

MHPU120002252023



**ORDER BELOW EXH.36 IN R.C.S. NO.43/2023**

**Shailesh Gajanan Phatak and Ors. Vs. Sagar Dattatray Pawar and Ors.**

This is an application filed by defendant No.1 and 2 for framing of preliminary issue as per Order XIV Rule 2(2) of Code of Civil Procedure.

**Brief facts of the application are as under :**

02. The defendants contended that present suit is filed for cancellation of compromise decree. Initially defendant No.1 and 2 filed suit bearing No.157/2022 against defendant No.3 to 12. However, plaintiff No.1 and 2 were not party to said suit. Therefore, it is necessary to ascertain whether plaintiffs have right to challenge compromise took place in R.C.S. No.157/2022. Therefore, it is need to frame preliminary issue to that effect. Hence, they filed present application.

03. The plaintiffs resisted the application by filing their joint say at Exh.48. They denied each and every contention of the application. They contended that they have legal right to challenge validity of compromise decree passed in R.C.S. No.157/2022. Further, they have filed present suit as per legal procedure. Hence, they prayed to reject the application.

04. Heard Ld. Advocate for plaintiffs and defendants. They argued in consonance with their respective contentions. Ld. Advocate of the defendants argued that in various judgments the Hon'ble Apex

Court held that separate suit is not maintainable in order to challenge compromise decree. Per contra, Ld. advocate of the plaintiffs argued that by playing fraud the defendants obtained compromise decree. Hence, suit is tenable. In order to support his contentions he relied on following judgments of Hon'ble Bombay High Court :-

***A. Navalaji Hariji Mule Vs. Madhukar Atmaram Tundulwar and Ors. (2025(1) BCJ 422).***

***B. Jethalal C. Thakkar and Ors. Vs. Lalbhai Hiralal Shah (1985 Mh.L.J.299).***

***C. Shashikant Vs. S. G.V.A. University (2009(4) Mh.L.J.579).***

***D. Pandurang Shankarrao Koparkar Vs. Chandrabhaga Koparkar and Anr. (2023 (2) BCJ 100).***

***E. Malati Rajarama Parshetye through Lrs. Vs. Abhay Shridhar Shetye (2023 (2) BCJ 399).***

05. At the outset, it is necessary to mention that earlier defendants filed application as per Order VII, Rule 11 of C.P.C. to reject the plaint. In which also the defendants claimed that suit is hit by Order XXIII, Rule 3A of CPC. Accordingly, predecessor of this Court decided the application and rejected the application. Thereafter, the defendants filed present application. It is settled law that doctrine of *Res Judicata* is not only applicable to suit but also applicable to application also. Therefore, first considerable question came before this Court whether present application is hit by *Res Judicata*. In this respect it needless to mention that parameters of application filed under Order VII, Rule 11 of C.P.C. and application

filed under Order XIV, Rule 2(2) of C.P.C. are different. In earlier application the court can see whether cause of action is disclosed or not, suit is properly valued, proper court fees were affixed and suit is barred by law. However, in present application it is incumbent upon the Court to see whether any pure question of law is involved in present suit or not, if yes, in that case the Court can decide the same before all other issues. Therefore, though earlier application was decided, however no any legal hurdle to decide present application.

06. *Perused record. It is admitted position that in present suit the plaintiff is seeking relief of declaration and perpetual injunction. After careful reading of the plaint, it is specifically case of the plaintiff that the defendants by playing fraud with Court compromised the suit bearing No.157/2021 and obtained compromise decree. The plaintiffs specifically made averments that they purchased block No.45. Accordingly, their name mutated on 7/12 extract of the suit property. Therefore, said compromise decree is not binding on their share. Further, they prayed to set aside the compromise decree. In this situation, it manifests that the plaintiff is seeking relief in respect of compromise decree. Order XXIII, Rule 3A of C.P.C., which specifically provides that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. Therefore, on plain reading of Order XXIII Rule 3A C.P.C., no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.*

07. The first and foremost question in respect of preliminary issue is pure question of law. In simple terms pure question of law

means there is no need to consider factual aspect or to consider evidence of the facts. In present suit the defendants contended that as per Order XXIII, Rule 3A the suit is barred. It manifests that as per contention of the defendants due to statutory barred provided in C.P.C. present suit is not tenable. Therefore, prima-facie it appears that question of law is involved in present suit. Hence, it needs to decide first. Further, I have perused judgment of **Navalji (supra)**, wherein the Hon'ble Bombay High Court held that if the order is obtained by fraud in that case separate suit for setting aside the decree is tenable. Furthermore, in **Jethalal (supra)**, the Hon'ble Bombay High Court held that barred of Order XXIII Rule 3A of C.P.C. is not applicable if party seeking to set aside compromise on ground of fraud, coercion or misrepresentation. However, the Hon'ble Supreme Court in case of *Triloki Nath Vs. Anirudh Singh (D) through LRs (AIR 2020 SC 491)* held that separate suit is not tenable. Therefore, I respectfully submits that ratio laid down in Navalaji and Jethalal (supra) is not applicable at this stage.

08. Further, I have perused judgment of **Shashikant (supra)**, **Pandurang (supra)** and **Malati (supra)**. Fact of aforesaid judgments and case in hand are different. Hence, at this stage ratio laid down in aforesaid judgment is not applicable. Considering factual matrix of present case, it would be appropriate to frame preliminary issue as prayed by the defendants. No prejudice will cause to the plaintiff, as opportunity to lead evidence is available to them. Accordingly, I pass following order :-

**ORDER**

01. The Application at Exh.36 is allowed.
02. Necessary order is passed below Exh.1.

Bhor  
Date :08.04.2026.

( S.D.Shirsat )  
2<sup>nd</sup> Jt.Civil judge, Jr. Dn.,  
Bhor, Dist. Pune

**CERTIFICATE**

"I affirm that the contents of this P.D.F file Order are same word for word as per original Order

|                                |                                                                       |
|--------------------------------|-----------------------------------------------------------------------|
| Name of the Steno              | Shri. A.D.More                                                        |
| Court Name                     | Hon'ble S.D. Shirsat<br>2 <sup>nd</sup> C.J.J.D.& J.M.F.C.,Bhor, Pune |
| Date of Order/Judgment         | 08/04/2026                                                            |
| Date of Sign<br>Order/Judgment | 08/04/2026                                                            |
| Order uploaded on              | 08/04/2026                                                            |