THE HON'BLE SRI JUSTICE K.C. BHANU

AND

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

A.S.No.931 of 2013

JUDGMENT: *(per Hon'ble Sri Justice M. Seetharama Murti)*

This appeal by the unsuccessful plaintiff is directed against the orders dated 30.07.2013 of the learned VIII Additional District Judge, Ranga Reddy District passed in I.A.No.77 of 2012 in O.S.No.676 of 2010 filed by the defendants 6 to 9 under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure requesting to reject the plaint.

2. We have heard the submissions of *Sri Resu Mahender Reddy,* learned senior counsel for the appellant/plaintiff ('the plaintiff', for brevity) and *Sri J.Prabhakar*, learned counsel for the respondents/ defendants 6 to 9 ('the defendants 6 to 9', for brevity).

3. The introductory facts, in brief, are as follows:

The sole plaintiff brought a suit against the defendants 1 to 9 for partition of plaint 'A' and 'C' schedule properties into seven equal and equitable shares by metes and bounds and for allotment of one such separated share each in 'A' and 'C' schedule properties to the plaintiff. The contesting defendants 6 to 9 having put in appearance in the said suit before the trial Court had filed an interlocutory application in I.A.77 of 2012 under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure ('the Code', for brevity) requesting to reject the plaint. The plaintiff had filed a counter resisting the said application. At the time of hearing before the trial Court, no oral and documentary evidence was adduced. On merits, the trial court had allowed the petition. Therefore, the aggrieved plaintiff is before this court.

4. The case of the defendants 6 to 9 in support of their request for rejection of the plaint, in brief, is this:

The 6th defendant is the mother of the defendants 7 to 9. Since the suit in O.S.No.676 of 2010, i.e., the instant suit which was instituted by the plaintiff was vitiated on account of misrepresentation and fraud in urging the pleadings in a manner prohibited by law, the defendants 6 to 9 are aggrieved. One V.Venkat Rao had four wives. Earlier, Sharara Devi, V.Ravinder Rao, Sudheer Rao and Jayasimha had filed O.S.No.1123 of 1984 on the file of the learned V Additional Judge, City Civil Court, Hyderabad. The said former suit was transferred to the Court of the learned II Additional Chief Judge, City Civil Court, Hyderabad and was re-numbered as O.S.No.293 of 1984. That suit was initially filed against the husband of the 6th defendant and son of the 1st plaintiff therein by name Srinivasa Rao. Subsequently, several other parties were impleaded in that suit. The said suit had attained finality by virtue of a compromise final decree dated 15.07.1991. As per the terms of the compromise, the properties were allotted to the parties to the said suit and a final decree was passed in the said suit O.S.No.293 of 1984. As per the final decree, the respective parties were put in possession of their respective shares of property and they have been enjoying the same. As per the terms of the compromise, the parties therein had admitted and agreed that item nos. 1 to 15 of the plaint 'A' schedule properties and Flat No.F-45 forming part of multi storied building complex in Municipal Colony, Malakpet, Hyderabad and House No.16-8-238/7 at Malakpet, Hyderabad are the personal properties of the 4th defendant therein, i.e., defendant no.6 herein. The plaintiff herein was allotted item no.29 and his mother-V.Padmavathi was allotted item nos.18 to 22 under the said compromise decree. The 6th defendant's husband V.Venkat Rao was allotted item nos.26 and 30 under the said compromise decree; further, certain other items were allotted to others as stated in the said decree. Thus, each party in the said earlier suit got his/her own respective items of properties in the terms of the compromise and they were declared to be owners and possessors of particular item/items and they were put in possession and are continuing in possession of the same. The final decree was also engrossed on appropriate stamp papers upon payment of stamp duty. The parties have been enjoying their shares ever since then. The plaintiff herein along with his mother V.Padmavathi sold away most of the properties allotted to them as per the compromise final decree and the plaintiff is in enjoyment of the remaining properties so allotted. After a lapse of more than 12 years the plaintiff along with his mother had filed I.A.No.1186 of 2003 to set aside the final decree dated 15.7.1991 passed pursuant to the compromise dated 26.04.1991 in O.S.No.293 of 1984 by pleading therein inequitable distribution of the properties and fraud etcetera. The husband of the 6th defendant herein was alive by then and he was shown as 5th respondent in the said application. He had filed a detailed counter affidavit disputing the claim of the said petitioners in I.A.No.1186 of 2003. The 6th defendant herein had also filed a counter affidavit along with her children. The 5th respondent herein, i.e., 4th defendant herein had also filed I.A.No.1434 of 2003 to set aside the final decree dated 15.07.1991 in the aforementioned suit, which is passed in pursuance of the compromise memo dated 26.04.1991. By common orders dated 01.10.2007, both the said applications, i.e., I.A.Nos.1186 of 2003 and 1434 of 2003 were dismissed by the learned III Additional Chief Judge, City Civil Court, Hyderabad. Thereafter, being aggrieved of the same, the applicants in I.A.No.1186 of 2003, i.e., the plaintiff herein and his mother had filed a revision in C.R.P.No.2097 of 2008 before this Court and this Court was pleased to dismiss the same by order dated 19.12.2008. The mother of the plaintiff herein had died during the pendency of the CRP 2097 of 2008, but the plaintiff had continued the said CRP proceedings. After dismissal of the said CRP, the plaintiff had filed Rev. CRPMP 1984 of 2009 in CRP 2097 of 2008. The said review petition was also dismissed by orders dated 23.10.2009. The husband of the 6th defendant had died on 31.12.2006 during the pendency of the application in I.A.No.1186 of 2003. After conclusion of the proceedings, the plaintiff herein had filed the present suit O.S.No.676 of 2010 on the file of the Principal District Court, Ranga Reddy. In paragraph (17) of the plaint in the said suit, the plaintiff had extracted the observations of the trial court in its common orders passed in I.A.No.1186 of 2003 and 1434 of 2003 wherein, it has been observed that the petition to set aside the compromise does not lie and the remedy is to file a separate suit. Having highlighted the same in bold letters in paragraph (17) of the plaint in the instant suit, the plaintiff in his plaint paragraphs 18 to 19 had just skipped over the issue by merely mentioning that CRP 2097 of 2008 and Rev. CRPMP 1984 of 2009 were dismissed by this Court. The findings recorded in CRP No.2097 of 2008 by this Court as to the maintainability of the petition were not set out by the plaintiff deliberately, wilfully and fraudulently. This Court in its orders in CRP No.2097 of 2008 had clearly held that the application filed before the trial Court, which passed the compromise decree is maintainable. This point was held in favour of the petitioners, i.e., the plaintiff herein and his mother and thus the findings of the trial court in the said common orders that were extracted in paragraph no.17 of the plaint were reversed by this court in the CRP. Further, this Court had held that the compromise final decree was not vitiated by any fraud or misrepresentation and had dismissed the CRP. Therefore, the pleadings in the present suit are nothing but a fraud played by the plaintiff on the trial Court as the plaintiff had not placed the true facts and pleadings on record. When the plaintiff had extracted the observations in the common orders of the trial court, a duty was cast upon the plaintiff to also refer to the corresponding observations of this court in the CRP. The trial court would have rejected the plaint without numbering the suit, had the plaintiff referred to the said observations in the plaint. In the present suit, the plaintiff had mentioned 'A' and 'B' schedule properties which were confirmed in favour of the respective parties in the former suit by virtue of the earlier decree. Thus, the property allotted to the 6th defendant is her separate property and is not liable for partition. So far as the 'C' schedule property in the instant suit is concerned there are no such amounts as is being stated by the plaintiff. No documents were filed along with the plaint in the present suit. Guns and Pistol were already sold by the father of the plaintiff during his life time only. All these facts are known to the plaintiff, but he had suppressed all these facts. Item 'C' schedule properties are all not available physically and no documentary evidence was filed along with the plaint. The initiation of the suit proceedings by the plaintiff is nothing but a gross abuse of process of court and is vitiated on account of suppression of facts and particulars. The plaintiff is an Advocate at the time of passing of compromise decree in O.S.No.293 of 1984 and continues to be a practicing advocate. During boom period, the plaintiff along with his mother filed I.A.No.1186 of 2003 and took an *ex parte* injunction and the said injunction orders continued till the disposal of the said application; and, on account of the said orders, the 6th defendant could not sell any of her properties. In fact, there was heavy demand at that time when the properties were proposed to be sold by the defendants 6 to 9 in the year 2003-04.

However, on account of the fraud, misrepresentation and suppression of facts resorted to by the plaintiff in initiating the earlier proceedings and the present suit proceedings, they could not do so. In the year 2003-04, several purchasers were after defendants 6 to 9 seeking to purchase; and, today the situation is reversed. Further, on account of recession and Telangana movement, the prices of the properties had fallen down by more than 60%, more particularly in the outskirts. The properties of the 6th defendant and her children in plaint 'A' schedule properties which were proposed to be sold are located in the outskirts of the city. As such, the defendants 6 to 9 are now not able to get actual price even though they are willing to sell them. The plaintiff is well acquainted with the legal aspects and legal procedures and as such he had misrepresented the facts and had indulged in the abuse of process of court. Hence, defendants 6 to 9 were constrained to file a writ petition as the proceedings are not maintainable either in law or on facts and as the very initiation of the proceedings is without jurisdiction and is an abuse of the process of court besides being fraudulent. The initiation of the suit amounted to fraud. In fact, it amounted to contempt as the action of the plaintiff in initiating suit is interference with the due course of law and justice. This Court had dismissed the writ petition observing that it is open to defendants 6 to 9 to raise all contentions before the trial court. The issue which had attained finality and which had concluded is now being sought to be reopened by suppression of facts, particularly, the fact that the plaintiff herein and his mother had sold away most of the properties allotted to them pursuant to the compromise final decree in O.S.No.293 of 1984. The said purchasers were not made parties to the present suit. The fraud, suppression and misrepresentation can also be clearly seen from the fact that in the present plaint in O.S.No.676 of 2010, it is stated that the earlier decree was not acted upon, which is contrary to the facts on record. The question of not acting upon the final decree does not arise and this was not the case of the plaintiff when he had filed I.A.No.1186 of 2003 in O.S.No.293 of 1984. In fact, the mother of the plaintiff along with the plaintiff had sold away most of the properties allotted to them and they had developed some of the properties. They are not in a position to restore *status quo ante* and have been enjoying the benefits of the fruits of the partition decree. It is therefore not open for the plaintiff herein to file a fresh suit. This is nothing but a gross abuse of the process of the court and the suit for partition in any event will not lie. The plaint was not properly scrutinised by the trial court at the time of numbering. There has been suppression of material facts, which could have been culled out from the documents accompanying the plaint. Had true facts been brought to the notice of the court at the time of institution of the suit, the trial court ought to have rejected the plaint in terms of Order VI Rule 16 of the Code. The plaintiff had failed to comply with the Order VII Rule 1 (e) to (h) of the Code and Order VII Rules 5 and 6 of the Code. Had the trial court examined the plaint with reference to the provisions of law and the documents, the suit would not have been numbered. In fact, the plaint in the present suit was returned by the trial court on the ground of maintainability in view of the earlier partition decree in terms of compromise in O.S.No.293 of 1984. The plaintiff had answered the objection of the trial court stating that fraud was played in obtaining his signature in the memorandum of compromise and that the compromise decree was not acted upon. In which event, he ought to have sought the relief of setting aside the compromise decree. He did not do so. This plea in the present plaint goes contrary to the averments of the petition in I.A.No.1186 of 2003 in O.S.No.293 of 1984. The plaintiff ought to have paid the court fee on 3/4th of the market value, as the question of the plaintiff being in joint possession does not arise for consideration inasmuch as the final decree was admittedly acted upon and the respective parties were already put in possession of the respective properties and as no party is entitled to plead contrary to a court decree to which he is a party. The defendant no.6 and her children are entitled to enjoy their properties as per the final decree and they cannot be deprived of their rights guaranteed under Article 300-A of the Constitution of India. They are entitled to carry out their avocations in the land, which legitimately belonged to them. Hence, the petition is filed to reject the plaint.

5. The plaintiff had filed a detailed counter affidavit denying all the allegations in the affidavit of the 6th defendant filed in support of the petition for rejection of the plaint. The sum and substance of the case of the plaintiff apart from the denial of the case of the 6th defendant, in brief, is as follows:

The petition for rejection of the plaint is filed with an ulterior motive and to make an unlawful gain for defendants 6 to 9 and cause wrongful loss to the plaintiff herein and others and to fructify their evil designs and knock away the properties and money to which the plaintiff and others are entitled to. The petition for rejection of the plaint filed by the defendants 6 to 9 is intended to avoid the trial of the suit. The defendants 6 to 9 had colluded with the plaintiff's father by name Venkat Rao and had played fraud on the plaintiff and his mother and had obtained signatures on the terms of the compromise without making the plaintiff as a party to the suit and by impleading him as a party to the suit on the date of the compromise. Therefore, the plaintiff had no occasion to go through the pleadings in the former suit; and, being under the influence of his father, he was compelled to sign the terms of the compromise and therefore, he did not sign the compromise voluntarily with free mind. Undue influence was exercised and coercive methods were adopted. The plaintiff's mother is an illiterate person. She is a traditional lady. She is not in a position to say anything against her husband. In the circumstances, this plaintiff was forced to sign the compromise and thus the compromise decree was passed in the suit in O.S.No.293 of 1984. Therefore, the said decree is vitiated by fraud and is a nullity and is *non est* in the eye of law. Basing on the said fraudulent decree, the defendants 6 to 9 are not entitled to seek the relief of rejection of the plaint in the instant suit filed by this plaintiff. There is no iota of truth in the allegations made by the 6th defendant. This plaintiff had played fraud, misrepresentation etcetera are all not correct. In fact, defendants 6 to 9 had played fraud having colluded with the father of this plaintiff and had instigated the father of this plaintiff to prevail upon the plaintiff and his mother and had not allowed this plaintiff to go through the terms of the compromise and had obtained his signature by playing fraud and misrepresentation. Therefore, the claim of the defendants 6 to 9 is not *bona fide.* The compromise decree in O.S.No.293 of 1984 is vitiated by fraud and the same cannot be looked into and the same is not binding on the plaintiff. The averments that the respective parties were put in possession of the respective shares and that the compromise decree was acted upon are all false. Certain cases were filed and certain claims were put forth claiming that the properties that had fallen to the share of this plaintiff herein are covered under the Andhra Tenancy and Agricultural Lands Act, and, certain other persons had claimed the said property as protected tenants, and, therefore, this plaintiff could not enjoy the said property though it was shown as his property in the final decree. Thus, undue advantage was taken of the innocence of the plaintiff and also his unawareness of the situation of the lands, which were shown to have fallen to his share. The said property is not free from encumbrances. The allotment of properties and apportionment of the properties is not equal. There is variation in the quantity and the quality of the properties of the sharers, particularly the plaintiff and his mother. It is false to say that the plaintiff and his mother had sold away certain properties shown in the compromise decree and that most of the properties allotted to this plaintiff were converted into residential complexes. Even before the said compromise final decree was passed, the father of this plaintiff had alienated the properties in favour of third parties; but, the lands were shown as free from any litigation, charges and encumbrances; and, such properties were allotted to the share of this plaintiff. Therefore, this plaintiff could not enjoy the said properties as no possession was delivered to him even as on today. The property in Sy.No.226 was shown to have been allotted to this plaintiff. The villagers had occupied the said property in Sy.No.226. Further, the said property was already sold to Medical and Health Association and the said fact could be seen from the documents filed by the father of the plaintiff before the Income Tax authorities. The fact of income tax ride was suppressed at the time of compromise decree. The income tax authorities had seized the documents, cash etcetera from the house of the father of the plaintiff. If that be so, why late Venkat Rao had got allotted the said land to the share of the plaintiff is to be explained by defendants 6 to 9 herein. Such properties should have been allotted to the share of the defendants 6 to 9 or Venkat Rao himself as he had meddled with the said properties. In view of the observations of the trial court in the orders dated 01.10.2007, the plaintiff had filed the present suit and he has got every right to have his lawful rights adjudicated. All the documents are filed along with the plaint. Since the copy of the order of this court in the CRP is also filed, there is no need to extract the contents of the said order in the plaint averments in the instant suit. Therefore, the contra allegations about misrepresentation and fraud are false. The ‘C’ schedule property is not available and that the instant suit is not maintainable and that the defendants 6 to 9 are entitled to enjoy their properties as per the final decree are all denied. Many of the properties, which had fallen to the share of the plaintiff as per the compromise decree, are in litigation. The defendants 6 to 9 could not sell their properties situated in the outskirts, when there was demand, due to the proceedings initiated by the plaintiff and his mother and that later due to recession and Telangana movement, the prices of the said properties have come down and that, therefore, they are not able to sell their properties even though they are willing to sell the same are all false. The properties which had fallen to the share of this plaintiff as per the final decree are not in possession of this plaintiff. No finality was attained by the final decree and hence, the decree of compromise can be challenged at any time. The allegations referring to the provisions of the Constitution of India are specifically denied. Hence, the petition may be dismissed.

6. We have carefully perused the pleadings and the orders of the court below. We have carefully perused the material documents filed by both the sides.

7. The learned senior counsel for the plaintiff/appellant herein and the learned counsel for the defendants 6 to 9/respondents herein had made submissions in line with the contentions of the parties by referring to the various aspects of the matter. The said aspects are adverted to supra while referring to the pleadings of the parties.

8. Now the points for determination are:

> **Whether in the facts and circumstances urged by defendants 6 to 9 the plaint in the suit O.S.No.676 of 2010 on the file of the learned VIII Additional District Judge, Ranga Reddy District (hereinafter referred to as 'the instant suit') filed by the plaintiff/appellant herein is liable to be rejected? And, if not so, whether the order impugned is liable to be set aside?**

9. POINTS:

9.1 The instant suit was filed by the sole plaintiff against defendants 6 to 9 and others for partition of plaint ‘A’ schedule and ‘C’ schedule properties into seven equal and equitable shares and for allotment of one such separated share each in the said properties to the plaintiff. In the instant suit, the defendants 6 to 9 had filed a petition for rejection of the plaint. The plaintiff had resisted the said application by filing a counter. On merits, the trial court had allowed the said petition. Therefore, the aggrieved plaintiff is before this court.

9.2 The basic facts are as follows:

Prior to the institution of this instant suit, there was an earlier suit for partition amongst the present parties to the instant suit and some others. That suit, after its renumbering, is O.S.No.293 of 1984 on the file of III Additional Chief Judge, City Civil Court, Hyderabad. That suit for partition (hereinafter referred to as ‘the former suit’), after impleadment of certain parties including the present plaintiff and few others was decreed as per terms of the compromise reduced into writing in a memo dated 26.04.1991. Pursuant to that compromise, a compromise final decree was passed on 15.07.1991; and in fact, the final decree was also engrossed on the stamp papers of the required value. The schedule of properties in the said former suit for partition and the instant suit for partition are exactly the same except for a few properties like the house at Bapatla Town of Guntur District in 242 square yards and ‘c’ schedule movable properties, which are (i) cash in two bank accounts, (ii) a gun, (iii) a 12 bore double barrel gun, and (iv) a pistol. Further, certain properties which were part of the schedule in the former suit for partition were omitted from the schedule of the instant suit for partition. Though a compromise final decree has been passed in the former suit and the plaintiff is also a party to the compromise final decree that was passed in that suit, he had brought the instant suit again for the partition of the self same properties, which are covered by the final decree in the former suit by omitting some properties and adding few more properties, as already noted. In this background, the defendants 6 to 9 would contend that the instant suit for partition filed by the plaintiff ignoring the compromise final decree in the former suit for partition is not maintainable and that the instant suit was instituted by misrepresentation of facts and playing fraud on the court. They further contend that the final decree for partition was acted upon and that the plaintiff and his mother have sold away some of the properties which were allotted to their shares and that they both had had given some property allotted to them for development and that the plaintiff herein had retained the other properties that had fallen to their share and that the compromise final decree was acted upon and that the instant suit for partition was filed by conveniently not showing all the properties in the former suit for partition and by adding some properties which are not available for partition and that the suit is vexatious and is liable to be rejected at the threshold. On the other hand, the plaintiff contends that the earlier compromise final decree was one obtained by suppression and misrepresentation of facts and fraud and that the compromise was not voluntarily signed and that the said final decree was not acted upon and that the properties that were allotted to his share in the said compromise final decree in the former suit were subject matter of litigation and that he was not put in possession of his share of properties and that therefore, the said compromise final decree can be challenged at any time.

9.3 In this setting, what is to be first noted is that the compromise final decree in the former suit for partition was passed on 15.07.1991. To the said compromise final decree, the plaintiff is a party. His late mother was also a party. It is an admitted and undisputed fact that the plaintiff had sold away, by executing registered sale deeds, certain properties which had fallen to his share and the share of his mother under the compromise final decree in the former suit. It is also undisputed that in the said sale deeds executed by the plaintiff, a mention of the compromise final decree was also made. Long after the said compromise final decree, the plaintiff and his mother together and another defendant in that suit had preferred two interlocutory applications in I.A.No.1186 of 2003 and 1434 of 2003 before the trial court to set aside the compromise final decree. By a common order dated 01.10.2007 the trial court had dismissed both the applications. Having been aggrieved of the same, the plaintiff and his mother, who are the applicants in I.A.No.1186 of 2003 had filed CRP 2097 of 2008 before this court assailing the said orders of the trial court. The other defendant whose application in IA 1434 of 2003 was dismissed did not challenge the order of the trial court by filing a CRP, as per the submissions of both the sides. In the affidavit filed in the application for setting aside the compromise final decree, the plaintiff and his mother had contended that they were not originally parties to the said former suit and that they and the other respondents 5 to 10 were impleaded as parties i.e., as defendants 3 to 8 on the date on which the compromise memo was filed into court and compromise was recorded, and that they had entered into the compromise at the instance of the 5th respondent and that the 2nd petitioner i.e., the plaintiff herein had joined the legal profession in the year 1989 and that his father had prevailed upon him and his mother and asked them to compromise the matter and that the father who was in a fiduciary capacity has misled them without disclosing the true facts and that his mother is an uneducated lady and is not worldly wise and that his father had prevailed upon him and his mother and that at that time they were under the influence of the 5th respondent and that they had not expected that they would be deprived of their legitimate shares and that therefore, in the said circumstances, the compromise final decree has come to be passed and that later it has come to light that the 5th respondent had already entered into an agreement of sale in respect of one property even before the compromise final decree was passed and had surrendered his rights by collecting consideration and that in respect of another item of property, which was allotted to the plaintiff and his mother, there was an encroachment by various persons even by the date of the compromise and that under the above and other circumstances, the compromise final decree is vitiated by misrepresentation and fraud and is, therefore, liable to be set aside. Some of the respondents including the husband of the 6th defendant herein had resisted the said application filed for setting aside the compromise final decree. The trial court had dismissed the said petition while *inter alia* observing as follows:

> "A reading of the affidavit at para-5B discloses that the said compromise was entered by "misrepresentation" and "Playing fraud" upon the petitioners. There was no allegation in the entire affidavit in both the applications that the R5 who is defendant No.1 in the suit who is the father of the petitioners played fraud on the court in getting the compromise recorded. On the other hand, the contention of the petitioners is that they have just signed in the compromise petition at the request of the father and their mother without hesitation because they are in practice of following the words of their parents without protest". Likewise, the evidence of both PW1 and RW1 also indicate that the fraud alleged is played against them by their father and not against the court. So, I find in view of the above

> judgment that the petition to set aside the compromise under Sec.151 does not lie and the remedy is to file a separate suit."

Basing on the above observations of the trial Court and by highlighting in the plaint the above observations in the order of the trial court to the effect that the 'remedy is to file a separate suit', the plaintiff had brought the instant suit for partition once again. The plaintiff had not extracted in the plaint the observations of this Court made in the CRP filed against the orders of the trial court, though the copy of the order made in the CRP is filed along with the plaint in the instant suit. In the CRP 2097 of 2008 filed by the plaintiff and his mother before this Court, this Court specifically considered the following question - 'whether the interlocutory application in IA No.1186 of 2003 filed to set aside the compromise decree is maintainable before the same court?'. This Court having referred to the relevant provisions and the provision of Section 96 of the Code and also the precedents had taken note of the legal position and had held as follows:

> ***"By following BANWARI LAL v. Smt. Chando Devi and Another (AIR 1993 SC 1139), this Court in Kanithi Appala Suryanarayana v. Kanithi Ganapathi Rao, held that a compromise decree can be set aside on the ground of fraud before the same Court if fraud is proved as alleged by one of the parties.***
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> ***In K.Rajam Raju v. Smt. P.Rangamma, this Court followed the judgment of the Supreme Court in BANWARI LAL's case (1 supra) and held that a party challenging the compromise has to question the same before the same court which has recorded the compromise and passed the decree by way of an application and not by way of separate suit.***
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> ***12. In the light of the above legal position, I have no hesitation to hold that the Application field before the lower court, which passed the compromise decree, is maintainable in view of the plea taken by the Revision Petitioners that fraud was played by misrepresenting the facts to the petitioners and Court by the fifth respondent."***

This Court in the CRP had also framed the next point as follows: ‘Whether the compromise decree dated 26.04.1991 is vitiated by fraud and misrepresentation?’ On that point, this Court had held that the trial court was right in holding that the petitioners, i.e., the plaintiff herein and his mother had failed to make out a case that there was any element of fraud involved in the matter, which required the Court to set aside the order and that there are no grounds to interfere with the order of the lower court in this regard. This Court having thus answered this point against the plaintiff and his mother had dismissed the CRP. The plaintiff later filed a review CRP M.P.No.1984 of 2009 in CRP 2097 of 2008 to review the orders of this court in the said CRP. This Court by its orders dated 23.10.2009 had dismissed the said review petition. Thus, the findings of this court in the CRP that the petition to set aside the compromise decree is maintainable and that the compromise decree is not vitiated by fraud and misrepresentation have become final. In the instant suit, the plaintiff had extracted and highlighted in the plaint the observations of the trial court to the effect that ‘the remedy is to file a separate suit’, but, at the same time did not extract and highlight the observations of this court in the CRP wherein it was held that the petition is maintainable and that the compromise decree is not vitiated by fraud and misrepresentation. Thus, as rightly contended by the defendants 6 to 9 herein, the plaintiff had failed to bring to the notice of the trial court specifically the observations of this court in the CRP and the plaintiff, by highlighting the orders of the trial court, which were set aside by this court in the CRP, had managed to have the instant suit registered and numbered. Be that as it may, the contentions of the plaintiff and the grounds urged in the instant suit once again filed for partition are exactly the same as the contentions and the grounds, which were urged in the interlocutory application in I.A.No.1186 of 2003, which was filed for setting aside the compromise final decree in the former suit. It is to be reiterated that the basis and the cause of action in the instant suit is based on the contentions that the earlier compromise final decree was one obtained by suppression and misrepresentation of facts and fraud and that the compromise was not voluntarily signed and that the said final decree was not acted upon and that the properties that were allotted to his share in the said compromise final decree in the former suit were subject matter of litigation and that he was not put in possession of his share of properties and that therefore, the said compromise final decree can be challenged at any time. But, as already pointed out supra, all these contentions were negatived by the trial court while disposing of I.A.No.1186 of 2003. And this Court in CRP 2097 of 2008, while confirming the orders of the trial court, had also held that the petition to set aside the compromise final decree is maintainable, but, the compromise final decree is not vitiated by fraud and misrepresentation. Even the application for review subsequently filed requesting to review the orders of this court in the CRP was dismissed, as already noted. Therefore, the finding that the compromise final decree is not vitiated by fraud and misrepresentation and is binding on the plaintiff and his late mother has become final.

9.4 Now, therefore, it is clear that the instant suit on the self same allegations for partition of the very same properties covered by the compromise final decree in the former suit is not maintainable, both under facts and in law. Be it noted that the former suit was instituted in City Civil Court; after the compromise final decree was passed, the application for setting aside the same on the grounds of fraud, misrepresentation etcetera was dismissed by the trial court; and, the CRP, as well as the review petition, filed thereafter, were also dismissed by this Court holding that the compromise final decree was not vitiated by misrepresentation and fraud; thus, the compromise final decree has become final and binding on the parties. As already noted, the plaintiff herein had admittedly sold away some of the properties, which had fallen to his share under the compromise final decree, by executing registered sale deeds; and, in those sale deeds, a reference was also made to the compromise final decree, as fairly conceded before this Court. However, by misrepresentation and suppression of facts and by not specifically pleading in the plaint the observations of this court in the CRP and by highlighting the observations in the orders of the trial court, which were overturned by this Court in the CRP, the instant suit for partition was filed in a court at Ranga Reddy District. All this is a clear abuse of process of Court. Keeping in view the facts, circumstances and the conduct of the plaintiff, it must be held that the instant suit once again seeking partition is not maintainable insofar as the properties covered by the compromise final decree in the former suit as it has become final and was acted upon. Hence, we are of the well considered view that the trial court was not in error in rejecting the plaint in the instant suit of the plaintiff.

9.5 The learned counsel for the plaintiff having placed reliance on the decisions of the Supreme Court in **I.T.C. Limited v. Debts Recovery Appellate Tribunal and Others**, **Kamala and Others v. K.T.Eshwara Sa** and **Popat and Kotecha Property v. State Bank of India Staff Association** had rightly contended that while rejecting a plaint for lack of cause of action, the Court has to only consider the plaint averments to find out whether the plaint discloses a cause of action or not; and, that the court also has to consider only the statements in the plaint to answer the question as to whether the suit appears from the statement in the plaint to be barred by any law. In the case on hand, a plain reading of the plaint shows that the plaintiff had not disclosed in the plaint averments that the order of the trial court which was highlighted in the plaint was reversed by this court in the orders made in the CRP, but the plaintiff had only made a passing reference in the plaint to the orders of this Court in the CRP by filing a copy of the orders in the CRP along with the plaint. On this aspect, it is advantageous to refer to the decision in **Bhaskar Laxman Jadhav and others v. Karamveer Kakasaheb Wagh Education Society and others,** wherein the Hon'ble Supreme Court while dealing with the aspects of practice and procedure related to the pleading, the drafting of pleading and the requirement of mentioning material facts, vis-à-vis a passing reference to such facts had held that it is not for the litigant to decide what fact is material for adjudicating a case and what is not material and it is the obligation of the litigant to disclose all the facts of the case and leave the decision making to the court. In this cited decision, the litigant has only made a passing reference by mentioning about an order and therefore, it was held that it is not enough disclosure and that the litigant has not clearly disclosed the facts and circumstances, which had attained finality.

9.6 Reverting to the facts of the instant case, if the plaint averments are considered as such, it is clear that for the instant suit for partition of the properties, which are covered by the compromise final decree in the former suit, there is no cause of action as the trial court and this court have concurrently held that the compromise final decree is not vitiated by fraud and misrepresentation and as the finding of the trial court that the remedy is to file a separate suit is overturned by this Court in the orders made in the CRP. Therefore, only on consideration of the plaint averments, it is plain and clear that there is no cause of action for the instant suit and the cause of action alleged does not subsist as the material facts constituting the cause of action for setting aside the compromise final decree on the ground of misrepresentation and fraud are already negatived and a decision was already made by competent civil court and the said decision was confirmed by this Court. Thus, the plaintiff in the instant suit had made inaccurate or misleading statements in the plaint in the sense that the plaintiff had highlighted in the plaint an overturned observation in the orders of the trial court while simultaneously omitting to highlight the relevant observations of this court in the CRP, whereby the observations of the trial Court that 'the remedy available is to file a separate suit' is overturned. Mere fact that a reference was made in the plaint to the fact that an order was passed in the CRP by this Court does not serve the requirement of disclosure as at the time of registration of the suit, it is not for the court to look into every word of the pleadings, documents and annexures to fish out a fact and it is for the litigant to come upfront and clean with all material facts and pleadings as held by the Supreme Court in the above cited decision. In the instant case, the plaintiff had omitted from the schedule of the plaint certain properties, which were in the schedule of the compromise final decree and had added few more properties, as already noted supra. When the plaintiff is challenging the compromise final decree as vitiated by fraud and misrepresentation, he ought to have shown in the schedule of plaint in the instant suit all the properties in the former suit. But, he did not do so. He had also suppressed the fact that he had sold some of the properties, which were allotted to him under the compromise final decree by, executing registered sale deeds while making a mention in the said sale deeds about the compromise final decree. In **Ramjas Foundation v. Union of India**, the Supreme Court had held that if a litigant does not come to Court with clean hands, he is not entitled to be heard and indeed, such a person is not entitled to any relief from any judicial forum.

9.7 The learned senior counsel for the plaintiff having placed reliance on a decision in **Pulavarthi Venkata Subba Rao v. Valluri Jagannadha Rao (deceased) by his heirs and legal representatives** had contended that the decree passed on compromise is not a decision by the Court and does not operate as *res judicata*. But, in the very decision, it is held by the Supreme Court that such a decree might create an estoppel by conduct between the parties. Further, from the plaint averments itself, it could be culled out that the compromise final decree in the former suit has become final; and, it is also now fairly conceded before this court that it was acted upon even by the plaintiff as he had executed sale deeds in respect of some of the properties allotted to him pursuant to the compromise final decree. The orders in the interlocutory application in IA No.1186 of 2003 and the orders of this Court in CRP 2097 of 2008 are binding on the parties as it was already held by the trial court, which granted the final decree and also by this court that the compromise final decree is not vitiated by misrepresentation and fraud. Since this Court has confirmed in the CRP the order of the trial court that the compromise final decree is not vitiated by fraud and misrepresentation, the same is no longer a triable issue in the instant suit as the said decision has become final after the dismissal of the application for review filed for reviewing the order in the CRP. Since the issue in regard to the validity of the compromise final decree has attained finality in the earlier proceedings between the same parties, and the compromise final decree has become final, the rejection of plaint shall be the inevitable conclusion. This view of this court also finds support from the decision in **Patasibai and others v. Ratanlal**. Therefore, the present suit for reopening of the partition, which has become final by virtue of compromise final decree, is not maintainable in view of the ratio in the decision in **Ranganayakamma and Another v. K.S.Prakash (Dead) by L.Rs and others,** as the parties are estopped by their own pleadings and are also estopped by record and any court need not go into the correctness of the contents of the compromise when once it is not vitiated in law. The learned senior counsel for the plaintiff having placed reliance on the decision in **Bhanu Kumar Jain v. Archana Kumar** had contended that despite dismissal of the interlocutory application for setting aside the compromise decree, the instant suit is maintainable. The facts of the reported case show that when an *ex parte* decree is passed, the defendant can take recourse simultaneously to both the proceedings namely, one, to file an appeal and another, to file an application for setting aside the orders in terms of Order 9 Rule 13 of the Code. However, the Supreme Court held as follows: 'In the event the appeal is dismissed as a result whereof the *ex parte* decree passed by the trial court merges with the orders passed by the appellate court, having regard to explanation appended to Order 9 Rule 13 of the Code, a petition under Order 9 Rule 13 would not be maintainable. However, explanation 1 appended to the said provision does not suggest that the converse is also true.' Thus, the decision was rendered having regard to the provisions of Order 9 Rule 13, which have no application to the facts of the present case. In the instant case, the order in the CRP was made having regard to the relevant provisions, which are applicable to the case on hand. Hence, the decision cited is not helpful to advance the case of the plaintiff herein.

9.8 It is to be next noted that the learned senior counsel for the plaintiff in the instant suit had contended that in the instant suit, there are some more properties, both immovable and movable as mentioned in the schedule of the plaint and that even if the plaint has to be rejected in respect of the properties covered by the compromise final decree in the former suit, the whole of the plaint cannot be rejected and that since the law does not permit rejection of plaint in part, the petition for rejection of the plaint is liable to be rejected. He had also urged that the parties may be directed to go for trial leaving all the questions and issues to be determined by the trial court after full-fledged trial. On the other hand, the learned counsel for the defendants 6 to 9 had contended that the instant suit is instituted by suppressing material facts and by making inaccurate and misleading statements in the plaint and that the plaintiff having sold some of the properties allotted to him under the compromise final decree had suppressed the said fact and that the plaintiff had conveniently omitted certain properties from the schedule of the present plaint and that the plaintiff had filed the instant suit in a court at Ranga Reddy District instead of filing the same in the City Civil Court, where the former suit was filed and was decreed and that the plaintiff had thus in many respects resorted to illegal and unfair methods and that all these facts cumulatively show that this is a clear case of abuse of process of court and law and that the plaintiff has not come to Court with clean hands and that, therefore, the whole of the plaint has to be rejected in view of the settled legal position. In support of the said contentions, the learned counsel for the defendants 6 to 9 had placed reliance on a decision in **Municipal Corporation of Delhi v. Kamla Devi,** wherein the Supreme Court held that when once a case is a clear abuse of process of court and a party had misused the legal system, the court is entitled to act in such cases to prevent such abuse and misuse. In the decision in **Kishore Samrite v. State of Uttar Pradesh and Others**, the Hon'ble Supreme Court while dealing with the question- whether both or any of the petitioners in the civil revision petitions are guilty of suppression of fact, not approaching the court with clean hands and thereby abused the process of the court - had stated some of the principles from the earlier cases of such kind. Some such enumerated principles in the cited decision, which are relevant, are as follows:

> **"32.1 Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts and came to the courts with "unclean hands". Courts have held that such litigants are neither entitled to be heard on the merits of the case nor are entitled to any relief.**
>
> **32.3 The obligation to approach the court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.**
>
> **32.5 A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.**
>
> **32.6 The court must ensure that its process is not abused and in order to prevent abuse of process of court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the court would be duty-bound to impose heavy costs.**
>
> **33. Access jurisprudence requires courts to deal with the legitimate litigation whatever be its form but decline to exercise jurisdiction, if such litigation is an abuse of process of court."**

Having regard to the facts of the case and the legal position obtaining, we are of the well considered view that the plaint in whole can be rejected.

9.9 Before drawing curtains on the controversy, it is to be noted that the compromise final decree in the former suit was passed on 15.07.1991. The application in I.A.No.1186 of 2003 to set aside the compromise final decree was filed in the year 2003. The said application was dismissed by the trial Court on 01.10.2007. The CRP 2097 of 2008 filed by the plaintiff and his mother assailing the above said orders was dismissed on 19.12.2008. The review petition in Rev. CRP MP.1984 of 2009 in the aforementioned CRP was dismissed by this Court on 23.10.2009. The instant suit for partition in O.S.No.676 of 2010 is filed in the year 2010. Thus, the compromise final decree dated 15.07.1991 was being challenged on the grounds of fraud and misrepresentation in the instant suit filed in the year 2010, i.e., nearly after two decades. However, the law of limitation provides that any challenge to any order or decree on the ground of fraud or misrepresentation shall be made within three years from the date of knowledge of such fraud or misrepresentation. Since the I.A.No.1186 of 2003 was filed in the year 2003, it can be said that the plaintiff herein was aware of the alleged fraud and misrepresentation by that year. Therefore, the instant suit filed in the year 2010 as per the admitted facts and as per the statements made in the plaint is clearly barred by the law of limitation. On this ground also, the plaint in the instant suit is liable for rejection. That apart, the fact remains that the plaint in the instant suit is liable for rejection primarily on the ground that the institution of instant suit amounts to abuse of process of court as the instant suit is instituted with an intent to deceive and mislead the court without full disclosure of the facts and as the plaintiff has come to the court with unclean hands and is not entitled to be heard on merits of the case nor is entitled to any relief and as the plaintiff is not a legitimate litigant and as it is a fit case not to exercise jurisdiction.

9.10 Having regard to the reasons, we find that the plaint in the instant suit is liable for rejection. Therefore, the order of the trial court ordering rejection of the plaint, is sustainable both under facts and law, and, hence, needs no interference. The points are accordingly answered against the plaintiff/appellant.

10. In the result, the appeal suit is dismissed with exemplary costs. The costs are quantified at Rs.10,000/- (Rupees ten thousand only).

Miscellaneous petitions pending, if any, in this appeal, shall stand closed.

K.C. BHANU, J

M. SEETHARAMA MURTI, J

28th April, 2015

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