

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 13175/2025
CNR: RJHC020706452025 | URN: CW / 29715U / 2025

Kusum Sharma W/o Lt. Shri Dinesh Mishra, R/o 362, Kateva Nagar, New Sanganer Road, Sodala, Jaipur (Raj.)
-----Petitioner

Versus

- 1

Sushila Maharshi W/o Shri Ravikant Maharshi D/o Lt. Shri Daulal Mishra, Aged About 72 Years, R/o 1171, Barkat Nagar, Tonk Phatak, Jaipur Rajasthan.
- 2

Shyam Manohar Lal Mishra S/o Lt. Shri Daulal Mishra, Aged About 74 Years, R/o 62, Jeevan Jyoti Nagar, Kishangarh, Ajmer, Rajasthan.
- 3

Krishna Mishra W/o Lt. Shri Vaid Mishra, Aged About 57 Years, R/o K-22, Gandhi Nagar, Naka Madar, Ajmer, Rajasthan.
- 4

Abhishek Mishra S/o Lt. Shri Vaid Mishra, Aged About 32 Years, R/o K-22, Gandhi Nagar, Naka Madar, Ajmer, Rajasthan.
- 5

Ananya Mishra S/o Lt. Shri Vaid Mishra, Aged About 28 Years, R/o K-22, Gandhi Nagar, Naka Madar, Ajmer, Rajasthan.
- Respondents

For Petitioner(s)	:	Mr. Ajay Shukla, Mr. Raghav Sharma, Mr. Shivam Sharma and Ms. Jyoti Sharma
For Respondent(s)	:	Mr. Madhav Mitra, Sr. Adv. assisted by Ms. Jaya Mitra for NP No.1 Mr. Mahendra Gaur for NP Nos.2 to 5

HON'BLE MR. JUSTICE SUDESH BANSAL

Order

31/08/2026

REPORTABLE

Instant writ petition under Article 227 of the Constitution of India, arises against the order dated 31.05.2025 passed by the Additional District and Sessions Judge No. 6, Jaipur Metropolitan-II, Jaipur, dismissing the application filed by petitioner under

Section 151 of the Code of Civil Procedure, 1908 (for short, "CPC") and, consequently, declined the prayer to set aside the compromise decree dated 25.11.2024, passed on the basis of a compromise arrived at *inter se* between respondent No. 1 and respondents No. 2 to 5, in a Civil Suit for partition and permanent injunction, bearing No. 97/2024, by the Additional District and Sessions Judge No. 6, Jaipur Metropolitan-II, Jaipur.

2. Heard learned counsel for petitioner, learned Senior Counsel appearing for respondent No.1 and learned counsel appearing for respondents No.2 to 5 at length, and carefully perused the record.

3. The relevant facts, required to be noticed in brief, may be recapitulated as under:

(i) The dispute pertains to the immovable properties left behind by one Shri Dinesh Mishra, who died on 21.08.2024. In respect of such properties, a civil suit for partition and permanent injunction came to be instituted by respondent No.1 against respondents No. 2 to 5, pleading *inter alia* that the deceased Shri Dinesh Mishra died intestate and is not survived by any natural heir of Class-I; respondent No.1 and respondents No. 2 to 5 are his heirs of Class-II, being his sister, brother and natural heirs of another deceased brother, hence, his properties are liable to be divided among respondent No.1; respondent No.2 and respondents No.3 to 5, in equal 1/3-1/3 share. Details of immovable properties are mentioned in Para No.3 of the plaint.

(ii) During the aforesaid suit for partition and permanent injunction, a written compromise dated 19.10.2024 was entered into between the parties viz. respondent No. 1 and respondents

No. 2 to 5, and based on that compromise, the civil suit was decreed vide judgment dated 25.11.2024, by the Court of Additional District and Sessions Judge No. 6, Jaipur Metropolitan-II, Jaipur.

(iii) Thereafter, petitioner moved an application under Section 151 CPC on 20.12.2024 before the Additional District and Sessions Judge No. 6, Jaipur Metropolitan-II, Jaipur, seeking to set aside the compromise decree, passed on the basis of compromise, stating, *inter alia*, that she happens to be the legally wedded wife of deceased Shri Dinesh Mishra and, being his natural and sole heir of Class-I, by way of the law of succession, she solely inherits and owns all the properties left behind by Shri Dinesh Mishra. It was, *inter alia*, averred that, in the civil suit for partition and permanent injunction, she was not impleaded as party and behind her back, a compromise was entered into between respondent No. 1 and respondents No. 2 to 5, agreeing to divide the properties of her husband, which is a collusive compromise so much so the judgment and decree dated 25.11.2024, passed on the basis thereof, is not liable to be sustained in law. Hence, it was prayed that such compromise, as well as the compromise decree be quashed and set aside.

(iv) Learned trial Court, on the application under Section 151 CPC filed by petitioner, issued notices to respondents. Respondents put in appearance and filed a joint reply to the application, taking a plea that application is not maintainable at all. Respondents categorically denied the locus of petitioner, stating herself as legally wedded wife of deceased Shri Dinesh

Mishra. It was stated by respondents that Shri Dinesh Mishra was already married to one Smt. Sudha Mishra since on 24.11.1984, and their marriage was dissolved by the Family Court vide judgment dated 12.09.2019; no child was born out of their marriage, hence, there was no heir of Class-I and only respondents are natural heirs of Class-II of deceased Shri Dinesh Mishra, therefore, respondents lawfully entered into compromise to divide the properties left by Shri Dinesh Mishra. It was denied by the respondents that petitioner ever entered into marriage with Shri Dinesh Mishra, and respondents disputed her locus and status as wife of late Shri Dinesh Mishra.

(v) Learned trial Court entertained and proceeded to decide the application on merits, and dismissed the same, vide order impugned dated 31.05.2025, by recording a fact finding that petitioner could not establish her marriage with Shri Dinesh Mishra after 12.09.2019, the date on which, the marriage of Shri Dinesh Mishra with his wife, Smt. Sudha Mishra, was dissolved by the Family Court No.1, Jaipur, under Section 13-B of the Hindu Marriage Act. Hence, feeling aggrieved by the order dated 31.05.2025, petitioner has preferred this writ petition.

4.1 The submission of learned counsel for petitioner is that, the judgment and decree dated 25.11.2024 passed by the trial Court on the basis of a collusive compromise, adversely affect the right, title and interest of petitioner in the suit properties left by deceased Shri Dinesh Mishra, and since against the compromise decree, petitioner neither has any remedy to file an independent civil suit nor an appeal, in view of the statutory bar envisaged

under Order XXIII Rule 3A CPC and Section 96(3) CPC. Hence, petitioner filed an application under Section 151 CPC, invoking the proviso appended to Order XXIII Rule 3 CPC, seeking to cancel the compromise and set aside the compromise decree dated 25.11.2024, before the same Court, which attested the compromise and passed the impugned decree.

4.2 In support of his submission, learned counsel for petitioner has relied upon the judgment of the Hon'ble Supreme Court delivered in the case of **Triloki Nath Singh V. Anirudh Singh(D) through LRs. [2020 (6) SCC 629]**, and submits that the trial Court erred in dismissing petitioner's application and declining to set aside the compromise decree, by disbelieving on the locus and status of petitioner as the legally wedded wife of deceased Shri Dinesh Mishra.

4.3 Learned counsel further submits that, indeed, petitioner had entered into marriage with Shri Dinesh Mishra way back in the year 1996 and since then has been living with him as his wife, but later on, when the real fact came to fore that Shri Dinesh Mishra was already married to one Smt. Sudha Mishra since 1984, and his previous marriage was not dissolved, then in order to get his previous marriage dissolved, a joint petition under Section 13B of the Hindu Marriage Act was filed by Shri Dinesh Mishra and Smt. Sudha Mishra, whereupon their marriage dated 24.11.1984 was dissolved by the Family Court vide judgment dated 12.09.2019. Thereafter, in order to avoid any objection to the sanctity of her marriage, petitioner again entered into remarriage with Shri Dinesh Mishra, in the month of September 2019, i.e., after

dissolution of previous marriage of Shri Dinesh Mishra with Smt. Sudha Mishra on 12.09.2019.

4.4 Learned counsel also submits that the documents, i.e., the Ration Card, Aadhar Card, copy of a sale deed of the year 2009, and the statements of Shri Dinesh Mishra recorded by the Police during the investigation of a criminal complaint, are sufficient to establish the fact that petitioner is wife of deceased Shri Dinesh Mishra. However, trial Court erred in disbelieving these documents and denying to accept the status of petitioner as the wife of deceased Shri Dinesh Mishra.

4.5 Hence, a prayer has been made by learned counsel for petitioner that the impugned order be quashed and the application filed by petitioner under Section 151 CPC be allowed, for the prayer made therein.

5.1 *Per contra*, on behalf of respondents, it has been contended that, in order to establish the locus of petitioner as wife of deceased Shri Dinesh Mishra, she was required to prove the facts that she entered into a lawful and valid marriage with Shri Dinesh Mishra as per Hindu rites and customs, that too after dissolution of the previous marriage of Shri Dinesh Mishra with Smt. Sudha Mishra vide judgment dated 12.09.2019. The documents, produced and relied upon by the petitioner, to prove her status as wife, do not establish the factum of her marriage ceremony with Shri Dinesh Mishra, that too after 12.09.2019. Hence, according to respondents, once petitioner could not establish her locus to file the application, learned trial Court committed no illegality in dismissing the application filed by petitioner.

5.2 In addition, contention on behalf of respondents is that petitioner never lived with Shri Dinesh Mishra as his wife; rather, there have been various litigations between them. Further, it has been pointed out by respondents that in the application under Section 151 CPC, petitioner nowhere disclosed that she had entered into re-marriage with Shri Dinesh Mishra after his divorce with Smt. Sudha Mishra on 12.09.2019, therefore, her case of remarriage apparently appears to be based on an afterthought plea, which is merely hypothetical and cannot be believed, unless proved.

5.3 Further, it has also been pointed out that in the death certificate of Shri Dinesh Mishra, issued by the Nagar Nigam, his wife's name is indicated as "Smt. Sudha Mishra", which also fortifies that status of petitioner was not accepted by Nagar Nigam as well, as wife of late Shri Dinesh Mishra.

5.4 Learned counsels for respondents further contend that, since before the death of Shri Dinesh Mishra on 21.08.2024, his marriage with Smt. Sudha Mishra had been dissolved vide judgment of the Family Court dated 12.09.2019, and there were no surviving heirs of Shri Dinesh Mishra of Class-I, as much as he died intestate, therefore, the only surviving heirs of late Shri Dinesh Mishra were the respondents, who are his natural heirs of Class-II, hence in this way, his properties automatically, by operation of law, devolved upon the respondents and have lawfully been divided among the respondents as per compromise, entered into between the respondents, and the compromise decree is absolutely lawful and valid.

5.5 Additional submission on behalf of respondents is that, indeed, petitioner was admittedly neither a party to the suit for partition nor a party to the compromise, hence, the application filed by petitioner under Section 151 CPC, seeking to set aside the compromise decree dated 25.11.2024, was not maintainable at law. However, even if, in any way, petitioner was aggrieved by the inter se compromise entered into between the respondents, so also by the compromise decree, passed by the trial Court in their favour, on the basis of their inter se compromise, in the partition suit, petitioner could have instituted an independent civil suit, first to establish her right, title and interest in the suit properties, and then to seek declaration that the compromise decree of partition dated 25.11.2024, does not affect her property rights, whatsoever may be, if, in any case, petitioner able to prove herself to be the legally wedded wife of deceased Shri Dinesh Mishra. Thus, according to respondents, from every angle, the impugned order dated 31.05.2025, dismissing petitioner's application under Section 151 CPC does not warrant interference and this writ petition too is liable to be dismissed.

6. Heard. Considered.

7. Indisputably, petitioner is neither a party in the civil suit for partition and permanent injunction instituted by respondent No. 1 against respondents No. 2 to 5, nor a party to the compromise dated 19.10.2024 arrived at between respondent No.1 and respondents No. 2 to 5, nor party in the compromise decree dated 25.11.2024, impugned herein.

8. Petitioner claims herself to be legally wedded wife and sole surviving successor of Class-I, after death of Shri Dinesh Mishra, and in that capacity, asserts to acquire sole ownership of the suit properties, detailed out in Para No.3 of the plaint, left by deceased Shri Dinesh Mishra, on the basis of the provisions of Hindu Succession Law.

9. From the record, there appears no dispute between the parties about the fact that the suit properties were self-earned properties of Shri Dinesh Mishra, and he died intestate, hence, both parties admit that devolution of suit properties, left by late Shri Dinesh Mishra, would be governed by the Hindu Law of Succession.

10. It is also undisputed that, after the death of Shri Dinesh Mishra, respondent No. 1 instituted a civil suit for partition in respect of his properties against respondent Nos. 2 to 5, which came to be decreed vide judgment dated 25.11.2024, on the basis of an *inter se* compromise arrived at between respondent No. 1 and respondent Nos. 2 to 5 on 19.10.2024.

11. Respondent No. 1 happens to be sister, respondent No. 2 is brother, and respondent Nos. 3 to 5 are the heirs of deceased brother of Shri Dinesh Mishra. Hence, they are the natural heirs of Class-II of deceased Shri Dinesh Mishra.

12. The contention of petitioner is that the compromise dated 19.10.2024 and the judgment and decree dated 25.11.2024 passed by the trial Court on the basis of the compromise, would adversely affect right, title and interest of petitioner, which already vest in the suit properties, by operation of Hindu Law of

Succession, since petitioner is the sole natural heir of Class-I of deceased Shri Dinesh Mishra, being his wedded wife, and therefore, it is desirable for her to get the compromise cancelled and to get the compromise decree dated 25.11.2024 set aside.

13. From the record, this is an admitted fact that Shri Dinesh Mishra was already married to one Smt. Sudha Mishra, and their marriage was solemnized wayback on 24.11.1984, but later on, their marriage came to be dissolved, by mutual consent under Section 13-B of the Hindu Marriage Act, vide judgment dated 12.09.2019 passed by the Family Court No. 1, Jaipur. The certified copy of decree of dissolution of marriage dated 12.09.2019 is available on record.

14. Thus, in view of the aforesaid admitted and undisputed facts, available on record, regarding previous marriage and dissolution of the marriage between Shri Dinesh Mishra and Smt. Sudha Mishra, what is necessary for petitioner first is to establish the fact that she entered into marriage with Shri Dinesh Mishra, subsequent to dissolution of his previous marriage with Smt. Sudha Mishra, vide judgment dated 12.09.2019, and thereafter only, she would be able to put her locus and status as legally wedded wife of late Shri Dinesh Mishra, so as to claim for acquiring sole ownership rights over the suit properties, left by Shri Dinesh Mishra intestate, being wife and sole successor of Class-I, by way of inheritance under the Hindu Succession Law.

15. In that view of matter, what is required for the petitioner is first to establish her locus and status of being the legally wedded wife of late Shri Dinesh Mishra, and for that, in the opinion of this

Court, petitioner can certainly avail the remedy of filing an independent civil suit against respondents before the Civil Court of competent jurisdiction. The *inter se* compromise in question and the compromise decree dated 25.11.2024, cannot be come in way against petitioner, for filing an independent civil suit of such nature, for seeking to establish her property rights in the suit properties, by proving her locus and status as legally wedded wife of deceased Shri Dinesh Mishra.

16. This Court further finds from the record that so far as grievance of petitioner of being adversely affected by the compromise decree dated 25.11.2024 is concerned, it may be noticed that in the order of attesting the compromise dated 25.11.2024 itself, the trial Court has specifically observed that the compromise shall be binding upon plaintiff and defendants, i.e., the parties to the suit and their legal representatives only, and shall not affect the legal rights of any third party. Admittedly, petitioner is neither a party to the suit nor to the compromise, hence, it stands well clear that there cannot be any adverse effect of the compromise decree in question, against any of the rights of petitioner in the suit properties, whatsoever may be, but for establishing her rights in the suit properties, first, petitioner is required to establish her locus and status of legally wedded wife of deceased Shri Dinesh Mishra.

17. This Court is of the considered opinion that the dispute of locus of petitioner, i.e., whether she is the legally wedded wife of deceased Shri Dinesh Mishra or not, is a dispute of a different nature, which ought not to have been addressed on merits by the

trial Court while deciding the application filed by petitioner under Section 151 CPC, because such dispute does not fall under the provision of Order XXIII Rule 3 CPC.

In the opinion of this Court, indeed what has transpired in the present case that the first and foremost question is about the locus and status of petitioner, and thereafter only, the question would arise as to whether the compromise decree impugned, is lawful or not, on account of being passed in the absence of petitioner.

18. Had the factum of marriage of petitioner with Shri Dinesh Mishra and her status as wife of Shri Dinesh Mishra, been an admitted or undisputed facts, then the case of petitioner would certainly stand on a different footing and, in that scenario, the application filed by petitioner under Section 151 CPC, challenging the compromise as unlawful and consequently seeking to set aside the compromise decree, could have been held maintainable. But once the locus and status of petitioner as the legally wedded wife of Shri Dinesh Mishra or not, have emerged as disputed questions of fact, then such disputes first require adjudication on merits, and in that eventuality, such disputed facts may not be adjudicated within the scope of the provisions of Order XXIII Rule 3 read with Section 151 CPC. Rather, such disputed questions of fact give rise to a fresh and separate cause of action, which requires independent adjudication, preferably by way of filing an independent civil suit, wherein an opportunity can be afforded to both parties to adduce their respective evidence, and thereafter, such complex dispute may be decided. Therefore, it can safely be

held that the remedy under Order XXIII Rule 3 CPC, by means of filing an application under Section 151 CPC, may not be held to be an appropriate and proper remedy for petitioner to get adjudication of her status to prove herself as the legally wedded wife of Shri Dinesh Mishra. Hence, this Court does not want to enter into that grey area of disputed facts, rather, arrives at a conclusion that the trial Court too erred in proceeding to decide such disputed question of fact, while considering the application under section 151 CPC within the scope of Order XXIII Rule 3 CPC, hence, from that angle as well, the findings on merits recorded by the trial Court in the impugned order, can be termed as without jurisdiction and perverse.

However, it is hereby observed that the issue of locus and status of petitioner as the legally wedded wife of Shri Dinesh Mishra or not, is left open to be decided in any other appropriate proceedings, and the findings recorded in the impugned order, in that regard, shall not be binding and final against the parties.

19. The submission of learned counsel for petitioner that, although petitioner was not a party to the suit nor to the compromise, yet, to challenge the compromise decree as unlawful or invalid and to get it set aside, the only remedy available was under Order XXIII Rule 3 CPC before the same Court which passed the compromise decree and no independent suit or appeal could have been filed, is not correct and cannot be countenanced. The *ratio decidendi* expounded in case of **Triloki Nath Singh** (*supra*) by the Apex Court, has been misconstrued and misunderstood by petitioner.

Indeed, in case of **Triloki Nath Singh** (*supra*), the person who had filed a civil suit challenging the compromise, was claiming rights under a person who was a party to the compromise. Hence, in that backdrop of the factual matrix, the civil suit was held to be hit by Rule 3A of Order XXIII CPC. However, the Hon'ble Supreme Court itself had observed in Para 22 that the appellant could file a suit for protection of his right, title or interest devolved on the basis of his sale deed allegedly executed by one of the parties to the proceedings in the partition suit, and that suit could be examined independently by the Court on its own merits. However, an independent suit by the appellant to challenge the validity of the compromise decree would not be competent, since the appellant derived his right, title and interest from one Shri Sampatiya, who was a judgment debtor and party to the suit. For ready reference, Para No. 22 is being reproduced hereunder, which would make clear the true picture:—

"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."

20. The proposition of law on the subject as to, (A) what civil legal remedies are available to a party to the suit; and (B) what

kind of civil legal remedies, are available to a third party, who was not a party to the suit or compromise decree, to challenge the compromise decree, is well established, which may be summarized as under:-

(A) Civil Remedies to a person, party to the compromise decree:

20.1 After introducing the Amendment Act 104 of 1976 to the Code of Civil Procedure, the civil remedy, to challenge the validity of a compromise decree to a person who was already a party to the suit or the compromise decree, is available within the scope of the proviso and explanation appended to Order XXIII Rule 3 CPC.

20.2 If a person, who was already a party to the suit, denies or disputes the compromise on the ground that the same was not lawful or is void or void ab initio, or even wants to challenge the same on the ground of fraud, want of authority to record the compromise, or on the ground of any other vitiating elements, the CPC requires such person to approach the trial Court under the proviso to Order XXIII Rule 3 and ask that Court to decide the issue as to whether the compromise is lawful and valid.

20.3 Although the aggrieved party to the suit also possesses a concurrent, but sequential, remedy of filing a first appeal thereagainst under Section 96(1) CPC, nevertheless, such appeal can be preferred only after recording of the findings by the trial Court on the issues under challenge in respect of the legality and validity of the consent decree. To make it more explicit, in other words, it may be said that if the compromise or consent decree is

challenged by a party to the suit on any of the grounds, including the grounds of legality, validity, fraud, want of authority or other vitiating elements, the same can be dealt with and examined by the trial Court itself within the proviso to Order XXIII Rule 3 and the explanation appended thereto, and after recording the findings by the trial Court, the aggrieved party may prefer an appeal against the consent decree. Such an appeal would be maintainable under Section 96(1) CPC, and the bar contained under Section 96(3) CPC would not operate thereagainst.

20.4 Such an appeal may be considered and decided on merits by the Appellate Court, keeping in mind the provision of Order 43 Rule 1A CPC, and the bar envisaged under Section 96(3) CPC would not come in the way for entertaining such appeal on merits.

20.5 Here, it is also made clear that Order 43 Rule 1A CPC itself does not create a new right of appeal; rather, this provision merely enables the appellant, already before the Appellate Court, to attack the consent decree on the ground that the compromise should, or should not, have been recorded.

20.6 It is true that the statutory bar contained in Section 96(3), that "*no appeal shall lie from a decree passed by the Court with the consent of parties*", is absolute, but that would come into operation, when the factum of compromise is not disputed.

20.7 It is further well established that unless and until the mandate of Order XXIII Rule 3 CPC is followed by the aggrieved party, the statutory bar envisaged under Section 96(3) CPC to

maintain the appeal against the consent decree would remain operative.

20.8 Undoubtedly, an independent suit by the aggrieved party to the suit or consent decree is expressly barred by virtue of Rule 3-A of Order XXIII CPC.

(B) Civil Remedies to a person, not party to the compromise decree:

20.9 But in case a person, who is neither a party to the suit nor a party to the compromise or consent decree, nor claims through any of the party(s) to the suit or compromise, yet is aggrieved by the consent decree and his/ her rights are hurt or prejudiced by the consent decree, the remedies available to that person to challenge the consent decree are, by way of filing an independent suit or by way of filing an appeal thereagainst under Section 96 CPC. It does not mean that such person may not invoke the remedy under proviso of Order XXIII Rule 3 CPC, but that would be of his/ her option, as per facts and circumstances of the case.

20.10 It is clear that the bar envisaged under Order XXIII Rule 3-A CPC and under Section 96(3) CPC would not operate against that person who is a third party to the consent decree. However, obviously, if that person chooses to file an appeal against the consent decree, the appeal can be maintained only after obtaining leave of the Court.

20.11 Here, it would also be apposite to observe that the scope of challenge to the compromise or consent decree, by a person who is not a party to the suit or compromise, but is a third

party, and who indeed claims an independent right, title or interest in the properties, without deriving such right from the party to the suit or compromise, may or may not fall within the ambit of proviso of Order XXIII Rule 3 CPC, and the scope of challenge, by that party, may be on some additional or different grounds as well, which may travel beyond the contours of the proviso of Order XXIII Rule 3 and may even be beyond the boundaries of Order 43 Rule 1A CPC, therefore, other fresh civil remedies are also available to that third party, which are not available to the person who is party to the compromise decree.

21. The proposition of law as set forth hereinabove, in foregoing Paragraph No.20, stands in alignment and conformity with the judgment of the Hon'ble Supreme Court, recently passed in the case of **Sakina Sultanali Sunesara (Momin) v. Shia Imami Ismaili Momin Jamat Samaj & ors.**, decided on **23.04.2025** in **Civil Appeal Nos. 6681-6682/ 2023** reported in **[2025 SCC OnLine (SC) 930]**. It would be apposite to reproduce Para Nos.7, 8, 9, 11, 13 and 15 of the judgment, as under:-

"7. We believe it is first necessary to look at the impact of the Amendment Act 104 of 1976 to CPC. Prior to 01.02.1977 an order "recording or refusing to record" a compromise was itself appealable under Order XLIII Rule 1(m). The Parliament removed that clause and, in the same breath, introduced four companion provisions:

- Proviso and Explanation to Order XXIII Rule 3 - obliging the Trial Court to decide, forthwith and itself, any objection to the fact or lawfulness of a compromise;*
- Rule 3-A of Order XXIII - barring a separate suit to avoid a compromise decree;*
- Order XLIII Rule 1-A - permitting an appellant who is already in a competent appeal against a decree to contend that the compromise "should, or should not, have been recorded"; and*
- Section 96(3) (as renumbered) - prohibiting an appeal from a decree "passed with the consent of parties".*

8. *In our opinion, the interpretation of these provisions is quite clear and coherent. A party that accepts the compromise is bound by it and cannot appeal (Section 96(3)). A party that denies the compromise must first raise that dispute before the Trial Court (proviso to Order XXIII Rule 3). A fresh suit is no longer possible (Order XXIII Rule 3-A). If, and only if, the Trial Court decides the objection and passes a decree adverse to the objector, a first appeal lies under Section 96(1); in that appeal the appellant may, by virtue of Order XLIII Rule 1-A(2), challenge the recording of the compromise.*

9. *The above reading stands affirmed in a catena of judgments passed by this Court. In Banwari Lal v. Smt. Chando Devi [(1993) 1 SCC 581], this Court held that, post-1976, the aggrieved party possesses two concurrent but sequential remedies:*

- *an application under the proviso to Order XXIII Rule 3 before the Trial Court; or*
- *a first appeal under Section 96(1) after the Trial Court has recorded its finding.*

11. *The path is therefore settled: the proviso to Order XXIII Rule 3 is not optional; it is the exclusive first port of call for any party on record who denies the compromise. Order XLIII Rule 1-A does not create a new right of appeal; it merely enables an appellant, already before the Appellate Court, to attack the decree on the ground that the compromise should not have been recorded. When the fact of compromise is not disputed, the bar in Section 96(3) is absolute.*

.....

13. *The appellant's submission that allegations of fraud transform a consent decree into an ordinary decree cannot be accepted. Fraud, want of authority or other vitiating elements are precisely the matters that the proviso directs the Trial Court to examine. Unless and until that route is pursued, the statutory bar in Section 96(3) of the CPC remains operative.*

.....

15. *We are satisfied that the Larger Bench took the right view. It noticed that the CPC, after the 1976 amendment, works in two distinct ways. If a person was already a party to the suit, and denies that any lawful compromise ever took place, the CPC requires that person to go back to the Trial Court under the proviso to Order XXIII Rule 3 and ask that Court to decide whether the compromise is valid. On the other hand, someone who was not a party to the suit, but whose rights are hurt by a consent decree, may approach the Appellate Court in a First Appeal under Section 96 of the CPC, but only after obtaining leave. Order XLIII Rule 1-A does not create an independent appeal at all; it merely says that, once an appeal is otherwise before the Court, the appellant may argue that the compromise should, or should not, have been recorded. Seen in that light, the High Court's directions correctly apply the structure of the statute and do not call for interference."*

(Emphasis Supplied)

22. The High Court of Karnataka in case of **Sushila v. Vijay**

Kumar; Civil Revision Petition No.100105/2016, decided on

06.07.2020, reported in **[2020 SCC OnLine (Kar) 3374]**,

opined in Para Nos.13 to 20 as under:-

"13. Thus, a decree passed by a Court on the basis of a compromise can only be between the parties to the suit and it cannot be between people who are not parties to the suit. In other words, the compromise recorded and decree passed thereon can only be between the parties to the suit and it cannot be in respect of people unconnected with the suit.

14. It therefore follows that the decree passed in OS 525/2014 can only be applicable to the parties to the suit i.e., the defendants and cannot be made applicable to the plaintiff, who was deleted from the array of parties.

15. R. 3A states that no suit shall lie to set aside on the ground that the decree based on the compromise was unlawful. Obviously, the compromise referred to in R 3A can only be referable to the compromise envisaged in R.3. As stated earlier, under R.3, a compromise can be recorded only between the parties to the suit and not between persons who are not parties to the suit.

16. Thus, the bar contemplated under Rule 3A would be applicable only to the persons who were parties to the compromise thereby meaning parties to the suit and it would have no application to the persons who are not parties to the suit.

17. If the arguments of the Learned Counsel were to be accepted, then a compromise entered into between two parties to a suit, would bind not only the parties to the compromise but also to all other persons who may possess an independent and distinct right over the property, which was the subject matter of the compromise, even if they are not parties to a compromise. This would result in an anomalous result and nullify the rights of persons who have an independent right over the property which was the subject matter of a compromise and that cannot be the intent of the law.

18. In other words, if the submission of the Learned Counsel is accepted, in a given case, even a collusive compromise decree over a property, would have the effect of depriving all rights a third party may possess over the land independently. This, clearly, would not be the bar envisaged under R. 3A.

19. The intent behind the framing of Rule 3 A is rather clear. R.3A basically intends to bar a party who has entered into a compromise and obtained a decree based on the compromise, to thereafter resile from the compromise that he had entered into and contend it was unlawful, by filing one more suit.

20. A compromise, is in the nature of a binding contract between the parties, the parties who have entered into a compromise are expected to abide by the terms stated therein. It is for this reason, that R 3 A of 023 creates a bar for those persons who are parties to the compromise from filing a subsequent suit on the ground that the compromise obtained by them was unlawful. In other words, a binding contract entered into between two parties, in a Court of law, can not be annulled or impugned by the filing of a separate suit."

(Emphasis Supplied)

This Court is in absolute concurrence with the view expressed by the Hon'ble High Court of Karnataka.

23.1 The judgment of Hon'ble Supreme Court delivered in case of **Triloki Nath Singh** (*supra*), on which learned counsel for petitioner has placed reliance, too stands in conformity to the proposition of law as enunciated hereinabove. The remedy which is available to a party to the suit, to challenge the compromise or a consent decree, was considered in Para No.18, which reads as under:-

"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 Order 23 CPC 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 3 CPC 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 3 CPC before the court."

23.2 The Hon'ble Supreme Court further noticed that although appellant was not party to the compromise decree, but was claiming right, title and interest over the property based on the sale deed executed in his favour by one Shri Sampatiya, who was judgment debtor and party to the suit, therefore, in that context, the Hon'ble Supreme Court held that the civil suit filed by appellant was not maintainable in view of specific bar as contained under Rule 3A of Order XXIII CPC.

23.3 The Hon'ble Supreme Court in this judgment, nowhere held or observed that an independent civil suit cannot be maintained to challenge the compromise decree by a third party, who was neither party to the compromise decree nor claims through any party to the compromise decree. Therefore, it is

misconception of law as understood by learned counsel for the petitioner that petitioner cannot maintain an independent civil suit to establish her locus standi and status of being legally wedded wife of deceased Shri Dinesh Mishra, and consequently, to get it declare that the compromise decree is ineffective and not binding upon her, in order to put a claim of acquiring ownership rights in the suit properties according to the provisions of Hindu Law of Inheritance.

24.1 Several other judgments delivered by the Hon'ble Supreme Court, time to time, in cases of (i) **Banwari Lal v. Smt. Chando Devi [(1993) 1 SCC 581]**, (ii) **Pushpa Devi Bhagat (D) v. Rajinder Singh [(2006) 5 SCC 566]**, (iii) **R. Rajanna v. S.R. Venkataswamy [(2014) 15 SCC 471]**, (iv) **R. Janakiammal v. S. K. Kumarasamy [(2021) 9 SCC 114]** and (v) **M/s. Sree Surya Developers and Promoters v. N. Sailesh Prasad [(2022) 5 SCC 736]**, making it clear the civil remedy to a person party to the compromise decree, and pronounced that no sooner a question relating to lawfulness of the agreement or compromise, is raised by a party to the suit or compromise, the party has to approach the same Court which recorded the compromise, and that challenge shall be adjudicated by the same Court under the proviso to Order XXIII Rule 3 CPC. A separate suit, challenging the consent decree by a party to the suit or consent decree, has been held to be not maintainable.

24.2 But, it is noteworthy that in these judgments as well, there is no stipulation putting a restriction on the person, who was neither a party to the suit nor party to the compromise decree,

nor claims through party(s) to the suit and compromise decree, that he can not challenge the compromise decree, on either of the grounds, by way of filing an independent civil suit.

25. Thus, it can safely be held that a person who is not a party to the suit or compromise decree, nor derives any right, title or interest in the properties through any of the parties to the suit or compromise decree, rather claims right, title or interest in the properties independently, yet is aggrieved by the compromise decree, may avail the civil remedies against the compromise decree, (i) either by way of filing an independent suit and/ or (ii) by way of filing an appeal under Section 96 CPC, after obtaining leave of the Court, or (iii) may also approach the same Court which recorded the compromise and passed the compromise decree, by way of filing an application under Section 151 CPC, purportedly invoking the scope within the proviso to Order XXIII Rule 3 CPC, at his/ her option and wisdom, according to facts and circumstances of the case.

26. Coming back to the facts of the case at hand, this Court is of the considered opinion that unless and until petitioner is able to establish her locus standi and status as wife of deceased Shri Dinesh Mishra and to prove her lawful marriage ceremony with Shri Dinesh Mishra post to the date, i.e., 12.09.2019, the cause of action for petitioner to challenge the legality or validity of the compromise decree dated 25.11.2024 does not arise. Otherwise also, in the order dated 25.11.2024, while recording the compromise, the trial Court itself has made it clear that the compromise shall be binding upon the plaintiff and defendants,

i.e., parties to the suit and their legal representatives only, and shall not affect the legal rights of any third party.

27. Thus, after consideration of the entire factual matrix, obtaining in the case at hand, this Court comes to a conclusion that the application filed by petitioner under Section 151 CPC, seeking to set aside the compromise decree dated 25.11.2024, without proving her locus and status as legally wedded wife of late Shri Dinesh Mishra, could not be held maintainable, particularly when the locus standi and status of petitioner as wife of deceased Shri Dinesh Mishra have emerged as a highly disputed question of facts because, in the opinion of this Court, the adjudication of such complex disputed question of facts does not come within the purview of the proviso to Order XXIII Rule 3 CPC. Hence, although the net result of the impugned order dated 31.05.2025, dismissing petitioner's application filed under Section 151 CPC, does not warrant any interference by this Court, however, this Court is of the opinion that the trial Court committed manifest illegality, jurisdictional error and perversity in entering into and deciding the disputed question of facts relating to the marital status and locus standi of petitioner, as to whether she is the legally wedded wife of late Shri Dinesh Mishra or not, since this dispute gives rise to a fresh and separate cause of action and does not, at all, attract the scope of proviso of Order XXIII Rule 3 CPC. Thus, the findings and observations made by the trial Court in the order impugned, to this extent, are hereby declared as without jurisdiction and perverse.

28. Before parting with the matter, it is made clear that any finding or observation made by this Court in the present order shall not affect the rights of either party on merits, and if petitioner, in any case, avails any other appropriate legal remedy for adjudication of her locus standi and status as legally wedded wife of late Shri Dinesh Mishra, and for claiming her rights in the suit properties, it shall be open for the respondents to raise all kinds of legal and valid objections, and the rights of parties would be adjudicated independently, in those proceedings, on their own merits, without being influenced by the findings of the trial Court made in the order impugned dated 31.05.2025 or made by this Court in the present order.

29. With the aforesaid observations and liberty, instant writ petition stands disposed of. The *ex parte* interim stay order dated 16.09.2025 stands vacated accordingly. No costs.

30. Stay application, application for vacation of *ex parte* stay order dated 16.09.2025 and pending application(s), if any, also stand disposed of.

(SUDESH BANSAL),J