**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR**

**CIVIL REVISION PETITION Nos.4018 of 2015 and 4508 of 2015**

**COMMON ORDER:**

Aggrieved by the orders dated 31.08.2015 and 24.04.2015 in I.A.No.256 of 2015 and in I.A.No.294 of 2015 in O.S.No.7 of 2010 on the file of the Additional Senior Civil Judge, Karimnagar, wherein an application made under Section 45 of the Indian Evidence Act and an application under Order 13, Rule 10 of C.P.C. were allowed, C.R.P.Nos. 4018 and 4508 of 2015 are filed.

Since the issue involved in both the Civil Revision Petitions filed under Article 227 of the Constitution of India is one and the same, they are being disposed of by this common order.

The facts in issue are as under:

The respondent/plaintiff filed O.S.No.7 of 2010 seeking declaration of title and recovery of possession of the plaint schedule property. The plaintiff claims to be owner and possessor of land admeasuring Ac.2.04 gts., in Sy.No.716/A and Ac.1.20 gts., in Sy.No.717/C, situated at Nagunoor Village, Karimnagar Mandal and District. The plaintiff's father by name Dasari Mallaiah was owner and possessor and his name was also recorded as pattadar. It is stated that the said land was purchased by the plaintiff from her father through a registered sale deed bearing document No.818 of 1970, dated 09.03.1970. The plaintiff along with her husband shifted to Chandurthi and started residing there. Since the parents and brothers of the plaintiff are residing in Nangunoor village, the plaintiff requested them to cultivate the said land. After the death of her parents, the brothers of the plaintiff cultivated the land and used to send the income generated on it to the plaintiff. About a year back, when the plaintiff asked her brothers for partition of her father's joint property, the brothers of the plaintiff denied the same and as such disputes arose between them. While things stood thus, the plaintiff came to know that defendant Nos.1 and 2, who are strangers to her created some false documents and took possession of the land. Hence, O.S.No.7 of 2010 came to be filed seeking a declaration of title and recovery of possession of the suit schedule property.

A written statement in the said suit came to be filed on 13.09.2010, in which the defendants took a plea stating that they purchased the suit land from Dasari Rajaiah and Dasari Keshaiah, who got the said land as their share pursuant to an oral partition which took place more than 50 years ago. Subsequently, a document bearing No.1552/1973 dated 03.07.1973 came to be executed in favour of defendant No.1. It is stated that there were disputes between the plaintiff on one hand and one Deva Dattam Reddy, mother of plaintiff D.Chandramma and Dasari Laxmaiah on the other. It is averred that Devadattam Reddy obtained a collusive decree in O.S.No.175 of 1972 in respect of the suit land and started raising disputes with defendant No.1. In view of the same, the suit land was taken over by the Tahsildar as per the orders of the Revenue Divisional Officer in Cr.M.C.No.49/1974 under Section 145 Cr.P.C. Later, defendant No.1 filed O.S.No.78 of 1977 on the file of the District Munsiff, Karimnagar against Deva Dattam Reddy, Plaintiff, her mother and brother, seeking declaration of title and perpetual injunction and also for declaration that the sale deed No. 818/1970 dated 10.03.1970 is void and ineffective. Finally, O.S.No.78 of 1977 ended in a compromise and the suit was decreed in terms of the compromise on 30.06.1977. Defendant No.1 therein was declared as owner and possessor of the suit land and since then he is in possession over the said property.

Though the issue of compromise in O.S.No.78 of 1977 was referred to in the written statement filed in the year 2010, the petitioner herein filed I.A.No.256 of 2014 requesting the Court to summon the documents with regard to compromise petition in O.S.No.78 of 1977 and vakaltnama filed on behalf of defendant No.2 therein, on the ground that she never attended the Court, engaged a counsel nor filed any compromise petition and all the said documents filed therein are forged. The said application was allowed on 24.04.2015. Later the petitioner filed I.A.No.256 of 2015 under Section 45 of the Indian Evidence Act, for sending the documents, which were called for in I.A.No.294 of 2014, to an expert. After analysing the material available on record, the trial Court allowed the said petition. Challenging the orders passed in both the I.A.s, these two Civil Revision Petitions are filed.

Sri M.Rajamalla Reddy, learned counsel appearing for petitioners in both the revisions would submit that the request of the petitioners to send these documents to an expert at this belated stage and to compare the thumb impression made in the year 1977 with the thumb impression now made cannot be permitted. He further submits that since the decree in O.S.No.78 of 1977 has become final, the plaintiff is bound by the contents of the decree and is estopped from disputing the thumb impression on the vakalathnama and compromise petition. He also submits that in the year 2010 itself the petitioners have filed written statement referring to the compromise decree passed in O.S.No.78 of 1977, but no steps are taken for calling of the documents and sending the documents to an expert till 2015. It is his case that even in chief evidence, the plaintiff did not deny the averments made in the written statement with regard to compromise and the compromise decree.

On the otherhand, learned counsel for the respondent/ plaintiff would submit that the respondent came to know about the decree only after filing of written statement and immediately thereafter petitions came to be filed summoning and sending the documents to an expert. Relying upon the judgment of the Apex Court in ***A.V.Papayya Sastry and others v. Government of Andhra Pradesh and others***[1] he submits that when any decree is obtained by fraud, none prevents the defendants from sending the documents to an expert in any subsequent proceedings. He further submits that no prejudice would be is caused to the petitioners if these documents are sent to an expert.

The un-disputed facts which are culled out from the material on record are as under:

One Mula Tirupathi Reddy, who is the first petitioner herein filed O.S.No.78 of 1977 on the file of the District Munsiff, Karimnagar seeking declaration of title and perpetual injunction over the schedule property and also seeking a declaration that the sale deed document No.818 of 1970 dated 10.03.1970 said to have been executed by the father of the respondent herein in her favour as void and ineffective. On 30.06.1977 the District

Munsiff, Karimnagar, passed the following order:

> "Sri V.Jagga Rao filed vakalat for all defendants. Plaintiff and all defendants present and filed joint compromise petition. Compromise is recorded and petition is allowed insofar as the subject matter of the suit is concerned. In the result, the suit is decreed without costs in terms of the compromise."

Thereafter, in the year 2010 ie. 33 years later, the respondent herein filed O.S.No.7 of 2010 on the file of the Additional Senior Civil Judge, Karimnagar, seeking declaration of title and recovery of possession of land admeasuring Ac.2.04 gts., in Sy.No.716/A and Ac.3.24 gts., in Sy.No.717/C situated at Nagunoor Village, Karimnagar Mandal and District which was subject matter of O.S.No.78 of 1977. In the said suit, the petitioners herein filed written statement denying the averments made in the plaint and also narrated the manner in which they came into possession. The trial in O.S.No.7 of 2010 commenced and the respondent herein ie. Plaintiff filed her chief affidavit on 10.02.2012 along with Exs.A1 to A8. Later, she was cross examined on 07.08.2012 and she was further cross examined on 15.11.2012. One Sunki Rajaiah @ Rajeshwar Rao was examined as PW.2. After completing the evidence of plaintiff, the first defendant got himself examined as DW.1 and he filed his chief affidavit on 30.01.2014. At that stage, the respondent herein filed I.A.No.294 of 2014 for summoning the documents i.e. compromise petition and vakalthnama in O.S.No.78 of 1977. After the said application was allowed, the respondent herein filed I.A.No.256 of 2015 for sending those documents to an expert for comparison of the thumb impression.

The averments in O.S.No.7 of 2010 would show that her brother denied to give the share and as such disputes arose between them. It was also stated that the plaintiff came to know that defendant Nos.1 and 2 created fabricate documents and took possession over the said land. Though the defendants in their written statement filed in the year 2010 referred to O.S.No.78 of 1977 and the compromise arrived at therein, the chief affidavit of the plaintiff which was filed in the year 2012 is silent on the said aspect. Even in the I.A. filed for sending the documents to the expert, the plea of fraud was never raised. For the first time, the theory of fraud came to be introduced in this revision.

The counsel for the petitioners submits that any decree or judgment which was obtained by playing fraud is non-est in the eye of law. In support of his plea, he relied upon the judgment of the Apex Court in **Papaiah Sastry case (1 supra).**

It would be appropriate to refer to few paragraphs in the judgment of the Apex Court in **Papaiah Sastry case (1 supra)** , which reads as under:

> "**22.** It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non-est in the eye of law. Such a judgment, decree or order by the first court or by the final court has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.
>
> **26.** Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of "finality of litigation" cannot be stretched to the extent of an absurdity that it can be utilised as an engine of oppression by dishonest and fraudulent litigants."

There is no dispute that fraud vitiates everything. It is also not in dispute that the fraud avoids all judicial acts, ecclesiastical or temporal. From the judgment of the Apex Court referred to above, it is clear that any judgment, decree or order obtained by playing fraud on the Court is non-est in the eye of the law and the decree alleged to have been obtained by playing fraud can be challenged in any Court at any time in appeal, revision, writ or in any collateral proceedings. But in order to establish fraud one has to first plead fraud in obtaining the decree in O.S.No.78 of 1977 and then establish the same by leading evidence. No such effort was made in the instant case. In fact such a plea was never raised even in the I.A. filed before the trial Court. Further, merely because the documents in O.S.No.78 of 1977 are summoned, it does not by itself mean that they should be sent to an expert on an allegation of fraud raised in the civil revision. As stated above, the plea of fraud is beyond the scope of the contents of the plaint.

One fact which should also to be noted is that till date no steps are being taken by the respondent herein to challenge the decree dated 30.06.1977 passed in O.S.No.78 of 1977 on the file of the District Munsiff, Karimnagar. The said decree discloses that the respondent herein, who was defendant No.2 in the said suit, was represented by a counsel and all the defendants who were present before the Court filed a joint compromise petition, which was allowed. No plea of fraud was raised by any of the other defendants in the said suit. Therefore, the plea of the respondents herein that there was fraud in obtaining the decree in O.S.No.78 of 1977 cannot be accepted.

For the aforesaid reasons, I am of the view that the order of the trial Court warrants interference and accordingly Civil Revision Petition No.4018 of 2015 is allowed by setting aside the order dated 31.08.2015 passed in I.A.No.256 of 2015 in O.S.No.7 of 2010 while C.R.P.No.4508 of 2015 stands dismissed. No order as to costs.

As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

**JUSTICE C.PRAVEEN KUMAR**

31.12.2015
gkv

---

[1] (2007) 4 SCC 221