22. 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.

This position of law has been reiterated by the Supreme Court in the



case **Mukund Bhavan Trust v. Shrimant Chhatrapati Udayan Raje**², wherein the Court, while relying upon the **Trilokhi Nath**, held that the bar under Order XXIII Rule 3A of CPC is applicable to third parties as well and the only remedy available to them would be to approach the same Court. Thus, a stranger or third party to the compromise, which has been accepted by the seal of the Court and has assumed the force of a decree, is on a similar pedestal as a party to such compromise insofar as the remedy to assail such compromise on the ground of its lawfulness is concerned. No distinction is traceable from Order XXIII Rule 3A of CPC.

The underlying essence in this legal position is quite understandable, as eloquently expressed by the Supreme Court in **R. Janakiammal**. Since, the intent of the legislature is to prevent multiplicity of proceedings qua the same subject matter and to ensure that compromises recorded before the Court are not reopened in a routine manner, it is nothing but necessary that any such challenge lies before the same Court. It is also because of the fact that when a compromise is accepted by a Court of law, it involves an element of judicial satisfaction qua the lawfulness of such compromise of such Court and in an extraordinary scenario, if such lawfulness is to be questioned, it must be questioned before the same forum. To permit otherwise would also go in the teeth of the principle of judicial consistency and discipline, and may result into absurd consequences including conflicting outcomes by Courts of equivalent or varying jurisdictions.”

10. If the submissions of Mr. Bahl are considered in the context of the aforesaid legal position, the same would indicate that the judgment and decree rendered by the Court on 31.05.2019 are claimed to be not lawful and, therefore, a declaration is sought to declare them as null and void.

11. There may be various reasons as to why the relief is claimed by the plaintiff, however, the fact remains that any declaration of the judgment and decree as null and void in the instant suit is essentially on basis of the same being not lawful. Under the aforesaid circumstances, the Court finds that the fresh civil suit is not maintainable, the same is accordingly, rejected.

12. At this stage, Mr. Bahl submits that the instant civil suit be treated to

² 2024 SCC OnLine SC 3844.



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be an application in the CS (COMM) 255/2019. The aforesaid prayer cannot be accepted.

13. Let the plaintiff, therefore, to file an appropriate application in the disposed of civil suit. Liberty, to that extent, is reserved in his favour.

14. The Court finds that the plaintiff in the instant case has *bonafide* prosecuted the proceedings, therefore, the benefit of Section 14 of the Limitation Act is extended to him. The period spent in the present proceedings be excluded for reckoning the limitation for filing of the application.

15. The instant suit along with the pending applications stands disposed of.

PURUSHAINDR KUMAR KAURAV, J

JULY 29, 2025/P/MJ