

# Consent Decrees Under Order XXIII CPC: Validity and Legal Effect

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## Abstract

Consent decrees provided for by Order XXIII, Rule 3 of the Code of Civil Procedure, 1908 (CPC) are a special combination of contract and civil procedure. The study discusses the legal consequences and validity of consent decrees, focusing on the statute governing consent decrees, the conditions for a valid consent decree, the basis for enforcement, the basis for appeal, and remedies for challenge. Based on a doctrinal analysis and the examination of case-law, the study shows that consent decrees are binding estoppels, and generally cannot be appealed under Section 96(3) CPC, but are subject to judicial review for fraud, coercion, illegality or improper authorization. The bar under Order XXIII Rule 3A CPC is primarily applicable to the parties to the compromise of the compromise and only limited but viable remedies are available for third parties.

**Keywords:** Consent decree, Order XXIII CPC, compromise decree, Section 96(3) CPC, Order XXIII Rule 3A.

## Introduction

In India, compromise and settlement are an essential part of the smooth administration of civil justice. The Code of Civil Procedure, 1908 provides a way to resolve disputes amicably, took into account the backlog of cases and the time consuming nature of adversarial litigation. Compromises and consent decrees, which are private agreements, become judicial orders under Order XXIII Rule 3 CPC. Indian courts have, in the past, acknowledged that consensual resolutions are beneficial in bringing finality to the resolution of disputes and also in relieving the burden on the courts. A consent decree is different from a decree issued after a contest (invitum). It is not a decision of the court on merits, it is judicial recognition of the agreement of the parties. While consensual, a consent decree has an array of legal implications: a consent decree is binding, it can be enforced as a judgment, and it's usually final. Its validity, however, is not absolute, but depends on statutory conditions and can be challenged under specific conditions on narrowly formulated grounds with a specific procedure. The concept of finality vs. fairness is at the core of the jurisprudence on consent decrees, as courts attempt to reconcile the certainty of finality with the need to prevent abuse of process.

## Research Problem

The legal framework of consent decrees under Order XXIII CPC involves a delicate balance between two key principles: party autonomy and judicial control, and finality of the statute. The law encourages settlements without litigation to decrease the burden of litigation, but it also sets forth strong restrictions on overturning consent decrees by appeal or through new lawsuits. This can be a source of injustice when consent is tainted by fraud, coercion, misrepresentation, or inadequate authorization, but the harmed party has few options for procedural remedies. In addition, the rights of third parties and strangers to be impacted by consent decrees are not well established and decisions in different cases can vary. The research question is whether the current law adequately strikes the balance between finality and fairness, and if there are adequate protections for the parties and non-parties against vitiated or unlawful consent decrees.

## Research Questions

1. What are the essential statutory conditions for the validity of a consent decree under Order XXIII Rule 3 CPC?

2. What is the legal effect of a consent decree in terms of binding force, estoppel, execution, appealability, and res judicata?
3. What remedies are available to parties and third parties for challenging a consent decree, and what are the procedural limitations?
4. How have Indian courts interpreted the bar under Order XXIII Rule 3A and Section 96(3) CPC in landmark judgments?
5. What are the contemporary challenges in recording and enforcing consent decrees, particularly in the context of e-litigation and family/property disputes?

### Objectives of the Study

- To analyse the statutory framework governing consent decrees under Order XXIII Rules 3 and 3A CPC and Section 96(3) CPC.
- To identify and examine the essential conditions for a valid consent decree, including requirements of writing, signature, lawfulness, and judicial satisfaction.
- To evaluate the legal consequences of consent decrees, including their binding nature, executability, appealability, and operation as estoppel or res judicata.
- To assess the grounds and procedural remedies available for challenging consent decrees, with particular attention to fraud, coercion, illegality, and lack of authority.
- To examine judicial pronouncements on consent decrees and identify emerging trends in third-party rights and stranger challenges.
- To provide critical analysis of contemporary issues, including e-compromises, family and property disputes, and commercial settlements.

### Research Methodology

The type of research used in this research is doctrinal legal research, which is based on primary and secondary legal sources. The sources of information include Code of Civil Procedure, 1908 (particularly Order XXIII Rules 3 and 3A, Section 96(3), and Section 151), Indian Contract Act, 1872, reported judgments of the Supreme Court of India and various High Courts. Secondary sources are Legal commentaries, Journal articles, Case notes, Online legal databases like SCC Online, Manupatra,

LiveLaw, iPleaders, and Supreme Today. The research is analytical and descriptive, involving statutory interpretation and case law analysis that is aimed at deriving principles, or identifying gaps in the current legal framework. The study is of a qualitative nature, and does not rely on empirical data, but rather judicial reasoning, statutory language and scholarly commentaries.

### Statutory Framework

#### Order XXIII Rule 3 CPC

If it is proved before the court that a suit has been adjusted in full or in part by any lawful agreement or compromise, the court shall enter the agreement or compromise, and pass a decree based on the same. (Order XXIII, Rule 3, CPC). The provision in Rule 3 also requires that if any party denies the existence of any compromise, then the court shall determine the question. The agreement should be lawful (not void or voidable under the provisions of the Indian Contract Act, 1872), in writing and signed by both parties or their lawfully appointed advocates (as interpreted by the courts) and be found satisfactory by the court before it is recorded. The judicial function of the court is not the adjudicatory but a ministerial and verificatory one.

#### Order XXIII Rule 3A CPC

Order XXIII Rule 3A CPC has inserted to bar multiplicity of litigation that "No suit shall be filed to cancel a decree on a ground that the compromise on which the decree is based is not lawful. This rule imposes a statutory rule that does not allow an independent action to attack a compromise decree on its basis of being unruly. But the bar is not one that must be met. It does not necessarily apply to outsiders or third parties who may be negatively impacted. Precludes applications under proviso to Rule 3 before same court, but bars suits on ground of unlawfulness of compromise. It also does not have any impact on other remedies like review, revision or execution objections (as may be allowed). The relationship between Rule 3 and Rule 3A is a product of the legislature's desire to limit re-litigation but maintain a limited "safety valve" for real grievances. The bar contained in Rule 3A has always been held to be in favor of the parties who consented and to be inapplicable to strangers.

### **Section 96(3) CPC**

The provisions of Section 96(3) CPC are clear and specific that appeal would not be allowed against decrees passed with the consent of parties. The basis is that when a party consents, it cannot appeal against itself. If the decree is a pure consent decree, then there is no appeal, and the bar also applies if the decree is called a "compromise decree", but it is really an agreement. If the court fails to record part of the compromise or records part of the compromise against the objections of the parties, there may be change of character of the decree, and may be appealability. While some High Courts have recognized that where the validity of the compromise is itself challenged as a preliminary question, an application under the proviso to Order XLIII Rule 3 to the High Court is the proper remedy, the majority view is that an appeal is the appropriate remedy.

### **Relevant Provisions of Indian Contract Act, 1872**

The question of lawfulness of a compromise depends on Indian Contract Act, 1872. All agreements shall be deemed to be contracts if they are made by free consent, for lawful consideration and for lawful object, as contained in Section 10. In sections 13-22, free consent is defined and vitiating factors, such as coercion (section 15), undue influence (section 16), fraud (section 17), misrepresentation (section 18), and mistake (section 20) are identified. Agreements which are prohibited by law, counter to any law, fraudulent, injurious to persons or property, or inconsistent with public policy are declared void under Section 23. Any compromise that violates these requirements is illegal and is not a valid consent decree.

### **Essential Conditions for Validity of Consent Decree**

In order for a consent decree to be considered valid and binding, the three following conditions must all be met. First, the compromise must be put into writing and be signed by the parties. Signatures by counsel appointed to serve on behalf of a duly authorised individual have been accepted in proper cases in accordance with the courts' decision. An oral agreement, whether or not it was followed, is not a valid consent decree under Order XXIII Rule 3. The Supreme Court reiterates that if there is no express

written consent in the vakalatnama, then a compromise agreement signed by counsel is not binding on the party.

Secondly, the agreement has to be legal under Indian Contract Act 1872. A compromise which is illegal, violates the provisions of any law, is a fraud, or injures person or property is void and cannot be entered as a lawful compromise. Courts have the obligation to make sure that the compromise is not anti-public policy or anti-statutory. For example, a compromise that takes away the statutory rights of a tenant, minor or coparcener to ancestral property can be illegal and cannot be recorded.

Third, the court will have to exercise its judgment and enter the compromise only when it is satisfied as to its existence, voluntariness and lawfulness. If there is no verification of mechanical recording, the decree becomes vitiated. If a party rejects the compromise, then the court must rule on the matter before going forward. If any of these conditions fails to exist, the consent decree may be invalid or rescindable, but only on application pursuant to the proviso to Rule 3, not by way of a new suit.

Further, the compromise must not be tainted by fraud, misrepresentation, forcing or undue influence. If a compromise achieved through fraud, it is illegal and can be opposed, but not in a separate suit, as the court has its inherent power under Section 151 CPC for the same. The burden of proof is on the party asserting fraud and evidence of mere allegations is not enough to set aside a consent decree.

### **Legal Effect of Consent Decree**

#### **Binding Effect and Estoppel**

A consent decree is considered to be an estoppel agreement between the parties. It is a contract, and is treated as such, with the seal of the court, and is usually not subject to unilateral rescission. The Supreme Court has held that a consent decree has been valid and binding until set aside by the court where it was passed on an application made under the proviso to Rule 3. The Supreme Court has been consistent in its opinion that until set aside by the court where it is passed a consent decree is valid and binding. It is an estoppel based on conduct and agreement and unlike an estoppel by record (res judicata) it prevents re-litigation between the same parties on the same matter.

## Execution

Order XXI CPC would permit execution of a consent decree, in the same way as any other decree. After it has been passed it can be carried out by execution proceedings and if not, non-compliance can result in suitable coercive action, such as attachment and sale of property, and in appropriate cases, other suitable action that is allowed by the law. An executing court, however, cannot review the validity of the consent decree behind the compromise; objections to the decree's validity should be filed before the court that signed it. The Limitation Act, 1963, provides that an application for execution of a civil decree may be preferred no later than twelve years after the decree comes into force (as per Article 136).

## Appeal ability

The CPCs expressly prohibit appeals from decrees passed with the parties' agreement (s.96(3) CPCs). This principle is that an appeal may not be made against the consent of the party making it. There is no appeal from a pure consent decree; the bar is applicable when the decree is called a "compromise decree" but is, in fact, consensual. The nature of the decree can change, and the appealability can arise when the court refuses to record a part of the compromise or records the compromise objecting to it. There are narrow exceptions where the validity of the compromise as a whole is challenged as a preliminary issue, which if so, would allow appeal under Order XLIII Rule 1A read with Section 96(1) but the prevailing opinion is that an application is the proper remedy under the proviso to Rule 3.

## Res Judicata

There is a grey area in application of Section 11 CPC to consent decrees. The old school opinion is that a consent decree does not constitute a "hearing and final decision" by the court, but merely a contract that is "recorded" by the agency. The modern position is that while not a res judicata, a consent decree is an estoppel by conduct that serves the same purpose and bars re-litigation of the same issue. Courts may consider a consent decree to have a res judicata-like effect where on the facts, the parties intended the consent decree as a final resolution of a specific issue. Therefore, although the term res judicata may not be the appropriate term in every case, the effect is the

same: that re-litigation should be precluded, and the case rendered final.

## Grounds and Procedure for Challenging Consent Decree

Even though it is binding, a consent decree cannot be protected from challenge. The channels are narrow, however, and are very procedural. A consent decree can be challenged on any of the grounds which vitiate consent or make it an illegal compromise such as lack of real consent (fraud, coercion, undue influence, misrepresentation, or mistake), illegality (compromise contrary to law or public policy), lack of authority (compromise entered by a person without proper authority such as by unauthorized counsel or guardian), or procedural defect (failure to record the compromise in writing, failure to have it signed, or failure for it to be recorded by the court).

The settled law is that having entered into a consent decree, the only way for a party to do so is to file an application in the same court in which the compromise is recorded, under the proviso to Order XXIII Rule 3. There is no independent suit as per Rule 3A and there is no appeal under Section 96(3) CPC. The applicant has to establish that there is no valid compromise or that the consent is not valid. In the recent case of *Sree Surya Developers and Promoters v. N. Sailesh Prasad* (2022), the Supreme Court restated that a consent decree is an estoppel and can only be overturned by the court that made it, under the proviso to Rule 3.

Section 151 CPC also gives a remedy of its own to set aside a consent decree obtained by fraud or collusion. Judgments and decrees are also void for fraud, and have been so held by courts. The burden of proving fraud is however, high and it is not enough to just say fraud, without having strong evidence pointing to it.

## Judicial Pronouncements / Case Law Analysis

In *Banwari Lal v. Chando Devi* (1993) 1 SCC 581, the Supreme Court has held that a stranger to the compromise cannot be barred from a suit and Order XXIII Rule 3A does not work against a stranger. In this case, the bar was a personal bar, to which the parties agreed.

In the case of *Sree Surya Developers and Promoters v. N. Sailesh Prasad* (2022) 2 SCC 433, the Court reiterated that there is no appeal against a

compromise decree (Rule 3A), there is no independent suit to set aside the decree and the only remedy is an application under the proviso to Rule 3 before the same court.

In *Manjunath Tirakaphe Malagi v. Gurusiddappa Tirakaphe Malagi* (2025), the Supreme Court rejected an appeal against a compromise decree issued in the year 2000 after two decades, this Court had ruled that a new suit challenging the validity of the compromise decree would be barred under Order XXIII Rule 3A. In a consent decree, the Court reminded the parties that it's like a contract with a court's seal and can only be challenged in the same court.

The Himachal Pradesh High Court in its judgment dated 26th April, 2026, found that the consent decree passed on agreed terms is a final decree and so an appeal against it is barred under Section 96(3). The Court again emphasized the importance of approaching the court where the compromise was entered, and establishing lack of consent.

In *Mohammed Anas Irfan v. Mohd. The Supreme Court in Shahnawaz* (2020) stated that in the case of fraud on the Court, it is to be taken seriously, while if it's being done through collusion or conspiracy, it's not a transaction that entails a deprivation of the property rights of the people involved and therefore should be treated as void ab initio. This is true of fraudulently or collusively secured consent decrees.

In his 2026 judgment, the Punjab and Haryana High Court had held that a decree passed by the courts in a collusive manner on ancestral coparcenary land is a null and void decree because it violates the birth right of coparceners and a decree can be attacked even by a person, who is not a party to the case.

### **Third-Party Rights and Stranger Challenges**

The right of third parties or “strangers” to oppose a decree is one of the most litigious aspects of consent decree law. Strangers are not subject to the bar against suits to challenge a compromise decree provided by Order XXIII Rule 3A. The Rajasthan High Court and the Bombay High Court have ruled that strangers can only come under Rule 3A if they have a valid cause of action, like fraud or collusion or invalidity and not otherwise.

Stranger challenges are not endless though. Courts have been consistently denying that a stranger may challenge a consent decree if he has no direct legal

interest or right involved in the decree. An interest that is only “speculative” or “remote” is not enough. As regards the ancestral property, the coparceners have been given locus standi to contend against collusive decrees even if they are not a party to the original suit, since their birthrights are being violated. A remedy for strangers is usually in the form of a separate suit for declaration and for injunction or an application filed under Section 151 of the CPC, on allegation of fraud or collusion. Courts, however, warn that just anyone shouldn't use this remedy to postpone execution or intimidate decree holders. The onus is on the stranger to prove fraud, collusion or illegality.

### **Consent Decrees in Family and Property Disputes**

Consent decrees are often applied in property and family issues, such as partition actions, marriage settlements and estate issues. When this occurs, courts give special consideration to the compromise to make sure that it does not infringe on statutory rights or public policy. For instance, a compromise which disinherits a minor or waives maintenance rights could be deemed illegal. Consent decrees are frequently used in partition suits to partition real estate between co-sharers. Wherever the decree touches upon the ancestral coparcenary property however, courts have held that it will be deemed to be void ab initio if any of the arrangements are collusive in nature and do not recognize the rights of the coparceners. Punjab & Haryana High Court's decision in 2026 reaffirms that birth rights through Hindu law can't be denied on the basis of a compromise between specific family members. Consent decrees are used in a wide variety of matrimonial matters to settle property, custody and maintenance matters. In the context of gender power imbalances, courts make sure that such compromises are not coerced or unduly influenced. The Supreme Court has reiterated that consent to marriage is free and informed and that any consent which is extorted or misrepresented may be withdrawn.

### **Critical Analysis and Contemporary Issues**

The statutory scheme places a value on finality and does not advocate re-litigation, a key to lowering the judicial backlog. It can however sometimes reinforce inequalities in the consenting process, where consent

was given as a result of fraud and coerces, or where individuals who were vulnerable were put in compromising situations. The courts, therefore, have to weigh the desirability of certainty and finality of consent decrees against the need to guard against abuse of process and to safeguard substantive rights. The court's task is not to rule on merits, but it has a duty to make sure that the compromise is lawful and voluntary. But in reality there are compromises that are written down mechanically, particularly in busy courts. Judicial scrutiny at the time of the recording of the statement can eliminate challenges in the future and help protect the vulnerable litigants. The Supreme Court's insistence on an express written authorization in the vakalatnama is a step towards being more stringent as to ensure that there shouldn't be any unauthorized compromises.

As the e-filing and virtual hearings become prevalent, it becomes harder to obtain the proper consent and verify signatures / authorisation. To ensure the integrity of consent decrees, courts may have to create more specific procedures for recording e-compromises. Measures must be taken to ensure that disputes over authenticity and authority are avoided when using video conferencing and digital signatures. A new issue that has arisen is the use of consent decrees in commercial and corporate cases where parties typically reach complicated settlements. Courts also need to make sure that any such compromises are not in contravention of any statutory obligations imposed under company law, insolvency law or securities law. There is also doubt about the enforceability of consent decrees in matters of arbitration, given the nature of the interplay between CPC and the Arbitration and Conciliation Act, 1996.

### Findings

1. Consent decrees under Order XXIII Rule 3 CPC require three essential conditions: written and signed agreement, lawful object and consideration, and proper judicial recording after satisfaction.
2. Once passed, consent decrees operate as binding estoppels, are executable under Order XXI CPC, and are generally non-appealable under Section 96(3) CPC.
3. The bar under Order XXIII Rule 3A CPC against fresh suits applies primarily to parties to the

compromise, not to strangers or third parties with direct legal interests.

4. The only remedy for a party alleging invalidity is an application under the proviso to Rule 3 before the same court that recorded the compromise; no appeal or independent suit lies.
5. Fraud, coercion, misrepresentation, lack of authority, and illegality are valid grounds for challenge, but the burden of proof is high and requires cogent evidence.
6. Consent decrees do not strictly operate as res judicata but create estoppel by conduct with similar practical effects in preventing re-litigation.
7. Third parties and strangers may challenge consent decrees in limited circumstances, particularly in cases involving ancestral property, fraud, or collusion.
8. Contemporary challenges include ensuring authenticity in e-compromises, protecting vulnerable parties in family disputes, and reconciling consent decrees with specialised statutes.

### Conclusion

Order XXIII CPC consent decrees are an important tool to effect consensual resolution of disputes and lower litigation loads. Their validity depends upon three elements; written and signed agreement, lawful object and proper judicial recording. Upon execution, they are binding estoppels, decrees, and generally are non-appealable and immune from fresh suits. They cannot, however, escape judicial review. If there is a violation of the will by fraud, coercion or illegality, the law offers a limited but sufficient remedy, by making an application before the same court in accordance with the proviso to Order XXIII Rule 3. The 'bar' under Rule 3A and Section 96(3) CPC serves to provide finality whilst affording a 'safety valve' for cases of 'genuine grievance'. The lessons for litigants and practitioners are: if you need to make a compromise, ensure that it is lawful, written and properly authorised; understand that generally the remedy for breach of a compromise is by appeal and fresh suit to the same court, and that generally there is no remedy for a failure to make a compromise; and, if you are a third party, assess whether you are "stranger" to the compromise and whether a compromise was made by fraud or collusion. Put

differently, consent decrees represent the idea that justice is about more than just adjudication, that justice is about consensual resolution in lawful and informed and real consensual resolution.

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