

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1856 OF 2026

M/s. Alcon Through Its Partners ...Petitioners

Versus

Pramod Maniklal Lunawat And Ors. ...Respondents

WITH

WRIT PETITION NO. 1858 OF 2026

Savita Changdeo Valhekar And Ors. ...Petitioner

Versus

Pramod Maniklal Lunawat And Ors. ...Respondents

WITH

WRIT PETITION NO. 1859 OF 2026

M/s. Alcon Through Its Partners ...Petitioner

Versus

Jayant Maniklal Lunawat And Ors. ...Respondents

WITH

WRIT PETITION NO. 526 OF 2026

Savita Changdeo Valhekar and Ors. ...Petitioners

Versus

Pramod Maniklal Lunawat And Ors. ...Respondents

Mr. Atul Damle, Senior Advocate, a/w Sujay Gangal, Swaraj
Savant and Harshal Mule, for the Petitioners.

Mr. Piyush Raheja, a/w Ms. Rucha Jog and Hemali D., i/by
RVJ Associates, for Respondent No.2.

CORAM: N. J. JAMADAR, J.

DATED: 9th FEBRUARY, 2026

Oral Order:-

1. Heard the learned Counsel for the parties.

2. The petitioners in WP Nos.1856, 1858 and 1859/2026 call in question the legality, propriety and correctness of an order dated 18th December, 2025 passed by the Executing Court in Misc. Applications taken out by the petitioners in execution proceedings seeking declaration that the Consent Decree dated 9th October, 1997 and 6th November, 2012 passed by the Civil Court in SCS/343/1997 and SCS/1535/1996, respectively, against late Vitthal Maruti Kamathe, are null and void, cancel and set aside the same and restrain the decree holders or any person claiming through them, from acting upon the said decrees, from alienating, conveying, transferring, selling, disposing off and/or creating third party interest in the suit properties.

3. In WP/526/2026, the petitioners assail an order passed by the Executing Court dated 29th November, 2025, whereby the Nazir of the Court is appointed as a Court Commissioner to take necessary steps for compliance of the provisions of the Maharashtra Tenancy and Agricultural Lands Act, 1948 and to execute and present the Sale Deed for registration on behalf of the judgment debtor in favour of decree holder as per the draft prepared by the decree holder and approved by the Executing Court.

4. Jayant Lunawant – respondent No.1, in WP/1859/2026 – plaintiff in SCS/1535/1996, had instituted a suit for a decree for specific performance of contract to sell the lands admeasuring 30 R. against Maruti Kamathe and his sons.

5. Prmod Lunawant – respondent No.1 in WP/1856/2026, WP/1858/2026 and WP/526/2026 had instituted SCS/343/1997 for specific performance of contract to sell the land admeasuring 10 R., for declaration and injunction against Vitthal Kamathe, the predecessor-in-title of the petitioners.

6. To execute the decree passed in SCS/1535/1996 the respondents – decree holders filed SD/155/2012. Likewise to execute the decree passed in SCS/343/1997 the respondents filed SD/755/2012.

7. Petitioner Nos.1 to 3, the successors-in-interest of Vitthal Kamathe entered into a registered Development Agreement dated 2nd June, 2006 and also executed a Power of Attorney of even date in favour of petitioner No.4 in respect of 33 R land, which, the petitioners claim, was allotted to late Vitthal in a partition in accordance with the Partition Deed dated 10th October, 1993. Eventually, petitioner Nos.1 to 3 executed a Sale Deed in favour of petitioner No.4 on 18th September, 2008, in respect of the said 33 R. land.

8. The petitioners instituted SCS/406/2014 against the respondents – decree holders assailing the legality and validity of the Consent Decree and sought the reliefs of declaration and injunction. In the said suit, an application for temporary injunction was filed. The trial Court allowed the said application.

9. In MCA/35/2016, the learned District Judge was persuaded to set aside the said order passed by the trial Court opining, *inter alia*, that a separate suit assailing the legality and validity of the Consent Decree was not maintainable and the proper remedy for the petitioners was to approach the Executing Court by filing an appropriate proceeding under Section 47 of the Code of Civil Procedure, 1908 (“the Code”).

10. Thereupon, the petitioners appeared before the Executing Court and filed Civil Misc. Application Nos.1747/2023, 1746/2023 and 1748/2023 purportedly under Order XXIII Rule 3 and Section 47 of the Code, in the Execution Petition Nos.755/2012 and 155/2012, respectively.

11. By the impugned order, the Executing Court was persuaded to reject the applications as the Executing Court was of the view that the petitioners being the strangers to the Consent Decrees, were required to institute an independent suit

and could not have raised objections under Order XXIII Rule 3 of the Code.

12. Being aggrieved, the petitioners have instituted WP/1856/2026, 1858/2026 and 1859/2026. In the meanwhile, as the Executing Court appointed the Court Official to execute and register the Sale Deed on behalf of the judgment debtor in favour of the decree holders, the petitioners have filed WP/526/2026.

13. Mr. Damle, the learned Senior Advocate for the petitioners, submitted that, by the first impugned order, the petitioners have been rendered remediless. When the petitioners instituted a suit assailing the legality and validity of the Consent Decree, the District Court while deciding Civil Misc. Appeal No.35/2016 observed that a separate suit was not maintainable and the proper remedy was to file an application under Section 47 of the Code before the Executing Court. In contrast, when the petitioners approached the Executing Court under the provisions of Order XXIII Rule 3, the application came to be rejected observing that, the proper remedy for the petitioners was to file an independent suit as they were the strangers to the decree.

14. Mr. Damle would urge that, by no stretch of imagination, the petitioners can be said to be the strangers to the decree. The objections raised by the petitioners to the legality and validity of the Consent Decrees are required to be determined on merits and the petitioners cannot be non-suited by holding that, neither a separate suit is maintainable nor an application under Order XXIII Rule 3 of the Code is maintainable.

15. In opposition to this, Mr. Raheja, the learned Counsel for Jaywant Lunawat (R1), submitted that, the petitioners have resorted to multiple proceedings to delay and defeat the execution of the decree. SCS/1535/1996 instituted by the petitioners is still being prosecuted. At the same time, the petitioners filed applications before the Executing Court. Neither of the proceeding is the correct remedy.

16. Mr. Raheja further submitted that, in the intervening period, Pramod (R1), the decree holder in SCS/343/1997 has assigned the rights under the said decree in favour of Jayant Lunawat (R1). Attention of the Court was invited to an order dated 29th September, 2025 passed on an application (Exhibit-117) in SD/755/2012 whereby the Executing Court has permitted Jayawant to substitute his name in place of Pramod, the decree-holder in the said execution proceedings.

17. Mr. Raheja, however, fairly submitted that the legal position is clear that, the only remedy is to approach the Court, which has passed the Consent Decree, if its legality and validity is to be questioned.

18. The legal position is settled by the judgment of the Supreme Court in the case of *Triloki Nath Singh vs. Anirudh Singh (D) through LRs and ors.*¹. In the said case, the successor-in-interest of the judgment debtor, who was a party to the Consent Decree, sought to assail the legality and validity of the Consent Decree by instituting a separate suit. A contention was raised that, the bar contained in Order XXIII Rule 3A of the Code does not operate as the appellant therein was not a party to the compromise decree. Repelling the said contention, the Supreme Court in terms enunciated that, the fact that the appellant was not a party to the compromise decree was not significant and the interdict contained in the provisions of Order XXIII Rule 3A of the Code applied with equal force qua such successor-in-interest also. The observations in paragraphs 21 and 22 of the said judgment are material and, hence, extracted below:

“21. Indeed, the appellant was not a party to the stated compromise decree. He was, however, claiming right, title

1 AIR 2020 Supreme Court 2111.

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.

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.”

19. In the instant case, the Court finds that the petitioners did not approach the Court, which passed the Consent Decree in SCS/1535/1996 and SCS/343/1997 contending that the compromise was not legal or the decree passed therein was vitiated by the factors which render the compromise

unenforceable. The petitioners first instituted a suit which the learned District Judge correctly opined to be not maintainable. The petitioners, thereafter, approached the Executing Court invoking the provisions contained in Section 47 of the Code, though the thrust of the objection was premised on the legality and validity of the compromise.

20. In a situation of the present nature, the petitioners deserve an opportunity to approach the Court, which has passed the consent decrees and agitate the legality and validity of the Consent Decree in SCS/1535/1996 and SCS/343/1997.

21. Mr. Damle, on instructions, submits that the petitioners will withdraw SCS/406/2014 and file an application before the Court, which passed the Consent Decree in SCS/1535/1996 and SCS/343/1997 to set aside the said Consent Decree. Mr. Damle submits that, in the intervening period, the execution and operation of the Consent Decree be deferred.

22. Mr. Raheja, the learned counsel for Jayawant Lunwat, strongly opposes the prayer to defer the proceedings in execution as the Consent Decrees have been passed in the year 2012. In the circumstances of the case, the Court considers it expedient to allow the petitioners to approach the Court which has passed the consent decrees and, direct that, in the

meanwhile though the proceedings in Execution Petition Nos.755/2012 and 155/2012 may continue, the final instrument may not be executed for the period of two weeks from the date of uploading of this order so as to facilitate the petitioners to approach the Civil Court, which has passed the consent decrees and seek appropriate reliefs.

23. The petitions, thus, stand disposed in the following terms:

- (i)** The statement made on behalf of the petitioners that, the petitioners intend to withdraw SCS/406/2014, is accepted as undertaking given to the Court.
- (ii)** The petitioners are permitted to file proceedings before the Court, which has passed the Consent Decree in SCS/1535/1996 and SCS/343/1997, to set aside the said Consent Decrees on the grounds as may be available in law.
- (iii)** In the event such applications are filed, the Civil Court shall decide the same on their own merits and, in accordance with law, in the light of the law enunciated by the Supreme Court in the case of *Triloki Nath* (supra) and without being influenced by any of the observations made by the Executing Court in the impugned orders.

- (iv) To facilitate the petitioners to approach the Civil Court and seek appropriate reliefs, though the Executing Court may proceed with the execution proceedings so as to take the preparatory steps for execution of the instruments, yet, final instruments may not be executed and registered for a period of two weeks from the date of uploading of this order.
- (v) All rights and contentions of all the parties are kept open for adjudication before the Civil Court and it is clarified that this Court has not entered into the merits of the matter and the claims of the petitioners on the basis of which the petitioners seek to set aside the Consent Decrees.
- (vi) No interference is warranted in the order passed by the Executing Court in SD/755/2012 dated 29th November, 2025 and, thus, WP/526/2026 stands dismissed.

[N. J. JAMADAR, J.]