

**HIGH COURT OF TRIPURA
AGARTALA**

RSA 03 OF 2008

- 1. Smt. Subhasini Shil,**
W/o Late Girindra Chandra Shil.
- 2. (a) Smt. Gita Rani Shil,**
W/o Late Upendra Ch. Shil.
- 2(b) Shri Pintu Shil,**
S/o Lt. Upendra Ch. Shil.
- 2(c) Shri Santosh Shil,**
S/o Lt. Upendra Ch. Shil.
- 2(d) Smt. Arpita Rani Shil,**
D/o Lt. Upendra Ch. Shil.
- All residents of village Chebri,
P.O. Khowai.**
- 3. Shri Jogendra Chandra Shil,**
S/o Late Girindra Chandra Shil.
- 4. Shri Narayan Shil,**
Son of Late Girindra Chandra Shil.
- 5. Sri Sukhendra Chandra Shil,**
Son of Late Girindra Chandra Shil.

Sl. No. 1 to 5 of Vill- Chebri,
Paragana-Birchandrapur,
P.S. Khowai,
Distt. West Tripura.

- 6. Smt. Milan Rani Shil,**
D/o Late Girindra Chandra Shil,
W/o Sri Binode Behari Chanda,
Dharmanagar, Vill : Uttarhurua,
P.O. Kalachara,
Distt. North Tripura.
- 7. Smt. Phulan Rani Shil,**
D/o Late Girindra Chandra Shil,
W/o Late Prabindra Chandra Shil,
Vill Basudev Para,
P.S. Ambassa,
District: North Tripura.

.. Appellants.

- Vrs -

- 1. (a) Smt. Bela Acharjee,**
W/o Late Sunil Kumar Acharjee,
Resident of Maharaj Ganja Bazar,
P.S. Khowai, District: West Tripura.
- 1(b) Sri Pinaki Acharjee,**
Son of Late Sunil Kumar Acharjee,
Resident of Maharaj Ganja Bazar,
P.S. Khowai, District: West Tripura
- 1(c) Smt. Malabika Acharjee,**
D/o Late Sunil Kumar Acharjee,
Resident of Maharaj Ganja Bazar,
P.S. Khowai, District: West Tripura.
- 1(d) Smt. Mallika Acharjee,**
D/o Late Sunil Kumar Acharjee,
W/o Sri Bijit Kumar Acharjee,
Resident of Rehabari,
Guwahati, Assam.
- 1(e) Mukti Chowdhury,**
D/o Late Sunil Kumar Acharjee,
W/o Sri Shaktibrata Chowdhury,
Resident of: Vidyasagar Road,
Jogendranagar, P.S. East Agartala,
Distt. West Tripura.
- 1(f) Smt. Mitali Acharjee,**
D/O. Late Sunil Kumar Acharjee,
W/o. Sri Narayan Acharjee,
Resident of: Lumbding,
Nowgaon, Assam.
- 2. (a) Smti. Anupama Acharjee,**
W/o Lt. Sudhangsu Acharjee,
Vill. Chebri, P.O. Khowai,
Distt. West Tripura.
- 2(b) Sri Soumen Acharjee,**
W/o Lt. Sudhangsu Acharjee,
Vill. Chebri, P.O. Khowai,
Distt. West Tripura.
- 2(c) Smti. Dulali Acharjee,**
W/o Sri Binode Lal Acharjee,
Resident of Khowai town (Near Srinath
Vidyaniketan), P.O. Khowai, Distt. West Tripura.

2(d) Smti. Rupali Acharjee,
W/o Sri Bapi Acharjee,
Vill. Barjala, P.S. East Agartala,
Distt. West Tripura.

2(e) Smti. Gouri Acharjee(Das),
W/o Sri Biswajit Das,
Vill. Chebri, P.O. Khowai,
Distt. West Tripura.

3. Smt. Renu Bala Acharjee,
W/o Late Aswini Kumar Acharjee,
D/o Late Sashi Bhusan Acharjee,
Vill Chebri, P.O. Khowai,
Distt. West Tripura.

4. Smt. Dhira Bala Acharjee,
D/o Late Sashi Bhusan Acharjee,
Vill Nak Phul, P.O. Kamalpur,
Distt. Dhalai.

5. Smt. Namita Acharjee,
W/o Nani Gopal Acharjee,
D/o Late Sashi Bhusan Acharjee,
P.O. Ulubari, G.S. Road, Guwahati,
Assam.

6. Smt. Khela Acharjee,
W/o Sri Sudhangshu Acharjee,
D/o Late Sashi Bhusan Acharjee,
Vill. Krishnanagar, Thakur Palli Road,
Agartala, Distt. West Tripura.

7. Sri Ashim Acharjee,

8. Nupur Acharjee.

9. Smt. Sikha Acharjee.

10. Smt. Pitu Acharjee.

11. Smt. Sheli Acharjee.
Sl.No. 7 to 11 : Legal heirs of
Late Aswini Acharjee, Vill. Chebri, P.S. Khowai,
Distt. West Tripura.

12. (Struck out).

13. (a) Smti Aparna Acharjee,
W/o Lt. Nikhil Acharjee.

13(b) Sri Nirjhar Acharjee,
Son of Lt. Nikhil Acharjee.

13(c) Smti Anita Acharjee,
Wife of Tapan Acharjee,
D/o Lt. Nikhil Acharjee.

13(d) Sumita Acharjee,
W/o Sankar Acharjee,
D/o Lt. Nikhil Acharjee.

13(e) Rita Acharjee,
D/o Lt. Nikhil Acharjee,
Village-Chebri, P.S. Khowai.
Dist. Khowai.

14. Sri Dipak Acharjee,
S/o Late Mono Ranjan Acharjee,
Ganki, (Near Fire Service Station),
P.S. Khowai, Distt. West Tripura.

15. (a) Smt. Bela Acharjee,
D/o Late Monoranjana Acharjee.

(b) Smt. Suprabha Acharjee,
D/o Late Nikhil Acharjee.

(c) Sri Malay Acharjee,

(d) Smt. Tapati Acharjee,

(e) Smt. Sathi Acharjee,

(f) Sri Pralay Acharjee,

All are the legal heirs of Late Mati Lal Acharjee,
Vill. Chebri, P.O. Khowai.

16. (Struck Out).

17. (Struck Out).

.. Respondents.

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the appellants : Mr. D.K.Biswas &
Mr. S. Lodh, Advs.

For the respondents : Mr. N. Das, Mr. S. Ghosh &
Mr. A. Bhattacharjee, Advs.

Date of hearing : 09.12.2014 & 10.12.2014

Date of delivery of judgment and order : 17.01.2015.

Whether fit for reporting : No

JUDGMENT & ORDER

This second appeal, under Section 100 of the Code of Civil Procedure, 1908 is directed against judgment and decree dated 14.12.2007 passed by learned Addl. District Judge, Khowai, West Tripura in Title Appeal No.06 of 2007 where-under the learned Addl. District Judge upheld the judgment and decree of dismissal dated 12.07.2007 in Title Suit No. 41 of 1979, passed by learned Civil Judge, Jr. Division, Khowai.

2. Heard learned counsel Mr. D.K.Biswas for the appellants. There was no representation on behalf of the respondents on the date of hearing.

3. The second appeal has been admitted for hearing on the following substantial questions of law.

"(a) Whether a suit for a declaration of an earlier decree void on the ground of fraud on the court can be defeated by holding that it is hit by res judicata?"

(b) Whether the Court can dismiss a suit without any finding on "Fraud" holding that the suit is hit by res judicata, when substantive right of the plaintiffs to the property in question is seriously affected?"

4. Appellant Nos. 1 and 3 to 7 along with another Upendra Chandra Shil (since deceased), the predecessor of appellant Nos 2(a) to 2(d) as plaintiffs (hereinafter mentioned as plaintiffs) jointly filed T.S. 41 of 1979 in the Court of Munsiff, Khowai against the defendant-respondents (hereinafter mentioned as defendants) seeking declaration of possessory right and confirmation of possession with permanent injunction with further prayer seeking declaration that decree passed in T.S.4 of 1958 which was merged with the appellate decree in Second Appeal No.11 of 1970 was a nullity and a void decree, in-effective and in-executable, in respect of the suit land described in Schedule-1 of the plaint.

4.1 The case of the plaintiffs in short is that their predecessor Girindra Chandra Shil, while was in possession of the land described in Schedule-1 of the plaint, got settlement from the government by "jung bong" case No.85 of 1954 and was possessing the same exercising all acts of possession which has been inherited by the plaintiffs. Prior to the settlement of Schedule-1 land in the name of Girindra Chandra Shil, the predecessor of the plaintiffs, the

predecessor of the defendants namely Sashi Bhusan Acharjee purchased the land described in Schedule-2 of the plaint by a registered deed from one Azhar Ullah on 31.01.1951 A.D. and that purchased land of Sashi Bhusan were adjacent to east and west boundary of the settled land of Girindra Ch. Shil. Sashi Bhusan Acharjee after purchase of the land described in Schedule-2 of the plaint, obtained a rectification of Sale-deed through Court on 17.12.1957 and thereafter in the year 1958 Sashi Bhusan instituted T.S. 4/58 in the Court of Munsiff, Khowai against Girindra Chandra Shil, seeking declaration of title and recovery of khas possession of 2 kanis of land and also for injunction for some other portion of the land described in the Schedule of T.S. 4 /58 and that land has been described in Schedule-3 of the plaint of the plaintiffs.

4.2 It is contended by the plaintiffs that the purchased land of Sashi Bhusan was of jote No.63 whereas the settled land of Girindra Chandra Shil was outside the land of jote No.63 of Azhar Ullah and so there was no point of Sashi Bhusan Acharjee having any land from the settled land of Giridindra Chandra Shil. Sashi Bhusan got decree of T.S. 4/58 and challenging the decree, the predecessor of the plaintiffs preferred first appeal but the first appeal was dismissed and thereafter they preferred second appeal and second appeal was also dismissed and the decree passed in T.S. 4/58 was affirmed. It is alleged that Sashi Bhusan Acharjee and his

brother sold out their purchased land total 12 kanis 7 gandas which they purchased from Azhar Ullah on 31.01.1951 and they left with no other land. During pendency of the present suit, the plaintiffs could ascertain that Sashi Bhusan Acharjee and his brother sold out their entire purchased land and so they exercised fraud on the Court while obtaining decree in T.S. 4/58 and the decree is, therefore, not executable since it is obtained in exercise of fraud and in collusion and therefore, the plaintiffs challenged the decree and further prayed for declaration as stated hereinbefore.

5. The defendants in their written statement contended that the present suit filed by the plaintiffs is not maintainable since the subject matter of the present suit was directly and substantially in issue in the previously instituted suit between the parties i.e. T.S. 4/58 and it is also contended that the land of Jote No.63 of Azhar Ullah and the land settled in the name of Girindra Chandra Shil were surveyed at the time of adjudication of T.S.4/58 and it was clearly found that 2 (two) kanis of purchased land of Sashi Bhusan of Jote No.63 were within settled land of Girindra Chandra Shil and the Survey Commissioner's report was accepted which was even not objected by Girindra Chandra Shil in the said suit. Title Suit No.4/58 was decreed in favour of Sashi Bhusan on 31.05.1968 and challenging the decree Girindira Chandra Shil preferred Title Appeal No.36 of 1968 and that was also

dismissed on 29.12.1969. Girindra Ch. Shil thereafter preferred second appeal No.11 of 1970 in the Agartala Bench of the Gauhati High Court and the High Court by judgment and decree dated 26.04.1979 dismissed the appeal and affirmed the decree passed by the trial Court which was affirmed by the appellate Court. The plaintiffs with a view to deprive the defendants from the fruits of hard-earned decree, instituted the vexatious suit against the defendants and so, the defendants prayed for dismissal of the suit.

6. The trial Court as it appears initially formulated 11 issues namely—

- 1) Is the suit maintainable in its present form?
- 2) Have the plaintiffs their alleged cause of action?
- 3) Has this Court jurisdiction to try this suit?
- 4) Is the suit barred by limitation?
- 5) Is the suit bad for defect of parties?
- 6) Do estoppels, waiver and acquiescence bar the suit?
- 7) Are the plaintiffs entitled to get a declaration of their possessory right?
- 8) Is the prayer for confirmation of possession tenable?
- 9) Are the Plaintiffs entitled to get permanent injunction?
- 10) To what other reliefs, if any, are the plaintiffs entitled?
- 11) Is the suit barred by Res-judicata?

6.1 subsequently issues were recasted and 3(three) issues were framed namely---

- i) Whether the suit is maintainable in its present form?
- ii) Whether the plaintiffs had been possessing the suit land prior to the date of institution of the instant suit and whether the defendants had been threatening the plaintiffs with a view to dispossessing them therefrom?
- iii) Whether the plaintiffs are entitled to any relief and if so upto what extent?

7. In course of trial, plaintiff No.2 (since deceased) Upendra Chandra Shil examined himself as P.W.1 and the plaintiff proved the following documents in support of their case:-

- 1) Certified copy of sale deed vide No.1-1334 dated 31-5-1960 executed by Sashi Bhusan Acharjee in favour of Ramesh Chandra Das. **(Exhibit P.1).**
- 2) Certified copy of sale deed vide No.1-1734 dated 14-6-1967 executed by Manoranjan Acharjee in favour of sri Kalipada Paul and Badal Krishna Paul. **(Exhibit P.2).**
- 3) Certified copy of sale deed vide No.1-1735 dated 14-6-1967 executed by Manoranjan Acharjee in favour of Nagendra Chandra Biswas.**(Exhibit P.3).**

- 4) Certified copy of sale deed vide no.1-2702 dated 20-7-1961 executed by Sashi Bhusan Acharjee in favour of Bibhash Chandra Das. **(Exhibit P.4).**
- 5) Certified copy of sale deed vide No.1-113 dated 12-2-1957 executed by Sashi Bhusan Acharjee in favour of Aswini Kumar Acharjee. **(Exhibit P.5).**

8. On behalf of the defendants, the defendant No.1(b) Pinaki Acharjee examined himself as D.W.1 and in support of their case, the defendants proved the following documents:-

- 1) Certified copy of the judgment of Munsiff, Khowai, West Tripura, dated 31-5-1968 in T.S. 4/1958. **(Exhibit-A).**
- 2) Commissioner report dated 01-6-1964. **(Exhibit-B).**
- 3) Certified copy of judgment dated 26-4-1979 of Hon'ble High Court, Agartala Bench, Agartala. **(Exhibit-C).**

9. The trial Court decided all the issues against the plaintiffs and accordingly, dismissed the suit.

10. Aggrieved, the plaintiffs preferred Title Appeal No.6 of 2007 in the Court of learned Addl. District Judge, Khowai, West Tripura and the learned Addl. District Judge by impugned judgment dated 14.12.2007 dismissed the appeal and hence, this second appeal.

11. Learned counsel Mr. D. K. Biswas appearing for the appellants has submitted that Sashi Bhusan Acharjee, the predecessor of the defendants along with another purchased 12 kanis 7 gandas of land from one Azhar Ullah on 13.01.1951

which appertains to jote No.63 of Mouja Chebri. After purchase in the year 1951, Sashi Bhusan applied for a correction deed in the year 1957 and obtained a correction deed incorporating therein a vexatious boundary to grab the settled land of Girindra Chandra Shil. Such correction deed was obtained with an obvious attempt to make out a case and to grab the land of Girindra Chandra Shil. It is also submitted by Mr. Biswas, learned counsel that Sashi Bhusan Acharjee after having the correction deed in the year 1957, instituted Title Suit No.4/58 seeking recovery of possession of two kanis of land described in Schedule 'Gha' of that suit which has been described in Schedule-3 of the present suit of the plaintiffs and got decree exercising fraud on the Court which the plaintiffs could ascertain after institution of the present suit when the plaintiffs found that Sashi Bhusan and his brother Monoranjan already sold out 12 kanis 7 gandas of land which they purchased from Azhar Ullah appertaining to jote No.63 of Mouja Chebri. Since Sashi Bhusan and his brother already sold out 12 kanis 7 gandas of land by dint of Exhibit 1 to 5, the Sale-deeds, they left with no other land for recovery from the plaintiffs and therefore, the decree was in-executable since obtained by fraud and the trial Court as well as the appellate Court failed to appreciate the facts and circumstances and the evidence on record and hence, the judgment and decree passed by the trial Court and affirmed by the appellate Court

are liable to be set aside and the suit instituted by the plaintiffs may be decreed in their favour.

12. I have meticulously gone through the evidence and materials on record and the impugned judgment passed by the trial Court and the appellate Court. It is an admitted position that Sashi Bhusan Acharjee, the predecessor of defendants instituted T.S. 4/58 seeking declaration and recovery of possession of 2 kanis of land described in Schedule-'Gha' of that suit which was in possession of Girindra Chandra Shil, the predecessor of the plaintiffs. It is also an admitted position that the suit was decreed in favour of Sashi Bhusan Acharjee and on appeal by Girindra Chandra Shil, the decree passed by the trial Court was affirmed and in the second appeal preferred by Girindra Chandra Shil also the decree was affirmed. The decree in the second appeal by the High Court was passed on 26.04.1979 and thereafter the present plaintiffs who are legal heirs/successors of Girindra Chandra Shil instituted the present suit seeking declaration and confirmation of possession in the suit land described in Schedule-1 of the plaint which includes the decreetal land of T.S.4/58. Presently, the plaintiffs contended that the decree of T.S.4/58 was obtained exercising fraud since the correction deed was obtained after about 7 years of purchase by Sashi Bhusan and further Sashi Bhusan and his brother Monoranjan already sold out 12 kanis 7 gandas of land which they purchased from Azhar Ullah on 31.01.1951 appertaining to

jote No.63, mouja Chebri. It is, therefore, admitted position that the suit land of the present suit consists the decreetal land of T.S.4/58.

13. Now let us see whether the decree of T.S.4/58 was obtained exercising fraud?

“Fraud” is defined in Section 17 of the Indian Contract Act, which reads thus:-

‘Fraud’ defined—‘Fraud’ means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:--

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2) the active concealment of a fact by one having knowledge or belief of the fact;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent.

14. As prescribed in Order VI, Rule 4 of CPC when fraud is pleaded particulars of fraud must be elaborately stated in the plaint. The plaintiffs contended that Sashi Bhusan purchased the land from Azhar Ullah in the year 1951 whereas Giridindra Chandra Shil got settlement of land of

Schedule-1 from the Govt. by way of a 'jung bong' case No.85 of 1954. Thereafter in the year 1957 Sashi Bhusan obtained a rectified Sale-deed and thereafter instituted T.S.4/58 seeking recovery of khas possession of 2(two) kanis of land from the settled land of Girindra Chandra Shil. It is also contended by the plaintiffs that after the present suit was instituted by the plaintiffs they could learn that Sashi Bhusan and his brother already sold out 12 kanis 7 gandas of land which they purchased from Azhar Ullah in the year 1951 and so they were left with no other land out of their purchased land and so, the decree was obtained by fraud.

15. The trial Court and the appellate Court elaborately discussed the evidence and materials on record. The judgment and decree passed in T.S. 4/58, as it appears, decided in the appellate Court as well as in the High Court in the second appeal was affirmed. Sashi Bhusan Acharjee purchased the land described in Schedule-2 of the plaint of the present suit in the year 1951 from Azhar Ullah. He obtained a rectified deed from Azhar Ullah in the year 1957 which is an undisputed fact. Neither Girindra Chandra Shil nor his successors i.e. present plaintiffs ever challenged the purchased deed of Sashi Bhusan Acharjee or the subsequent rectified deed obtained by Sashi Bhusan from Azhar Ullah at any point of time. While the rectified deed was already on record in course of adjudication of T.S.4/58, the plaintiffs cannot allege exercise of fraud because of the rectified deed.

Fraud is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill will towards the other is immaterial. The expression 'fraud' involves two elements, deceit and injury to the person deceived. A 'fraud' is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Burden lies on the plaintiffs heavily to prove that Sashi Bhusan Acharjee, the predecessor of the defendants while instituted Title Suit No.4/58 deceived the plaintiffs or their predecessor Girindra Chandra Shil and thereby obtained decree in the suit.

16. The trial Court as well as the appellate Court elaborately discussed the factual aspects and the evidence on record including the documentary evidence and I find nothing to re-appreciate the same. The plaintiffs by proving the Sale-deeds marked Exhibit 1 to Exhibit 5, intended to show that Sashi Bhusan Acharjee and his brother Monoranjan Acharjee sold out 12 kanis 7 gandas of and thereby they have exhausted their purchased land and that was not disclosed before the Court when T.S.4/58 including appeals there from were under adjudication. On perusal of Exhibit-A, I find that this issue was elaborately discussed by the trial Court in the judgment of T.S.4/58. I intend to quote herein the observation made in para 15 of the judgment dated 31.5.1968 of T.S.4/98 (Exhibit-A) which reads as follows:-

"15. The learned lawyer of the defdt contended that from the plaint it is clear that the pltff purchased 8 kanis of land. From the Exgt.B-4 and B-5 it appears that pltff has transferred almost 7 kanis of land to different persons. Moreover it further appears from the plaint itself that the pltff previous to the institution of the suit transferred one kani of land to his son-in-law Aswini. If that be so the pltff cannot have more land in the dag No.902 and the contention of the pltff for recovery of possession is false. In this connection the learned lawyer of the pltff stated that six kanis of land have been transferred by the pltff after the institution of the suit but these six kanis are outside the suit land. A reference to Ext.B-5 and Ext.B-4 will show that these land were transferred after the institution of the suit. Moreover from the evidence of D.W.5 it will be clear that to the north of his land there is homestead of Girindra Seal. This homestead is his land of schedule 'Gha'. So there is no doubt that this suit land falls outside the transferred land of the pltff subsequent to the institution of the present suit. The next contention that the entire 8 kanis of land have been accounted for and so the pltff cannot have any further claim upon the suit land of schedule "Gha". In this respect I wish to mention that the predecessor of the pltff took settlement about 40 years back and it is clear from the evidence of both the parties that the lands of Jote No.63, i.e. dag No.902 were jungly. From the evidence of P.W.4, the Surveyor of S.D.O.'s office we find that the lands were surveyed in 1337 T.E. and after that no survey took place. In that view of the matter it is quite natural that there are some

excess land in the jote. Moreover when the settlement was taken on the basis of specific, well defined boundary, even if there be some excess land within the plot of such settlement, it must be taken that the excess land was also settled in favour of the person taking settlement. It is now well settled principle of law that in case of dispute between the quantity of land and the boundary, the boundary must prevail. Moreover when from the records it is clear that the Government has given settlement of the entire lands of Jote No.63 to one person, it cannot again settle any land of the same jote to other person. It may be noted here that in many cases it is noticed that the settled land actually is greater in area than that are mentioned in pattas executed by the Government because at the time settlement, during the time of Maharajas, the lands were jungly. So in any view of the matter, it must be taken that the suit land appertains to the land of dag No.902 and as such the plaintiff and his brother are the owners of the same by purchase.”

17. Even if Sashi Bhusan and his brother Monoranjan sold out 12 kanis 7 gandas of land out of their purchased land from Azhar Ullah, that cannot frustrate the decree passed in T.S. 4/58 which has been affirmed in second appeal No.11/70. It is clear that the present plaintiffs with a view to frustrate the decree of T.S.4/58 filed the present vexatious suit having no valid reason there for. It is apparent that the plaintiffs instituted the suit only to somehow avoid the decree of T.S.4/58 and to deprive the defendants from the fruit of the

decree. The allegation of fraud is totally unfounded and is an imagination of the plaintiffs having no material at all to support it. While a competent court already passed decree and the decree stands good, it cannot be set aside in a subsequent suit on the ground as alleged by the plaintiffs.

18. It is settled law that fraud and justice cannot dwell together. Fraud vitiates everything and once fraud is proved even a decree passed by a competent Court may be set aside. But there must be strict proof of fraud. A vexatious allegation against the other cannot be treated as fraud. Here, in this case, a decree was passed in an earlier suit for a specific plot of land. The plaintiffs challenged the decree alleging fraud on the ground that the rectification deed was wrong and that the predecessor of the defendants already sold out their purchased land. Such issues were substantially dealt with by the trial Court in the previous suit which has ended in second appeal. So, on that ground, the allegation of fraud cannot stand and is liable to be rejected which the trial Court and the appellate Court in my considered opinion has rightly done.

19. It is shocking that the predecessor of the defendants instituted the suit in the year 1958 and the decree passed by the Court was finally upheld in the second appeal in the year 1979 but the defendants could not enjoy the fruit of the decree because of this frivolous suit instituted by the

plaintiffs and thereby the plaintiffs could avoid execution of the decree most illegally for last 36 years.

20. I find no merit in the second appeal and hence it is dismissed with costs throughout. I also feel it appropriate and proper to impose a special compensatory cost of Rs.2000/- on the plaintiffs which should be paid to the defendants.

21. The second appeal accordingly stands dismissed.

22. Send back the L.C. records along with a copy of this judgment.

JUDGE