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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 754/2015 & I.As.5741-5742/2015**

VINOD POPLI

..... Plaintiff

Through: Mr. Vinay Kumar Garg, Senior
Advocate with Mr. Rishi
Manchanda, Advocate.

versus

RAGINI POPLI & ORS

..... Defendants

Through: None.

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Reserved on : 22nd March, 2015
Date of Decision : 6th April, 2015

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. Present suit has been filed for declaration and permanent injunction by the plaintiff against his wife, daughter and son-in-law.
2. Plaintiff seeks a declaration that the Memorandums of Undertaking/ Compromise Deed/ Undertaking dated 30th May, 2012 and 1st April, 2013 as well as final decree of Divorce dated 06th May, 2013 and the First Motion as well as its terms of Settlement dated 06th July, 2012 and registered Gift Deed dated 14th May, 2009 in favour of defendant No.1 with respect to property bearing No.5/3, First Floor, East Patel Nagar, New Delhi, are null and void. Plaintiff also seeks injunction restraining defendants from transferring or creating third

party rights in property bearing No.3/3, East Patel Nagar, New Delhi and 5/3, (First Floor), East Patel Nagar, New Delhi.

3. Mr. Vinay Kumar Garg, learned senior counsel for the plaintiff stated that the plaintiff in depression due to huge losses suffered by him as a consequence of a fire incident in his warehouse, had transferred all his assets in favour of defendants and also took divorce from defendant No.1 by mutual consent.

4. Mr. Garg further stated that there was no intention on the part of the plaintiff in either obtaining divorce or in transferring any of the properties. In support of his contention, he pointed out that the plaintiff and defendant No.1 had after obtaining the decree of divorce visited several places including Hong Kong and China together.

5. Having perused the plaint, this Court finds that it is the case of the plaintiff that in order to save his properties due to huge losses, he had transferred all his properties in the name of his wife, daughter and son-in-law.

6. In the plaint, it has also been averred that though the plaintiff never had any dispute with his wife or intention to end his marital relationship, yet he had obtained a divorce.

7. It has also been stated in the plaint that plaintiff and defendant No.1 had been living together as husband-wife not only immediately prior to the decree of divorce, but also subsequent thereto. Some of the relevant averments in the plaint are reproduced hereinbelow:-

“5.The plaintiff was made to believe to take divorce from Defendant No.1 though only for the name sake. The Plaintiff trapped in his own circumstances, was completely incapable of seeing through the designs of the

Defendant No.3 and fell prey to his own son-in-law, the Defendant No.3 herein. The Plaintiff was duped to believe that in order to save his properties, the Plaintiff should transfer all his properties in the name of the Defendants and also take divorce from the Defendant No.1 by mutual consent. However, it is a fact that neither the Plaintiff nor the Defendant No.1 ever had any dispute or intention to end their marital relationship nor did the Plaintiff ever intended to actually transfer the right, title or interest in any of his properties in the name of any of the Defendants.....

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11.It is also a matter of fact that the Plaintiff never intended to divorce the Defendant No.1 and even the Defendant No.1 never intended to put her marital relationship with the Plaintiff to an end. Even after the decree of divorce dated 06.05.2013, the Plaintiff and the Defendant No.1 continued to live together as husband and wife.....

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13. That the Plaintiff and the Defendant No.1 even after the aforesaid decree of divorce, had all these years been living together as husband and wife. The Plaintiff and the Defendant No.1 visited several places after 06.05.2013 including Hong Kong and China. The Defendant No.1 accompanied the Plaintiff as his wife and in her visa applications she has clearly acknowledged herself as the wife of the Plaintiff.....

(emphasis supplied)

8. A perusal of the documents file reveals that though in the motions filed in a petition seeking dissolution of marriage by a decree of divorce under Section 13-B(2) as well as in the Memorandum of

Understanding/Compromise Deed/undertakings the plaintiff had averred that he and defendant No.1 had not been living together as husband and wife since 01st March, 2011, yet they had travelled to Mysore, Hyderabad, Chennai, China, Hong Kong and stayed together even after the decree of divorce.

9. Believing the plaintiff's averments in the petition under Section 13-B(2) of the Hindu Marriage Act, 1955, an Additional District Judge, Tis Hazari Courts, Delhi, had dissolved the plaintiff's marriage with defendant No.1 by a decree of divorce by mutual consent.

10. Keeping in view the aforesaid facts, this Court is of the view that plaintiff has been taking '*convenient stands*' presumably to defeat the rights of his creditors, without any regard for truth.

11. In this Court's opinion, after obtaining a decree of divorce on the basis of sworn affidavits that the plaintiff had not been cohabitating with his wife since 01st March, 2011, the plaintiff cannot today contend that he has never lived separately from defendant No.1-wife.

12. In fact, upon a reading of the plaint and the documents filed, this Court finds that plaintiff has played fraud upon the Court and is equally at fault and the principle of *in pari delicto* is clearly applicable to the present case.

13. In Black's Law Dictionary, Tenth Edition, *in pari delicto* has been defined as "*the principle that a plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing*".

14. It is settled law that when parties to a legal controversy are *in pari delicto* neither can obtain any relief from the Court, since both are

at equal fault or of equal guilt. In ***Bateman Eichler, Hill Richards, Inc. v. Berner***, 472 U.S. 299 (1985), the U.S. Supreme Court has held as under:-

“The common-law defense at issue in this case derives from the Latin, in pari delicto portior est conditio defendentis: “In a case of equal or mutual fault.....the position of the [defending] party.....is the better one.” The defense is grounded on two premises: first, that courts should not lend their good offices to mediating disputes among wrongdoers; and second, that denying judicial relief to an admitted wrongdoer is an effective means of deterring illegality.....”

(emphasis supplied)

15. The Supreme Court in ***Immani Appa Rao and Ors. vs. Gollapalli Ramalingamurthi and Ors.***, (1962) 3 SCR 739 has held as under:-

“ In support of the contrary view reliance is usually placed on an early English decision in Doe, Dem. Roberts against Roberts, Widow. In that case it was held that "no man can be allowed to allege his own fraud to avoid his own deed; and, therefore, where a deed of conveyance of an estate from one brother to another was executed, to give the latter a colorable qualification to kill game. The document was as against the parties to it valid and so sufficient to support an ejectment for the premises". In dealing with the question raised Bayley, J. observed "by the production of the deed, the plaintiff established a prima facie title; and we cannot allow the defendant to be heard in a Court of Justice to say that his own deed is to be avoided by his own fraud;" and Holroyd, J., added that “a deed may be avoided on the ground of fraud, but then the objection must come from a person neither party nor privy to it, for no man can allege his own fraud in order to invalidate his own deed”.

This decision has, however, been commented on by Taylor in his "Law of Evidence". According to Taylor "it seems now clearly settled that a party is not estopped by his deed from avoiding it by proving that it was executed for a fraudulent, illegal or immoral purpose." The learned Author then refers to the case of Roberts and adds "in the subsequent case of Prole v. Wiggins Sir Nicholas Tindal observed that this decision rested on the fact that the defence set up was inconsistent 'with the deed". Taylor then adds that "the case, however, can scarcely be supported by this circumstance, for in an action of ejectment by the grantee of an annuity to recover premises on which it was secured, the grantor was allowed to show that the premises were of less value than the annuity, and consequently, that the deed required enrolment, although he had expressly covenanted in the deed that the premises were of greater value.....". According to the learned author "the better opinion seems to be that where both parties to an indenture either know, or have the means of knowing, that it was executed for an immoral purpose, or in contravention of a statute, or of public policy, neither of them will be estopped from proving those facts which render the instrument void ab initio for although a party will thus in certain cases be enabled to take advantage of his own wrong, yet this evil is of a trifling nature in comparison with the flagrant evasion of the law that would result from the adoption of an opposite rule". Indeed, according to Taylor, although illegality is not pleaded by the defendant nor sought to be relied upon by him by way of defence, yet the Court itself, upon the illegality appearing upon the evidence, will take notice of it, and will dismiss the action Ex turpi causa non oritur actio. No polluted hand shall touch the pure fountain of Justice".

To the same effect is the opinion of Story "In general, where parties are concerned in illegal agreements or other transactions, whether they are mala prohibita or mala in se, Courts of Equity following the rule of law as to participators in a common crime will not interpose to

grant any relief, acting upon the known maxim In pari delicto potior est conditio defendentis et posidentis. The old cases often gave relief, both at law and inequity, where the party would otherwise derive an advantage from his inequity. But the modern doctrine has adopted a more severely just and probably politic and moral rule, which is to leave the parties where it finds them giving no relief and no countenance to claims of this sort".

In judicial decisions where this question has been considered a passage from the judgment of Lord Mansfield, C. J., in Holman v. Johnson is often quoted. If we may say so with respect the said passage very succinctly and eloquently brings out the true principles which should govern the decision of such cases. Said Lord Mansfield, C. J., "the objection that a contract is immoral or illegal as between plaintiff and defendant sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that the objection is ever allowed but it is founded in general principles of policy which the defendant has the advantage of, contrary to the real justice, as between him and the plaintiff, by accident, if I may say so. The principle of public policy is this: ex dolo malo non oritur actio. No Court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If, from the plaintiff's own stating or otherwise the cause of action appears to arise ex turpi causa or the transgression of a positive law of this country, there the court says he has no right to be assisted. It is upon that ground the Court goes; not for the sake of the defendant, but because they will not lend their aid to such a plaintiff".

(emphasis supplied)

16. Further, the Apex Court in ***G. Pankajakshi Amma & Ors. vs. Mathai Mathew (Dead) Through LRS. & Anr., (2004) 12 SCC 83*** has held as under:-

"10. There is any reason also why the impugned judgment cannot be upheld. According to the 1st respondent these

transactions were to be unaccounted transactions. According to the 1st respondent, all these amounts are paid in cash. If these are unaccounted transactions then they are illegal transactions. No court can come to the aid of the party in an illegal transaction. It is settled law that in such cases the loss must be allowed to lie where it falls. In this case as these are unaccounted transactions, the Court could not have lent its hands and passed a decree. For these reasons also the suit was required to be dismissed.”

(emphasis supplied)

17. Keeping in view the aforesaid discussion, this Court is of the view that the present plaint is barred by the principle of *in pari delicto*. Accordingly, present plaint and applications are rejected as barred by law under Order VII Rule 11 CPC.

MANMOHAN, J

APRIL 06, 2015

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