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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****BEFORE****HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV**+ **CS(OS) 244/2021, CC 4/2022, I.A. 7367/2021, I.A. 22171/2022,
I.A.22176/2022, I.A. 18405/2023, and I.A. 21242/2023**

Between: -

SH. VIPIN WADHWA

S/O SH. H.C. WADHWA

R/O H. No 58, FD BLOCK, PITAMPURA,
DELHI 110034

....PLAINTIFF

(Through: Mr. Rajesh Yadav, Sr. Adv. with Mr. Neeraj Yadav, Adv..)

AND

1. M/S PRASHANT ENTERPRISES(PARTNERSHIP FIRM) HAVING OFFICE AT
C-38, RAJOURI GARDEN, DELHI**2. SH. JASBEER SINGH**

S/O LATE SH. MAHINDER SINGH

R/O C-38, RAJOURI GARDEN, DELHI

3. SH. HARJEET SINGH

S/O LATE SH. MAHINDER SINGH

R/O C-38, RAJOURI GARDEN, DELHI

4. SH. BALBIR SINGH

S/O SH. GURBACHAN SINGH

R/O E-61, MANSAROVER GARDEN, DELHI-110015



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5. SH. INDER PAL SINGH
S/O SH. GURBACHAN SINGH
R/O E-61, MANSAROVER GARDEN, DELHI-110015

6. SH. RAVINDER BHATIA
S/O SH. SATPAL BHATIA
R/O D-8/12, MODEL TOWN, DELHI-110009

7. DELHI DEVELOPMENT AUTHORITY (DDA)
THROUGH ITS VICE CHAIRMAN
VIKAS SADAN, INA, NEW DELHI-110023

8. SH. A.K. JAIN
S/O SH. C.L. JAIN
RIO 181, VAISHALI, PITAMPURA,
NEW DELHI - 110088
MOB. NO. 9811057984

....DEFENDANTS

*(Through: Mr. Rajesh Kumar Luthra, Advocate for D-2 & 3.
Mr. Rajesh Mishra, Ms. Pooja Jha, Mr. Sahil Sharma and Ms. Geeta Rani,
Advs. for D-5 & 6.
Ms. Prabhsahay Kaur, SC with Ms. Aditya Verma, Mr. Bir Inder Guram and
Mr. Shubham, Advs. for D-7.
Mr. Darpan Wadhwa, Sr. Adv. With Ms. Pritha Sukumar, Mr. Sulabh
Rewari, Mr. Amer Vaid and Ms. Saumya Sinha, Advs. for D-8)*

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Reserved on: 02.05.2025
Pronounced on: 02.07.2025

J U D G M E N T

I.A.22171/2022 and I.A.22176/2022

The instant applications have been filed on behalf of the defendant no.
8. I.A. 22171/2022 is an application filed under Order VII Rule 11 read with



Section 151 of the Code of Civil Procedure, 1908 (CPC) and I.A. 22176/2022 is an application under Order XII Rule 6 CPC read with Section 151 CPC.

2. Mr. Darpan Wadhwa, learned senior counsel for defendant no.8 contends that in the present case, the suit is liable to be dismissed *in limine* as the plaint does not disclose any cause of action and is barred by law in terms of Order XXIII Rule 3A of CPC.

3. He further contends that the suit is also barred as per the first part of Article 54 of the Limitation Act, 1963 which postulates that for specific performance of a contract, the period of limitation is three years from the date fixed for the performance, or, if no such date is fixed, from the date the plaintiff has notice that performance is refused. Under the first part of Article 54, once the date for performance of the contract has been fixed by the parties, the limitation begins to run from that date and specific performance of the contract could be within three years from that date unless the parties, by an agreement, extend the fixed time.

4. He points out that in the present case, as per the agreement, the last date of payment was 23.10.1999; therefore, the institution of the present suit in the year 2021 is *ex-facie* barred by limitation.

5. He has referred to the stand taken by defendant Nos. 2 and 3 in their Written Statement dated 16.07.2010 filed in CS(OS) 2310/2009 and has contended that even assuming the date of knowledge of refusal to be 16.07.2010, the suit is still barred by limitation. In support of his submission that the suit is barred by limitation, learned senior counsel has placed



reliance on the decisions in *A. Valliammai v. K.P. Murali*¹ and *Fatehji and Company v. L.M. Nagpal and others*².

6. The second prong of his submission rests on the bar prescribed under Order XXIII Rule 3A of CPC. He submits that the consent decree dated 03.02.2020 passed in CS(OS) 2310/2009 cannot be challenged in a separate suit as the plaintiff was a party to the said suit. He submits that Rule 3A of Order XXIII bars a suit to set aside a decree on the ground that the compromise on which the decree was passed was not lawful and the Court would be justified in rejecting the plaint under Order VII Rule 11 CPC on the said ground.

7. He contends that if the plaintiff has any grievance *qua* consent decree, he should have approached the same Court, as there is no remedy against the consent decree by way of a separate suit. He argued that while passing the consent decree, the Court had considered the objections of the plaintiff, therefore, at this belated stage, he cannot file a substantive suit to set aside the decree. He further submits that a consent decree cannot be challenged even by a person who was not a party to the compromise decree in light of the judgment of the Supreme Court in *Triloki Nath Singh v. Anirudh Singh*³.

8. With respect to his application under Order XII Rule 6 of CPC, he has placed reliance on the decision in *Karam Kapahi v. Lal Chand Public Charitable Trust*⁴.

9. *Per contra*, Mr. Rajesh Yadav, learned senior counsel appearing on

¹ 2023 SCC OnLine SC 1150.

² (2015) 8 SCC 390.

³ (2020) 6 SCC 629.

⁴ (2010) 4 SCC 753.



behalf of the plaintiff, controverts the submissions made on behalf of defendant no.8 and submits that the instant applications are misconceived and merit dismissal at the threshold.

10. On I.A. 22171/2022, learned senior counsel submits that Order XXIII Rule 3A of CPC is not applicable to the judgment and decree dated 03.02.2020 passed by this Court in CS(OS) 2310/2009, as the plaintiff was not a party to the said decree. Consequently, the application is liable to be dismissed. He further contends that in deciding an application under Order VII Rule 11 CPC, the contents of the plaint must be taken as gospel truth, and the defence set up by the defendants cannot be considered at this stage. On the issue of limitation, he argues that it is a mixed question of fact and law, which cannot be determined through an application under Order VII Rule 11 CPC.

11. Without prejudice to the aforesaid contention, he submits that the suit has been instituted within the prescribed limitation period, as the challenge to the judgment and decree dated 03.02.2020 has been filed within three years of its passing. Regarding the relief of specific performance of the agreement to sell, he contends that the claim is also within limitation since no communication was ever addressed to the plaintiff by defendant nos.2 and 3, or any other defendant, denying the execution of the agreement or cancelling it, and thus, the same is a continuing cause of action.

12. Learned counsel further submits that the application is not maintainable as it is a settled principle of law that a suit cannot be dismissed in part. He contends that prayers (c) to (f) are, in any case, independently maintainable, as the possession of the property is protected under Section 53A of the Transfer of Property Act, 1882. With respect to the compromise



decree, he argues that merely because a Court has found the decree to be lawful, such an observation cannot preclude a third party from challenging it. He further contends that the mere fact that the plaintiff was afforded a hearing at the time of passing the decree does not divest him of his right to challenge its validity.

13. Learned senior counsel for the plaintiff submits that the application being I.A. 22171/2022 under Order XII Rule 6 CPC is misconceived as the plaintiff has not made any unequivocal admission that would warrant the invocation of the said provision. He contends that defendant no. 8 has failed to establish that the suit is liable to be dismissed on the ground of any categorical admission by the plaintiff.

14. He further submits that the argument of the defendant that the plaintiff did not take legal action against defendants no. 2 and 3 to seek specific performance of the agreement dated 30.06.1999 is untenable. The plaintiff has consistently asserted his rights over the suit property, which he has been in possession of since the execution of the agreements dated 30.06.1999 and 20.01.2000.

15. He further contended that the plaintiff was not a party to the application seeking withdrawal of CS(OS) 2310/2009, which resulted in the consent decree dated 03.02.2020. Consequently, he submits that the plaintiff retains his right to challenge the said decree and seek specific performance of the agreement. The plaintiff has neither made any admission in the suit to this effect nor in the documents filed therein that could justify the dismissal of the suit under Order XII Rule 6 CPC.

16. With respect to the written statement filed by defendants no. 2 and 3 in CS(OS) 2310/2009, learned counsel submits that the plaintiff disputes and



denies the averments made therein. He denies that the plaintiff ever admitted to refraining from taking legal action to enforce the agreement dated 30.06.1999. He further submits that no communication was issued by defendants no. 2 and 3 or any other defendants cancelling the said agreement. The plaintiff had already paid 96% of the total sale consideration and was put in possession of the suit property in furtherance of the agreement, thereby entitling him to protection under Section 53A of the Transfer of Property Act, 1882.

17. It is also contended that the mere filing of a written statement by defendants no. 2 and 3 in a separate suit does not preclude the plaintiff from challenging the judgment and decree dated 03.02.2020 or from seeking specific performance of the agreement. The plaintiff was under no legal obligation to issue any written request for performance of the agreement, as he was unaware of its cancellation. He further denies the contention that he has failed to assert his rights over the suit property proactively.

18. Regarding the contention that prayers (a) and (b) of the suit are not maintainable and the suit should be dismissed in part, learned counsel submits that such an argument is legally untenable. He contends that it is a settled principle that a suit cannot be dismissed in part, and in any case, prayers (c) to (f) are independently maintainable, as the plaintiff's possession is protected under Section 53A of the Transfer of Property Act, 1882. The defendant's argument that these prayers are merely consequential to prayers (a) and (b) is unfounded. Accordingly, he prays for the dismissal of the instant application.

19. I have considered the submissions advanced by learned senior counsel for the parties and have perused the record.



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20. The facts of the case indicate that the present suit is one for declaration and specific performance of the Agreement to Sell dated 30.06.1999, executed by defendant nos. 1 to 6 in favour of the plaintiff. The suit also seeks permanent and mandatory injunctions in respect of the suit property. Additionally, the plaintiff has also sought, *inter alia*, relief for setting aside the judgment and decree dated 03.02.2020 as null and void.

21. The relief clause, as prayed for by the plaintiff, is as follows:-

“a) Pass a Decree of Declaration in favour of the Plaintiff and against the Defendants thereby declaring the Judgment and Decree dated 03.02.2020 passed in CS(OS) 2310/ 2009 titled "A.K. Jain Vs. Vipin Wadhwa & Ors as null and void nor binding upon the Plaintiff and not affecting the suit property;

b) Pass a Decree of Specific Performance in respect of the Agreement dated 30.06.2019 in favour of the Plaintiff and against Defendants No. 2 to 6 thereby directing the Defendants No. 1 to 6 to execute the sale deed in respect of the Suit property i.e property bearing No. A-1/15, Prashant Vihar, Delhi-85 admeasuring 387 sq. yards more specifically shown in site plan Annexed with the Plaint in favour of the Plaintiff;

c) Pass a Decree of Permanent Injunction in favour of the Plaintiff and against the Defendants, their agents, assignees, representatives etc., thereby restraining them from, in any manner, alienating, creating third party interest, in respect of Suit property i.e Property Bearing No. A-1/15, Prashant Vihar, Delhi 85 admeasuring 387 sq. yards more specifically shown in site plan Annexed with the Plaint;

d) Pass a Decree of Permanent Injunction in favour of the Plaintiff and against the Defendants their agents, assignees, representatives etc., thereby restraining them from, in any manner interfering with the possession of the Plaintiff or dispossessing the Plaintiff from the Suit Property i.e Property bearing No. A-1/15, Prashant Vihar, Delhi-85 more specifically shown in Site Plan Annexed with the Plaint;

e) Pass a Decree of Permanent Injunction in favour of the Plaintiff and against the Defendants their agents, assignees, representatives etc., thereby restraining them from disconnecting electricity and water connection of the Suit property i.e Property bearing No. A- 1/15, Prashant Vihar, Delhi-85 more specifically shown in Site Plan Annexed with the Plaint;

f) Pass a Decree of Mandatory Injunction in favour of the Plaintiff and



against the Defendants, thereby directing Defendant No. 7 to transfer the Title Documents of the Suit Property in the name of the Plaintiff, in their record for all purposes;”

22. The facts, as borne out in the plaint, reveal that on 30.06.1999, defendant nos. 1 to 6 executed an Agreement to Sell in favour of the plaintiff with respect to the suit property. The total sale consideration was agreed to be Rs.2,21,00,000/- (Rupees Two Crores Twenty-One Lakhs). Out of total consideration, the plaintiff claims to have paid Rs.2,13,46,600/- to defendant nos. 2 to 6, leaving only a balance of Rs.7,53,400/-, which was to be paid at the time of the execution of the sale deed.

23. Subsequently, on 11.01.2000, another agreement was executed concerning the same property between A.K. Jain (defendant no. 8), the plaintiff, for a consideration of Rs.2,73,00,000/-. Under this agreement, a sum of Rs.55,00,000/- was received by the plaintiff and Rs 10,00,000/- was received by defendant nos. 2 and 3. However, as the Agreement to Sell dated 11.01.2000 was allegedly not performed by the plaintiff, along with defendant nos. 2, 3, and 7, the defendant no. 8 instituted CS(OS) 2310/2009.

24. From a perusal of the plaint, it is seen that the plaintiff has alleged that defendant no. 8, in collusion with defendant nos. 2 to 6, conspired to resell the suit property and defraud the plaintiff. It is claimed that despite the plaintiff having paid nearly 96% of the total sale consideration to defendant nos. 2 to 5 under the Agreement to Sell dated 30.06.1999 and being in possession of the entire suit property, the defendants engaged in a fraudulent transaction to deprive him of his rights. It is further alleged that, in furtherance of this collusion, an application under Order XXIII Rules 1, 3, and 3A CPC, bearing I.A. No. 1478/2020, was filed in CS(OS) 2310/2009 on the basis of an alleged compromise between defendant no. 8 and



defendant nos. 2 and 3. By order dated 03.02.2020, the Court accepted the compromise between the parties in the said application, which the plaintiff seeks to assail in the present suit.

25. It is further pleaded that, following the order dated 03.02.2020, the plaintiff made several attempts to amicably resolve the dispute with defendant nos. 2 to 6, but the same remained unsuccessful. The plaintiff states that he continues to be willing to perform his obligations under the Agreement to Sell dated 30.06.1999 and, accordingly, seeks a decree in his favour

26. Before proceeding to decide the application under Order XII Rule 6 CPC, the Court shall first analyse the contentions raised in the Order VII Rule 11 CPC application.

27. The entire rationale of Order VII Rule 11 CPC application rests on two fundamental premises *firstly*, order dated 03.02.2020 being a consent decree ought to have been challenged in the same Court as per the bar prescribed under Order XXIII Rule 3A CPC and *secondly*, the suit is barred by the limitation.

28. In order to rule on the first ground of Order VII Rule 11 CPC application, it is pertinent to peruse the consent decree dated 03.02.2020.

The relevant extracts of the said decree read as under:-

"15. The counsel for the defendant No.1 has drawn attention to paragraph 11 of the reply on merits in the amended written statement on behalf of the defendant no.1 dated 6th April, 2013 where the defendant No.1 has denied that the possession of the entire first floor along with basement of the property was handed over by the defendant No.1 to the plaintiff and has pleaded that the entire first floor with basement was in possession of the defendant No.1 and the plaintiff had nothing to do with the possession.

16. The counsel for the defendant No.1 has next drawn attention to affidavit by way of examination-in-chief Ex.D1W1/A dated 21st November, 2017 of the



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defendant No.1, where the defendant No.1 has deposed as under:

“12. I state that the possession of the entire first floor and the basement is with me and the plaintiff has nothing to do with the possession. I state that the defendant No.1 has put his guards in the property. I state that when the plaintiff is not in the possession of the basement and the first floor, the question of obstructing the entry of the plaintiff by me does not arise. I state that the plaintiff in connivance with the property dealers fraudulently got the possession letter signed at the time of execution of the agreement only as a security though actual vacant physical possession of the entire property continued to be with me.”

and has contended that the defendant No.1 was not cross-examined on the aspect.

17. In the compromise application between the plaintiff and defendants No.2&3, it is inter alia recorded in paragraphs 8(iv), 9(vi), (vii) & 9(viii) as under:

“8. iv) the Defendant Nos.2 and 3 had also agreed and admitted to hand over vacant possession of portion of the property in their occupation i.e. Second Floor & Terrace to the Plaintiff.

9. vi) The Defendants No.2 & 3 shall forthwith handover the vacant physical peaceful possession of entire Second Floor and entire Terrace thereupon of the suit property to the Plaintiff;

vii) Simultaneously to taking over of possession of Second Floor and terrace, the Plaintiff shall pay a sum of Rs.50,00,000/- to the Defendants No.2 & 3 in equal proportion in full and final settlement;

viii) This is to record that the possession of entire Basement and entire First Floor of the suit property is already with the Plaintiff. The Ground Floor is presently in an unauthorized occupation. The plaintiff, hereinafter, shall be entitled to recover possession of the Ground Floor from the occupant either through negotiations or through Court at his own costs.”

18. The counsel for the defendant No.1 has also contended that the defendant No.1 has a substantial right to be decided in this suit. It is also argued that the defendant No.1 was not given any opportunity to file pleadings in response to the pleadings of defendants No.2&3. However, on enquiry, whether the defendant No.1 at any time sought an opportunity therefor, the answer is in the negative.

19. It is also contended by counsel for defendant no.1, that it was the plea of the defendants No.2&3 that they had no privity with the plaintiff.

20. The counsel for the plaintiff states that as per the written documents and in fact, the possession of the basement and first floor is with the plaintiff and the counsel for the defendants No.2&3 states that possession of the second floor and terrace above is with the defendants No.2&3 and both state that they want



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the suit, insofar as by the plaintiff against the defendants No.2&3, to be disposed of in terms of the compromise.

21. I have perused the compromise arrived at between the plaintiff and the defendants No.2&3 and find the same to be lawful and do not deem any need for an opportunity to file reply to be given to the defendant No.1, inasmuch as the rights of the defendant No.1, even if any for adjudication in this suit, were at the instance of the plaintiff and not at the instance of the defendant No.1 and the defendant No.1 cannot come in the way of the plaintiff withdrawing the suit insofar as against the defendant No.1 and if the defendant No.1 has any entitlement in law to agitate any right, would have to institute independent action therefor and cannot stop this suit from being withdrawn qua him. All that needs to be observed is that nothing contained in the compromise arrived at between the plaintiff and the defendants No.2&3 shall bind or affect the defendants No.1&4.

22. IA No.1478/2020 is thus allowed.

23. A consent decree is passed, in favour of the plaintiff and against the defendants No.2&3, on the terms contained in IA No.1478/2020, which shall form part of the decree sheet, leaving the parties to bear their own costs.

24. The suit, insofar as against the defendants No.1&4, is dismissed as withdrawn, leaving the parties to bear their own costs.

Decree sheet be drawn up."

29. On the first blush, it appears that the plaintiff was a party to the suit in the CS(OS) 2310/2009 as defendant no. 1 therein. However, till the point the consent decree was passed, the said suit was withdrawn *qua* the plaintiff. The Court noted that as per the compromise arrived at between the defendant no. 8 and the defendants No.2 and 3, there was no need for an opportunity to the plaintiff to file a reply. The rights of the plaintiff, even if any, were at the instance of the defendant No. 8. The Court also observed that nothing contained in the compromise arrived at between the defendant No. 8 and the defendants No.2 and 3 shall bind or affect the plaintiff and defendant No. 7 i.e., DDA.

30. Thus, a bare perusal of the consent decree would indicate that *firstly*, the plaintiff herein was not a party to the compromise decree and *secondly*,



the Court gave him the liberty to agitate his rights in accordance with law by way of an independent action.

31. Therefore, the question that now arises before this Court is whether a stranger to the compromise decree is susceptible to the bar prescribed under Order XXIII Rule 3A of the CPC so as to deprive such third party from instituting an independent suit for the vindication of his rights.

32. We may first consider the nature and scope of the bar contemplated under Order XXIII Rule 3A of CPC, before proceeding to answer whether the bar extends to the parties to the compromise or strangers too. In this regard, reference can be made to the decision of the Supreme Court in the case of **R. Janakiammal v. S.K. Kumarasamy**⁵, wherein the Court held that Rule 3A of Order XXIII bars the suit to set aside the decree on the ground that the compromise on which the decree was passed was not lawful. Expanding upon what could constitute an unlawful compromise, the Court observed and held that an agreement or compromise which is clearly void or voidable shall not be deemed to be lawful and the bar under Rule 3A shall be attracted if the compromise on the basis of which the decree was passed was void or voidable. Furthermore, it was held that a party to a consent decree based on a compromise, intending to challenge the said consent 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. The relevant extracts of the said decision read as under:-

“53. Order 23 Rule 3 as well as Rule 3-A came for consideration before this Court in large number of cases and we need to refer to a few of them to find out the ratio of judgments of this Court in context of Rule 3 and Rule 3-A.

⁵ (2021) 9 SCC 114.



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In Banwari Lal v. Chando Devi [Banwari Lal v. Chando Devi, (1993) 1 SCC 581] , this Court considered Rule 3 as well as Rule 3-A of the Order 23. This Court held that the object of the Amendment Act, 1976 is to compel the party challenging the compromise to question the court which has recorded the compromise. In paras 6 and 7, the following was laid down : (SCC pp. 584-85)

‘6. The experience of the courts has been that on many occasions parties having filed petitions of compromise on basis of which decrees are prepared, later for one reason or other challenge the validity of such compromise. For setting aside such decrees suits used to be filed which dragged on for years including appeals to different courts. Keeping in view the predicament of the courts and the public, several amendments have been introduced in Order 23 of the Code which contain provisions relating to withdrawal and adjustment of suit by the Civil Procedure Code (Amendment) Act, 1976. Rule 1 Order 23 of the Code prescribes that at any time after the institution of the suit, the plaintiff may abandon his suit or abandon a part of his claim. Rule 1(3) provides that where the Court is satisfied : (a) that a suit must fail by reason of some formal defect, or (b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw such suit with liberty to institute a fresh suit. In view of Rule 1(4) if the plaintiff abandons his suit or withdraws such suit without permission referred to above, he shall be precluded from instituting any such suit in respect of such subject-matter. Rule 3 Order 23 which contained the procedure regarding compromise of the suit was also amended to curtail vexatious and tiring litigation while challenging a compromise decree. Not only in Rule 3 some special requirements were introduced before a compromise is recorded by the court including that the lawful agreement or a compromise must be in writing and signed by the parties, a proviso with an Explanation was also added which is as follows:

“Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation.—An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this Rule.”

7. By adding the proviso along with an Explanation the purpose and the object of the amending Act appears to be to compel the party



challenging the compromise to question the same before the court which had recorded the compromise in question. That court was enjoined to decide the controversy whether the parties have arrived at an adjustment in a lawful manner. The Explanation made it clear that an agreement or a compromise which is void or voidable under the Contract Act shall not be deemed to be lawful within the meaning of the said Rule. Having introduced the proviso along with the Explanation in Rule 3 in order to avoid multiplicity of suit and prolonged litigation, a specific bar was prescribed by Rule 3-A in respect of institution of a separate suit for setting aside a decree on the basis of a compromise saying:

“3-A. Bar to suit.—No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.” ’

54. The next judgment to be noted is *Pushpa Devi Bhagat v. Rajinder Singh* [*Pushpa Devi Bhagat v. Rajinder Singh*, (2006) 5 SCC 566] , R.V. Raveendran, J. speaking for the Court noted the provisions of Order 23 Rule 3 and Rule 3-A and recorded his conclusions in para 17 in the following words : (SCC p. 576)

‘17. The position that emerges from the amended provisions of Order 23 can be summed up thus:

(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



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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.'

55. The next judgment is *R. Rajanna v. S.R. Venkataswamy* [*R. Rajanna v. S.R. Venkataswamy*, (2014) 15 SCC 471 : (2015) 4 SCC (Civ) 238] in which the provisions of Order 23 Rule 3 and Rule 3-A were again considered. After extracting the aforesaid provisions, the following was held by this Court in para 11 : (SCC p. 474)

'11. It is manifest from a plain reading of the above that in terms of the proviso to Order 23 Rule 3 where one party alleges and the other denies adjustment or satisfaction of any suit by a lawful agreement or compromise in writing and signed by the parties, the Court before whom such question is raised, shall decide the same. What is important is that in terms of Explanation to Order 23 Rule 3, the agreement or compromise shall not be deemed to be lawful within the meaning of the said Rule if the same is void or voidable under the Contract Act, 1872. It follows that in every case where the question arises whether or not there has been a lawful agreement or compromise in writing and signed by the parties, the question whether the agreement or compromise is lawful has to be determined by the court concerned. What is lawful will in turn depend upon whether the allegations suggest any infirmity in the compromise and the decree that would make the same void or voidable under the Contract Act. More importantly, Order 23 Rule 3-A clearly bars a suit to set aside a decree on the ground that the compromise on which the decree is based was not lawful. This implies that no sooner a question relating to lawfulness of the agreement or compromise is raised before the court that passed the decree on the basis of any such agreement or compromise, it is that court and that court alone who can examine and determine that question. The court cannot direct the parties to file a separate suit on the subject for no such suit will lie in view of the provisions of Order 23 Rule 3-ACPC. That is precisely what has happened in the case at hand. When the appellant filed OS No. 5326 of 2005 to challenge the validity of the compromise decree, the court before whom the suit came up rejected the plaint under Order 7 Rule 11CPC on the application made by the respondents holding that such



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a suit was barred by the provisions of Order 23 Rule 3-ACPC. Having thus got the plaint rejected, the defendants (the respondents herein) could hardly be heard to argue that the plaintiff (the appellant herein) ought to pursue his remedy against the compromise decree in pursuance of OS No. 5326 of 2005 and if the plaint in the suit has been rejected to pursue his remedy against such rejection before a higher court.'

56. The judgments of Pushpa Devi [Pushpa Devi Bhagat v. Rajinder Singh, (2006) 5 SCC 566] as well as Banwari Lal [Banwari Lal v. Chando Devi, (1993) 1 SCC 581] were referred to and relied on by this Court. This Court held that no sooner a question relating to lawfulness of the agreement or compromise is raised before the court that passed the decree on the basis of any such agreement or compromise, it is that court and that court alone which can examine and determine that question.

57. In subsequent judgment, Triloki Nath Singh v. Anirudh Singh [Triloki Nath Singh v. Anirudh Singh, (2020) 6 SCC 629 : (2020) 3 SCC (Civ) 732], this Court again referring to earlier judgments reiterated the same proposition i.e. 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 separate suit is not maintainable. In paras 17 and 18, the following has been laid down : (SCC p. 638)

'17. By introducing the amendment to the Civil Procedure Code (Amendment) Act, 1976 w.e.f. 1-2-1977, the legislature has brought into force Order 23 Rule 3-A, which creates bar to institute the suit to set aside a decree on the ground that the compromise on which decree is based was not lawful. The purpose of effecting a compromise between the parties is to put an end to the various disputes pending before the court of competent jurisdiction once and for all.

18. Finality of decisions is an underlying principle of all adjudicating forums. Thus, creation of further litigation should never be the basis of a compromise between the parties. Rule 3-A of the Order 23CPC put a specific bar 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. The scheme of Order 23 Rule 3CPC is to avoid multiplicity of litigation and permit parties to amicably come to a settlement which is lawful, is in writing and a voluntary act on the part of the parties. The court can be instrumental in having an agreed compromise effected and finality attached to the same. The court should never be party to imposition of a compromise upon an unwilling party, still open to be questioned on an application under the proviso to Order 23 Rule 3CPC before the court.' "

33. This position has been reiterated by the Supreme Court in the case of



Sree Surya Developers & Promoters v. N. Sailesh Prasad⁶ and Navratan Lal Sharma v. Radha Mohan Sharma & Ors.⁷

34. Now coming to the bar prescribed under Order XXIII Rule 3A CPC, which reads as under:-

“3-A. Bar to suit.—No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.”’

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

⁶ (2022) 5 SCC 736.

⁷ 2024 INSC 970.



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.

38. This position of law has been reiterated by the Supreme Court in the case **Mukund Bhavan Trust v. Shrimant Chhatrapati Udayan Raje**⁸, 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.

39. The underlying essence in this legal position is quite understandable,

⁸ 2024 SCC OnLine SC 3844.



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.

40. Therefore, the prayer (a) to the suit, which essentially relates to seeking a declaration that the consent decree dated 03.02.2020 is null and void is barred by law under Order XXIII Rule 3A of CPC.

41. Now, the question which arises for the Court's consideration is whether the suit for specific performance is barred by the limitation.

42. In a suit for specific performance of the Agreement, the limitation is prescribed under Article 54 of the Limitation Act, 1963, which reads as under:-

54. For specific performance of a contract	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
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43. The essential aspect that needs to be considered is whether the suit for specific performance is within the limitation prescribed under Article 54 of



the Limitation Act, 1963. The limitation period for such a suit is three years, which begins from either:

- a. The date fixed for performance in the agreement; or
- b. If no such date is fixed, from the date when the plaintiff has noticed that performance has been refused.

44. The key question for determination is whether any action or conduct by the defendant or the plaintiff extended or revived the limitation period, thereby keeping the right of the plaintiff to seek specific performance alive. Mere silence or inaction on the part of the defendant does not extend the limitation period unless there is a clear acknowledgement of liability within the meaning of Section 18 of the Limitation Act, 1963.

45. It is settled law that as per Section 9 of the Limitation Act, 1963, once the period of limitation starts running, it continues to run irrespective of any subsequent disability or inability to institute a suit or make an application.

46. On the interpretation of Article 54, the Supreme Court in ***Pachanan Dhara v. Monmatha Nath Maity***⁹, has held that for determining applicability of the first or the second part, the Court will have to see whether any time was fixed for performance of the agreement to sell and if so fixed, whether the suit was filed beyond the prescribed period, unless a case for extension of time or performance was pleaded or established. However, when no time is fixed for performance, the Court will have to determine the date on which the plaintiff had notice of refusal on the part of the defendant to perform the contract.

47. Furthermore, in ***Fatehji & Co. v. L.M. Nagpal***¹⁰, the Supreme Court

⁹ (2006) 5 SCC 340.

¹⁰ (2015) 8 SCC 390.



clarified that a plaintiff seeking specific performance must act with due diligence and cannot allow limitation to lapse while relying on alleged assurances or informal negotiations unless those assurances are unequivocal and legally sustainable. The relevant portion of the said decision reads as under:-

“5. We considered the rival submissions. The specific performance is claimed of a written agreement of sale dated 2-7-1973 and as per the terms the performance of the contract was fixed till 2-12-1973. The defendants by subsequent letters dated 7-4-1975, 1-10-1975 and 1-8-1976 sought for extension of time to enable them to obtain permission of the lessor and the last extension of six months expired on 1-2-1977. In view of Order 7 Rules 11(a) and 11(d) CPC the Court has to satisfy that the plaint discloses a cause of action and does not appear to be barred by any law. Article 54 of the Limitation Act stipulates that the limitation for filing the suit for specific performance of the contract is three years from the date fixed for the performance or if no such date is fixed, when the plaintiff has notice that performance is refused.

6. The fact that the plaintiffs were put in possession of the property agreed to be sold on the date of agreement itself would not make any difference with regard to the limitation of filing the suit for specific performance. In fact both the courts below have rightly held that Article 54 of the Limitation Act does not make any difference between a case where possession of the property has been delivered in part-performance of the agreement or otherwise. In the same way the courts below have also concurrently held even if any permission is to be obtained prior to the performance/completion of the contract, the mere fact that the defendants have not obtained the said permission would not lead to inference that no cause of action for filing the suit for specific performance would arise. Further it is also not the case for postponing the performance to a future date without fixing any further date for performance. The last extension for a period of six months w.e.f. 1-8-1976 sought for by the defendants expired on 1-2-1977. The present suit seeking for specific performance was filed by the plaintiffs on 29-4-1994, much beyond the period of three years.

7. Yet another circumstance was pointed out to prove the laches on the part of the plaintiffs. The sons of the second defendant filed a suit in July 1985 against Defendants 2, 3 and the plaintiffs seeking for declaration that the present suit property is their ancestral joint family property and the sale made by the defendants in favour of the plaintiffs be declared as null and void. The plaintiffs herein contested the said suit and it came to be dismissed on 5-4-1989. The suit for specific performance was not filed within three years from the said date also.

8. The plaintiffs averred in the plaint that the last and final cause of action accrued and arose to them after August 1991 when the defendants succeeded



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in hiding themselves and started avoiding the plaintiffs and the cause of action being recurring and continuous one, they filed the suit on 29-4-1994. As already seen the original cause of action became available to the plaintiffs on 2-12-1973, the date fixed for the performance of the contract and thereafter the same stood extended till 1-2-1977 as requested by the defendants. Though the plaintiffs claimed that oral extension of time was given, no particulars as to when and how long, were not mentioned in the plaint. On the other hand even after knowing the dishonest intention of the sons of the second defendant with regard to the suit property in the year 1985, the plaintiffs did not file the suit immediately. The suit having been filed in the year 1994 is barred by limitation under Article 54 of the Limitation Act."

48. In the present case, if the agreement fixed a date for performance, the plaintiff was required to initiate legal proceedings within three years from that date. If no date was fixed, the limitation would begin from the point at which the plaintiff became aware of the refusal of performance by the defendant.

49. Thus, the onus lies upon the plaintiff to demonstrate, through cogent evidence, that the limitation period has been effectively kept alive by an acknowledgement under Section 18 of the Limitation Act, 1963 or any legally recognised extension. In the absence of such an extension, the suit, if filed beyond three years, would be time-barred.

50. In the present case, the entire controversy revolves around the Agreement to Sell dated 30.06.1999, which reads as under:-

"AGREEMENT TO SELL

This agreement to sell is made at Delhi, on this 30th day of June 1999 between:-

Prashant Enterprises a partnership firm having its office at A1/15, Prashant Vihar, Rohini, Delhi-110085 (which expression unless repugnant to the context or meaning thereof mean and include the partners for the time being of the said firm, their survivor or survivors and their legal heirs, legal representatives, successors, executors, nominees and assignees and administrators of last survivor) through its present partners namely:



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1. S. Jasbeer Singh S/o Late S. Mahinder Singh r/o 177, Anand Vihar, Pitampura, Delhi-110034.
2. S. Harjeet Singh S/o Late S. Mahinder Singh r/o 177, Anand Vihar, Pitampura, Delhi-110034
3. S. Balbir Singh S/o S. Gurbachan Singh r/o E-61, Mansarover Garden, New Delhi-110015.
4. S. Inder Pal Singh S/o S. Gurbachan Singh r/o E-61, Mansarover Garden, New Delhi-110015.
5. Sh. Ravinder Bhatia s/o Sh. Satpal Bhatia r/o D-8/12, Model Town, Delhi-110009.

Hereinafter collectively called "*THE FIRST PARTY*";

AND

Sh. Vipin Wadhwa s/o H.C.Wadhwa r/o 8, Kapil Vihar, Pitampura, Delhi-110034 hereby which expression shall mean and include his legal heirs, legal representatives, successors, administrators, executors, nominee and assignees hereinafter called as "*THE SECOND PART*".

WHEREAS the first party is the absolute, sole and complete owner of the built up property A1/15, Prashant vihar, Rohini, Delhi-110085 measuring about 389 sq. yards situated at Prashant Vihar, Rohini, Delhi within the limits of Delhi Municipal Corporation in the Revenue Estate of DELHI. The property consists build up basement, ground floor, first floor and second floor.

AND WHEREAS Delhi Development Authority has allotted the plot A1/15, Prashant vihar, Rohini, Delhi-110085 through its lease deed in favour of S. Jasbeer Singh s/o late S. Mahinder Singh and S. Harjeet Singh s/o late S. Mahinder Singh the partners 1 & 2 of the first party mentioned above.

AND WHEREAS S. Jasbeer Singh S/o Late S. Mahinder Singh and S. Harjeet Singh S/o Late S. Mahinder Singh entered into a partnership to build and run a banquet hall and restaurant under the name & style of "24 CARATS" Wherein the name of the firm was "PRASHANT ENTERPRISES" and both S. Jasbeer Singh S/o Late S. Mahinder Singh and S. Harjeet Singh s/o late S. Mahinder Singh agreed to transfer the said plot of A1/15, Prashant vihar, Rohini, Delhi-110085 as the share of their capital in the firm.

AND WHEREAS the partnership firm "PRASHANT ENTERPRISES" had undergone a change in the year 1994 by the retirement of one of the partner and consequent admission of two new partners hereby the firm has presently the above mentioned five partners.



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AND WHEREAS as the first party has agreed to sell the said property and the second party have agreed to purchase the same for a total sum of Rs 2,21,00,000/- (Rupees two crore twenty one lacs only)

NOW THIS AGREEMENT TO SELL WITNESSES AS

UNDER

1) That in pursuance of the said agreement and in consideration of Rs. 2,21,00,000/- (Rupees Two Crore Twenty One Lacs only) which sum will be received/has been received by first party from the second party in the following manners:-

i. Rs 10,00,000/- (Rupees Ten Lacs only) received as token earnest money on the 23rd day of June, 1999.

ii. Rs 30,00,000/- (Rupees Thirty Lacs only) received on the day of June, 1999.

iii. Rs 3,50,000/- (Rupees Three Lac Fifty Thousand only) to be received on demand by the first party but before the 23rd day of July, 1999.

iv. Rs 31,50,000/- (Rupees Thirty One Lacs Fifty Thousand only) to be received on or before the 23rd day of July, 1999.

v. The balancing to the paid at the time of registration of transfer documents but not latter than the 23rd day of October, 1999.

2) That the first party do hereby agree to sell, convey, transfer and assign all the rights, title and interest in the aforesaid property alongwith the land rights, super-structure built therein fixture fittings, electric fittings, and other assets etc. unto the second party absolutely and forever.

3) That the first party will hand over the physical vacant possession of the said property to the second party on the date of the receipt of the complete consideration as mentioned in point no. "1" above.

4) That the first party and the second party have mutually agree the a sum of Rs 3,50,000/- maximum will be paid to Punjab and Sind bank which the first party owes to the set down. The first party has assured to the second party that except the claim of Rs 3,50,000/- in the name of the first party in the account of Punjab and Sind Bank, the property hereby agreed to be sold is free from all kinds of encumbrances, such as sale, gift, mortgage, charge, lien.



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5) That the first party assured the second party that they will get the original lease deed release from Punjab and Sind Bank on the date of receipt of Rs 75.00 lacs as mentioned in point no. "iv" of the point no. "1" above.

6) That the first party shall bring NOC from the Punjab & Sind Bank for executing a valid title deed between the parties a view to convey an absolute title free from all charges and encumbrances.

7) That all the statutory dues like electricity bill payable to DVB, House Tax, Water Bill, ground rents payable to DDA etc. payable in respect of the said property shall be paid by the first party upto the date of execution of the transfer of the said property and thereafter the same shall be paid by the second party.

8) That the first party will hand over the original documents of the lease deed in respect of the said property to the second party on the date of receipt of Rs 75.00 lacs as mentioned in point no. "iv" of the point no. "1" above and the same will be sealed and kept in the possession of the second party.

9) That the second party shall pay the stamp duty, unearned increase of DDA transfer duty and registration fee at the time of registration of the sale-deed.

10) That the first party will apply and obtain income tax clearance certificate accordingly as applicable.

11) That the second party will pay all the sums to the following three partners of the first party jointly towards the consideration of the sale proceeds of the said property:-

i. S. Jasbeer Singh S/o Late S. Mahinder Singh.

ii. S. Inder Pal Singh s/o S. Gurbachan Singh.

iii. Sh. Ravinder Bhatia s/o Sh. Satpal Bhatia.

12) That the first party shall give a list of the assets lying in the building of the said property duly signed by the three partners mentioned in point no. "11" above alongwith this agreement.

13) That the first party shall pay all the liabilities whether secured or unsecured of the firm except the liabilities if any, as may be agreed by both the parties mutually through any supplementary agreement. Further the second party will not be liable to pay any such liabilities and the first party shall keep the second party in indemnify for all the losses and damages for the non-payment of such liabilities or otherwise agreed upon mutually by both the parties.



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In witness whereof the first and second party have executed this agreement to sell at the place, day, month and year as first above written in the presence of the following witnesses.

WITNESSES:-

*-sd-
(GURBHACHAN SINGH)*

*Partner (1) Jasbeer Singh
Partner (2) Harjeet Singh
Partner (3) Balbir Singh
Partner (4) Inderpal Singh
Partner (5) Ravinder Bhatia
FIRST PARTY*

*Vipin Wadhwa
SECOND PARTY"*

51. As per the said Agreement, what is discernible is that the total consideration as envisaged in Clause 1 amounts to Rs 2,21,00,000/-. The said Clause further delineates the schedule of payment and mandates that the balance amount needs to be paid at the time of registration of documents but not later than 23.10.1999. Furthermore, Clause 3 of the Agreement states that the first party therein shall hand over the physical vacant possession to the second party therein on the date of receipt of the complete consideration as mentioned in Clause 1.

52. Thus, though the said agreement does not provide for any specific date of performance of the Agreement, however, a holistic reading of the same would indicate that it fixes the threshold for handing over the possession of the property by 23.10.1999 i.e., the time fixed for the last instalment of the consideration and quite evidently, the handing over of possession has been linked with the payment of balance consideration which is linked with the time of registration, as per Clause 3.

53. In view of the aforesaid, the limitation would start from 23.10.1999 and the plaintiff ought to have filed the suit for specific performance within



three years from 1999 i.e., 2002.

54. Even assuming that the plaintiff genuinely believed that the defendants would eventually obey the terms and conditions of the Agreement, Article 54 would still have application in the present case. It is the plaintiff's own case that he got to know about the termination of the Agreement to Sell when the defendants filed their written Statement dated 16.07.2010 in CS(OS) 2310/2009. Even assuming that to be true and considering the date of 16.07.2010 as the date of knowledge of refusal, which is undisputed by the plaintiff, still the three-year limitation would have expired by 2013. Thus, the suit is barred by limitation on that count as well.

55. The plaintiff's contention that the consent decree dated 03.02.2020 revives the original cause of action is misconceived and legally untenable. It is a settled principle of law that a consent decree is, in essence, a contract between the parties, endorsed and formalised by the imprimatur of the Court. The enforceability of such a decree is contingent upon the legality and validity of the underlying compromise or agreement upon which it is founded. Consequently, any challenge to the same must be pursued before the very Court that recorded the compromise.

56. However, the mere existence or execution of a consent decree cannot operate to resurrect a cause of action that had long since become extinct by efflux of time. In the present case, the alleged cause of action emanated from the Agreement to Sell dated 30.06.1999, and, even assuming its enforceability, the limitation period for instituting a suit thereon expired on 23.10.2002, three years from the date of the alleged breach, i.e., 23.10.1999.

57. Once the statutory period of limitation has lapsed, the cause of action



is extinguished in the eyes of the law. Neither the filing of a suit by defendant No. 8 in CS(OS) 2310/2009, nor the judgment and decree rendered therein, has the legal efficacy to breathe life into a claim that had already become time-barred. The proceedings in CS(OS) 2310/2009 may, at best, give rise to a fresh and distinct cause of action namely, for seeking the setting aside of the said judgment and decree but they cannot resuscitate the original claim based on the 1999 agreement, which had already perished due to limitation. At this stage, it would also be apposite to note that even the principle of acknowledgement of debt, which essentially extends the limitation period, gives fresh life to it and prevents it from expiring, ceases to apply once the prescribed period has already expired. It applies only during the continuation of the prescribed period and not afterwards. Even otherwise, the consent decree is in no way an acknowledgement of debt by the defendants.

58. One of the contentions raised by the plaintiff was that the agreement dated 11.01.2000 was in the nature of an assignment of the agreement dated 30.06.1999. On the force of the said contention, it is contended by the plaintiff that the performance of the agreement dated 11.01.2000 is not possible without the first agreement dated 30.06.1999.

59. Even assuming the said contention to be true, it still does not come to his rescue because the assignment of rights and obligations to a third party leads to novation of the contract. Reference can be made to the decision of the Constitution Bench of the Supreme Court in the case of ***Khardah Company Ltd v. Raymon & Co (India) Private Ltd.***¹¹ which held as under:-

¹¹ AIR 1962 SC 1810.



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“...An assignment of a contract might result by transfer either of the rights or of the obligations thereunder. But there is a well-recognised distinction between these two classes of assignments. As a rule obligations under a contract cannot be assigned except with the consent of the promisee, and when such consent is given, it is really a novation resulting in substitution of liabilities. On the other hand, rights under a contract are assignable unless the contract is personal in its nature or the rights are incapable of assignment either under the law or under an agreement between the parties.”

60. In the present case, since, it's the plaintiff's own submission that out of the payment of Rs. 65,00,000/-, Rs. 10,00,000/- was paid to defendant No. 2 and 3 by the defendant No. 8. Moreover, the agreement dated 11.01.2000 would clearly indicate that it imposes obligations on defendant No. 2 and 3 also. Thus, even assuming the contention that the agreement dated 11.01.2000 was in the nature of an assignment, it would amount to novation of the contract and therefore, enforceability of the agreement dated 30.06.1999 shall not be contingent on the agreement dated 11.01.2000, as the latter would operate as a standalone contract.

61. Moreover, the question of possession, whether with the plaintiff or with defendant no. 8, is not germane to the adjudication of the present suit, which is confined to the reliefs of declaration and specific performance of the agreement to sell. The nature of reliefs sought neither encompasses a determination of the right of possession, nor does it invoke the Court's jurisdiction to order eviction or recovery of possession.

62. Furthermore, the issue as to whether the possession of any party is lawful or unauthorized would require independent adjudication based on distinct pleadings, evidence, and legal considerations, none of which fall within the present scope of the proceedings. So far as the question of eviction of the plaintiff is concerned, there is nothing placed on record to contend that the defendant has started the proceeding of eviction and even if



the eviction proceeding has started, the plaintiff is well within his rights to contest the same in accordance with law.

63. Similarly, the contention regarding any excess amount allegedly received by defendants no.2 and 3 may give rise to a separate cause of action in the nature of recovery of money or unjust enrichment. However, such relief cannot be granted in the present suit in the absence of a specific prayer to that effect and more importantly, in the absence of a foundational pleading supporting a monetary claim. Thus, the said claim, if any, must be agitated before an appropriate forum through properly instituted proceedings.

64. In view of the aforesaid, since the plaintiff cannot challenge the consent decree in a separate suit in view of the legal bar under Order XXIII Rule 3A of CPC and the suit is barred by limitation as per Article 54 of the Limitation Act, 1963, the present plaint is liable to be rejected under Order VII Rule 11 of CPC.

65. Since the suit itself is barred by limitation on the basis of the pleadings in the plaint, therefore, the Court restrains from rendering any finding on the application under Order XII Rule 6 of CPC as the same is not necessitated in light of the above determination.

66. Accordingly, the plaint stands rejected.

67. The suit stands disposed of along with all pending application(s), if any.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

JULY 02, 2025
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