



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

CIVIL REVISION APPLICATION NO. 05 OF 2026

Mangal Kalash Creation LLP
Through its Partners
Rajesh Baliram Vargantwar
and another .. Applicant

Versus

Sourabh Satish Abde and others .. Respondents

Shri Mohit R. Deshmukh, Advocate for the Applicant.
Shri S. V. Natu, Advocate for the Respondent Nos. 1 to 3.
Shri R. K. Ashtekar, Advocate for the Respondent Nos. 7 to 10.

CORAM : SHAILESH P. BRAHME, J.

CLOSED FOR ORDER ON : 05.02.2026
ORDER PRONOUNCED ON : 11.02.2026

FINAL ORDER :

1. Heard the contesting parties on 29.01.2026. Similar issue is required to be dealt with in C. R. A. No. 170 of 2025. Both matters are heard on 05.02.2026.
2. A common order dated 15.12.2025 passed below Exhibit 24 and 65 by Jt. Civil Judge Senior Division, Aurangabad in Spl. C. S. No. 152 of 2024 refusing to reject the plaint is under challenge at the instance of the defendant No. 8.

3. The respondent Nos. 1 and 2 are the original plaintiffs and the respondent Nos. 3 to 10 are the original defendant Nos. 1 to 7. Spl. C. S. No. 152 of 2024 is filed for declaration that decree in Spl. C. S. No. 32 of 1975 is obtained by fraud and collusion, which is *void ab-initio*, partition, possession, injunction and further ancillary reliefs. The relationship *inter-se* amongst the respondents is not disputed.

4. Applicant filed application Exhibit 24 for rejection of plaint on the ground of limitation and Sec. 6 of the Hindu Succession Act. Another application Exhibit 65 was filed for rejection of plaint and counter claim of defendant Nos. 4 to 7 on the ground that there is no right to sue for claiming relief of partition. Both applications were contested by the respondents. Both are rejected by the common order. Application Exhibit Nos. 24 and 65 do not spell out the ground of statutory bar under Rule 3-A of Order XXIII of the Code of Civil Procedure (for the sake of brevity and convenience hereinafter referred as to the "C.P.C."). The parties canvassed submissions on that line and then impugned order was passed. In this Court also learned counsels addressed on the same line and additionally on the grounds pleaded in the applications.

5. The respondent Nos. 1 to 3 have filed present suit specifically challenging the compromise decree passed in Spl. C. S. No. 35 of 1975 on 11.08.1975. The description in para No. 1 of the plaint discloses two properties. The compromise decree in

earlier proceeding is said to have been obtained by fraud, collusion and suppression of material facts. The decree is stated to be null and *void ab-initio*. It is further contended that Shobha and Rekha, daughters of Balwantrao and Sarala are having share and interest, but they are excluded from earlier suit. The decree is stated to be illegal and unexecutable for want of registration and payment of stamp duty. It is specifically stated in para No. 31 that the plaintiffs were not aware of the alleged partition decree, but learnt about it after paper publication dated 17.12.2022. The plaintiffs are stated to have gathered the knowledge of development agreement entered with the defendant No. 8.

6. Learned counsel for the applicant Mr. Mohit Deshmukh submits that compromise decree was passed on 11.08.1975 and present suit is filed after 49 years, which is clearly barred by limitation. In view of specific bar under Rule 3-A of Order XXIII of the C. P. C., plaint is liable to be rejected. It is further contended that the cause of action is illusory and there exists no right to sue because plaintiffs can have no coparcenary rights in the property. It is submitted that as per the prevalent law Shobha and her sister Rekha had no right. The compromise decree was not collusive. It is further submitted that registration and stamp duty is required for the compromise decree.

7. As against that learned counsel Mr. Natu for the

respondent Nos. 1 to 3 submits that a separate suit is maintainable because neither plaintiffs, nor their mother Shobha were parties to earlier suit. It is impermissible for the plaintiffs to approach the self same Court which passed the compromise decree because subject matter in earlier suit is different. It is further submitted that terms of settlement show relinquishment of the share of the members of the family for which registration and payment of stamp duty is mandatory. It is further submitted that the plaintiffs and their mother would get share after demise of Balwantrao and thereafter Sarala. Reliance is placed on number of judgments.

8. Learned advocate Mr. R. K. Ashtekar for the respondent Nos. 4 to 10 adopted the submissions of learned advocate Mr. S. V. Natu.

9. I have gone through the plaint, terms of settlement and compromise decree passed in Spl. C. S. No. 32 of 2015, which was filed for partition and possession of the separate share. Kishor, the defendant No. 2 had filed suit against Balwantrao, Sarala and real brother Subhash in respect of only one subject matter bearing Municipal House No. 5-5-62 situated at new Osmanpura. It was amicably settled and the compromise decree was passed on 11.08.1975. The said decree is sought to be challenged in the present suit. One more property is added in the present suit i. e. CTS No. 15209 situated at Vidya Nagar, Aurangabad.

10. Learned advocate Mr. Deshmukh has placed heavy reliance on the judgment of the Supreme Court in the matter of Triloki Nath Singh Vs. Anirudh Singh (Dead) through Legal Representatives and others reported in (2020) 6 SCC 629 to buttress that separate suit is not maintainable and bar under Rule 3-A of Order XXIII of the C. P. C. is attracted. According to him only remedy is to approach the same Court which passed the compromise decree. The relevant paragraphs are as follows :

“15. What is emerged as a legislative intent has been considered in extenso by this Court in Pushpa Devi Bhagat(Dead) Through LR Sadhna Rai(Smt) Vs. Rajinder Singh and Others (2006) 5 SCC 566, after taking note of the scheme of Order 23 Rule 3 and Rule 3A added with effect from 1st February,1977. The relevant paragraphs are as under:-

- (i) No appeal is maintainable against a consent decree having regard to the specific bar contained in Section 96(3) CPC.
- (ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) of Rule 1 Order 43.
- (iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3-A.
- (iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 Order 23.

Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and

made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. The second defendant, who challenged the consent compromise decree was fully aware of this position as she filed an application for setting aside the consent decree on 21-8-2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants challenged the consent decree. For reasons best known to herself, the second defendant within a few days thereafter (that is on 27-8-2001) filed an appeal and chose not to pursue the application filed before the court which passed the consent decree. Such an appeal by the second defendant was not maintainable, having regard to the express bar contained in Section 96(3) of the Code.

(Emphasis supplied)

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 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.”

11. The observations of Hon’ble Apex Court in para Nos. 21 to 23 are to be understood in the context of that case. In that case appellant was the original plaintiff who was assailing compromise decree passed in second appeal before the High Court. His vendor Sampatiya was party to the second appeal as well as compromise. He had purchased the property from Sampatiya on 06.01.1984 when litigation in earlier round was going on. He was transferee *pendent-lite*. His sale deed was subject to outcome of litigation in earlier round. Therefore, it is observed that he is claiming through his predecessor Sampatiya. As the compromise was accepted by High Court, it is held that his grievance could be ventilated before High Court only.

12. In Triloki Nath Singh (supra) the purport of Rule 3-A of Order 23 was considered by the Apex Court. There was no specific issue before the Court as to whether a stranger to impugned compromise decree can bring independent suit. In paragraph No.15 as referred above, the remedy of the third party or stranger to the consent decree has not been dealt with. Similarly paragraph Nos.21 to 23 do not spell out a ratio that a stranger is prohibited from filing suit challenging compromise decree.

13. In the present case plaintiffs were not party to Spl. C. S. No. 32 of 1975. Their mother Shoba and aunt Rekha were also not party. They are claiming share and interest by inheritance. It is not case that they are claiming through the defendants of the earlier suit or their right to have share is subjected to outcome of earlier suit. Their right to claim share by inheritance cannot be gone into on merits at this stage.

14. Mr. S. V. Natu, learned advocate for the respondent Nos. 1 to 3 cited various judgments on the issue of bar under Rule 3-A of Order XXIII of the C. P. C. In the matter of Pushpa Devi Bhagat (Dead) through L.Rs. Sadhna Rai (Smt) Vs Rajinder Singh and others reported in (2006) 5 SCC 566 a separate suit was filed challenging compromise decree. But the plaintiff was party to earlier suit. This is evident from para No. 17 of the judgment. In the case of R. Jankiammal Vs. S. K. Kumarasamy (deceased) through L.Rs. and others reported in (2021) 9 SCC 114 similar factual position emerged. In

that case Court *inter alia* relied on the judgment in the matter of Triloki Nath Singh Vs. Anirudh Singh (Dead) through Legal Representatives and others (supra).

15. Further judgment of the Supreme Court dated **21.04.2025** in the matter of **Manjunath Tirakappa Malagi and another Vs. Gurusiddappa Tirakappa Malagi (Dead through L.Rs.) in S. L. P. (Civil) No. 4812 of 2023** shows that plaintiffs challenging compromise decree were having their father as a party to compromise decree.

16. My attention is also adverted to the judgment of Supreme Court in M/s Sree Surya Developers and Promoters Vs. N. Sailesh Prasad and others reported in *AIR 2022 SC 1031*. The gift deed executed in favour of minor son was revoked and that was challenged in the suit. It was compromised by father on behalf of son. After attaining majority a suit was filed by son challenging the compromise decree passed in earlier suit. Application under Order VII Rule 11 was pressed into service at the instance of appellant Sree Surya Developers. Application was allowed by the Trial Court but reversed by High Court. Supreme Court reversed judgment of High Court. Appellant in that case was party to the earlier suit and the compromise decree. In these peculiar facts *inter alia* relying on various judgments including Triloki Nath Singh (supra), the following observations are made in para No. 8.

“That thereafter it is specifically observed and held that a party to a consent decree based on a compromise to

challenge the compromise decree on the ground that the decree was not lawful i.e., it was void or voidable has to approach the same court, which recorded the compromise and a separate suit challenging the consent decree has been held to be not maintainable.”

In the above referred matter also a stranger to earlier compromise decree was not the plaintiff whose plaint was sought to be rejected. It cannot be said that the issue involved in the present matter is covered by the judgment.

17. In matter of Mukund Bhavan Trust Vs. Shrimant Chhatrapati (supra), application under Order VII Rule 11 of C.P.C. was pressed into service on the ground that suit was barred by limitation. One of the prayers in the subsequently filed suit was about declaration that the compromise decree passed in earlier suits and the civil appeal are void-ab-initio and be quashed. The application under Order 7 Rule 11 of the C. P. C. was rejected by the Trial Court and it was further confirmed by High Court. Defendant No.1 was before the Supreme Court as appellant. The predominant consideration was in respect of the limitation. Relying on the judgment of Triloki Nath Singh, (supra) it was observed by Apex Court in paragraph No. 23 that the plaintiff therein was a stranger to the suits which ended in compromise and therefore bar under Rule 3-A of Order 23 of C.P.C. was attracted. It cannot be said to be ratio because the precise question which is germane in the present case was not fallen for the consideration.

18. My attention is also adverted to Full Bench judgment of Gujarat High Court in the matter of Sakina Sultanali Sunesara (Momin) and others Vs. Shia Imami Ismaili Momin Jamat Samaj and others reported in *AIR 2020 Gujrat 12* to buttress that independent suit is not maintainable for challenging the compromise decree at the instance of stranger. Following issues were fallen for consideration before the Full Bench of the Gujrat High Court :-

"(A) In case of a decree passed by the Trial Court, on the basis of compromise between the parties ('Consent Decree'), what remedy the 'aggrieved party' would have before the Appellate Court. Whether it would be 'First Appeal' under Section 96 of CPC or 'Appeal from Order' under Order 43 Rule 1 A of the CPC.

(B) Which of the following two sets of the decisions of the Division Benches of this Court, connotes the correct position of law.

(i) Judgment of the Division Bench of this Court dated 04.07.2013 recorded on First Appeal No.3804 of 2012 in the case of Legal Heirs of Decd. Ullasbhai Parsottambhai (supra) and

(ii) Order of the Division Bench of this Court dated 27.12.2012 recorded on Civil Application No.11987 of 2012 in the case of Indiraben Ratilal Adhia (supra).

OR

(i) The judgment of the Division Bench of this Court, in the case of M/s. Sanskruti Infra Developers Pvt. Ltd. (supra), (dated 08.2016 recorded First Appeal No.2536 of 2015) as noted in para:7.1 above, and

(ii) the judgment of the Division Bench of this Court in the case of Kantibhai Viththalbhai Ukani (supra), (Civil Application (Leave to Appeal) No.5223 of 2016 -

order dated 11.08.2016), as noted in para:7.2 above.

(C) Whether an application by an 'aggrieved party' before the Trial Court for setting aside a 'consent decree', invoking Order 23 Rule 3 of CPC would be maintainable."

19. A specific issue as to whether remedy of independent suit for stranger to the compromise decree is available or not was neither referred nor dealt with. It is evident from above issues as well as following paragraph :

“20. In the light of the afore-stated legal position settled by the Supreme Court let us consider the questions referred by the Single Bench. So far as the first question posed by the Single Bench in the Reference Order is concerned, it reads as under :-

“In case of decree passed by the trial Court on the basis of compromise between the parties (consent decree), what remedy the aggrieved party would have before the appellate Court. Whether it would be "First Appeal" under Section 96 of CPC or "Appeal from Order" under Order XLIII Rule 1A of CPC?”

20. In that context while summing up the reasoning following answers are given :

“40. The upshot of the above may be summed up as under :-

(i) After the deletion of Clause (m) of Rule 1 of Order XLIII, by the amendment Act 104 of 1976, no Appeal from Order against the order passed under Rule 3 of Order XXIII recording or refusing to record an agreement, compromise or satisfaction would lie under Rule 1 of Order XLIII of CPC. Rule 1A of Order XLIII does not provide for any remedy to file an appeal either against any order

or against any decree.

(ii) It is only in an appeal filed under Section 96(1) read with Order XLI of CPC, against the decree passed in the suit after recording of compromise or refusing to record compromise, the appellant can contest such decree on the ground that the compromise should or should not have been recorded, in view of Rule 1A(2) of Order XLIII.

(iii) No appeal would be maintainable from a decree passed by the Court with the consent of the parties i.e. on the basis of the compromise arrived at between the parties in the suit under Rule 3 of Order XXIII, in view of the bar contained in Section 96(3) of CPC.

(iv) No suit shall lie to set aside a decree passed under Rule 3 of Order XXIII on the ground that the compromise on which the decree is based was not lawful in view of the bar contained in Rule 3A of Order XXIII.

(v) If the aggrieved party was the party to the suit, the only remedy available to him against the decree passed by the Court on the basis of compromise between the parties (consent decree), would be to file an application under the proviso to Rule 3 of Order XXIII, disputing such compromise. The Court which passed the compromise decree has to decide the said dispute or question raised by the party.

(vi) When there is a dispute raised by either of the parties to the suit on the question as to whether there was a compromise or not, a decree accepting the compromise on resolution of that controversy, cannot be said to be a decree passed with the consent of the parties. Therefore, the bar under Section 96(3) of the Code would not have any application. Section 96(3) is applicable to cases where the factum of compromise or agreement is not in dispute.

(vii) If the aggrieved party was not the party to the suit, the remedy available to him to challenge the decree passed by the Court on the basis of compromise between the parties to the suit (consent decree), would be to file an appeal under Section 96(1) of

CPC, with the leave of the appellate Court, or to file a review application before the Court, which passed the decree, as may be permissible under Section 114 read with Order XLVII of CPC.

(viii) The words "signed by the parties" contained in Rule 3 of Order XXIII would include the compromise signed by the duly authorized pleaders or the power-of-attorney holders or the recognized agents of the parties concerned."

21. The answer in clause IV and VII would not persuade this Court in the present matter. It was not ratio of Full Bench that aggrieved person who was not party to the suit does not have the remedy of filing independent suit. The purport of the reasoning is that such a aggrieved party would be having remedy to file appeal under Section 96 (1) of the CPC with the leave of the Appellate Court or to file review application before the same Court which passed the decree. The judgment of the Full Bench of Gujarat High Court is confirmed by Supreme Court in case of Sakina Sultanali Vs. Shia Imami. Apex Court relied on the judgment of Triloki Nath Singh and M/s Sree Surya Developers referred (supra) holding that the opinion expressed by the Full Bench is correct. With at most respect, I am of the considered view that there is no endorsement by the Apex Court on the proposition that stranger is precluded in filing independent suit challenging compromise decree.

22. The common thread of all above authorities including Triloki Nath Singh (supra) is that the independent suit challenging compromise decree is held to have been barred by Rule 3-A of Order XXIII of the C. P. C. because plaintiffs were party to

compromise decree or their right is subjected to outcome of earlier litigation. In none of the authorities referred above, it is laid down that a stranger who is challenging the compromise decree on the ground of suppression, collusion or fraud is prohibited from filing independent suit.

23. Mr. S. V. Natu, learned advocate has adverted my attention to a consistent view being taken High Court permitting a stranger to file separate suit challenging compromise decree. Following are those judgments :

- I Ashim Kumar Dey Vs. Calcutta Wholesale Medicine Market Area Committee of Bengal Chemists & Druggists Association & others reported 2006 SCC OneLine Cal. 221.
- II Ramkrishna Shridhar Choube and others Vs. The Court Receiver and others and Kamtidevi Premnath Choube and another reported in 2011(1) Bom. C. R. 286.
- III Khalil Haji Bholumiya Salar and another and Zaitunbi Md. Hanif and another Vs. Parveen Sayyedduddin and others reported in 2013(6) Bom.C.R. 841.
- IV Sushilabai wd/o Bomenshaw Byramji Vs. Kamlarukh wd/o DPR CASSAD through L.Rs. and another reported in 2014(3) Mh. L. J. 404.
- V Gulam Nabi Khanday Vs. Mushtaq Ahmad reported in 2024 DGLS (J&K) 34.
- VI. Shirish Bhaskar Somwanshi Vs. Bhaskar Balasaheb Somwanshi Writ Petition No.5170 of 2022

24. In the present suit the compromise decree is impugned on various grounds including suppression of facts, collusion and fraud. It is trite law that fraud vitiates everything and decree obtained by fraud is nonest. The remedy to file separate suit by the aggrieved stranger who was not party to earlier litigation or compromise decree is the most appropriate remedy. The Trial Court can examine issues on the basis of evidence adduced before it. The challenge to the compromise decree would necessary involve inquiry into facts and law. Neither in appeal under Section 96(1) of the C. P. C. after seeking leave of the Court nor in any application for review filed before same Court which recorded compromise decree, the objective scrutiny of the disputed facts by adducing evidence is permissible. I find that in none of the judgments this aspect has been dealt with.

25. In the present case, the cause of action has been specifically stated and it is contended that plaintiffs were not aware of the compromise decree which they learnt after paper publication dated 17.12.2022. In that view of the matter the limitation becomes mixed question of facts and law, which can be answered after full fledged trial.

26. In the present suit two properties are involved, whereas in earlier suit only one property was subject matter. In the present matter various reliefs are claimed. The defendant No. 8 is concerned with the property, which is entrusted to it by

development agreement dated 26.04.2023. It's grievance for rejection of the plaint can be said to be restricted to that property only. Therefore, relying on the law laid down by the Supreme Court in the matter of Central Bank of India Vs. Prabha Jain and others reported in *(2025) 4 SCC 38*, as can be understood from para Nos. 23 and 24 of the judgment, it is suffice to say that partial rejection of plaint cannot be countenanced.

27. Reliance is also placed by Mr. Deshmukh on the judgment of this Court in the matter of Vishwambhar Namdev Nikam and another Vs. Sunanda Maheshankar Suryawanshi and others (supra). This aspect can be dealt with after full fledged trial. The facts in that case are distinguishable. Even if the judgment is held to have been supporting the applicant, it would result in partial rejection of the plaint, which is impermissible because of the judgment of the Supreme Court cited supra.

28. Mr. Deshmukh, learned counsel appearing for the applicant vehemently canvased that cause of action is illusory and right to sue does not exist. According to him, Shobha who was mother of the plaintiffs, was not necessary party because she had no right. The provisions of Sec. 6 of the Hindu Succession Act and its proviso has been pressed into service. These are the intricate issues, which require deeper examination after full fledged trial.

29. I do not find any perversity or patent illegality in the impugned order. No interference is called for. It cannot be overlooked that defendant No. 8 sought rejection of plaint, but specific ground of Rule 3A of Order XXIII of the C. P. C. is not incorporated either in the application Exhibit 24 or Exhibit 65. It is not understood as to why successive applications are required to be filed for rejection of the plaint.

30. I propose to adopt the consistent view taken by Bombay High Court which is referred in paragraph No. 24. The Division Bench of Calcutta High Court as well as Single Bench of Jammu and Kashmir High Court also support my view.

31. The civil revision application is rejected.

32. Needless to mention that the observations recorded in the order are *prima facie* in nature.

[SHAILESH P. BRAHME J.]