

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

R.S.A No.5081 of 2015(O&M)

Date of decision : 16.05.2016

**Ved Parkash Aggarwal through his Legal representative Neeraj
Aggarwal and others**

..... Appellants

Versus

Sadhu Ram Gupta and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. A.S.Jattana, Advocate
for the appellants.

1. **Whether Reporters of Local papers may be allowed to see the judgment?Yes.**
2. **To be referred to the Reporters or not?Yes.**
3. **Whether the judgment should be reported in the Digest?Yes.**

DARSHAN SINGH,J

CM No. 6513-C of 2016

This application has been filed for placing on record some additional grounds.

Heard.

For the reasons mentioned in the application, the present application stands allowed and the additional grounds are taken on record subject to just objections of the opposite party.

R.S.A No. 5081 of 2015(O&M)

The present appeal has been preferred against the judgment and decree dated 28.04.2015 passed by learned Additional District Judge, Chandigarh, vide which the appeal filed by the appellant-plaintiff Ved

Parkash Agarwal against the judgment and decree dated 07.10.2013 passed by the learned Civil Judge (Junior Division), Chandigarh, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. The appellant-plaintiff Ved Parkash Aggarwal has filed the suit for declaration that the judgment and decree dated 21.05.1994 passed in Civil Suit No. 177 of 1994 for specific performance of contract is null and void having been procured by practicing fraud upon the Court. The appellant-plaintiff also sought the relief of permanent injunction restraining the Chandigarh Industrial Development and Tourism Corporation (for short 'CITCO') from effecting any change in the record in consequence of the aforesaid judgment and decree with respect to the built up industrial shed in question.

4. As per the averments in the plaint, the built up industrial shed in question was allotted to the appellant-plaintiff Ved Parkash Aggarwal to the extent of 1/ 3rd share, deceased-defendant no. 1 Sadhu Ram Gupta to the extent of 1/ 3rd share, Bal Krishan Gupta and Gian Chand Gupta to the extend of 1/ 6th share each. They were also partners in the firm under the name and style of M/s Aggarwal Industrial Corporation formed in the year 1976. Vide dissolution-cum-partnership deed dated 13.06.1978, the plaintiff got the share of other partners in the business and became the sole proprietor of the said firm. In the year 1983-84, he inducted one Kirpal Singh of M/s Accufit Fastners and Anil Thapar of M/s Master Fasteners as tenants in the portion of the suit

property. Gradually, the plaintiff lost interest and shut down his business. He asked the tenants to vacate the suit property, but they were reluctant to do so. He requested defendant no.1 to help him. Defendant no. 1 agreed and assured him that he will file the eviction petition on his behalf. In pursuance thereof, he obtained his signatures on some blank papers and plaintiff appointed him as his General Power of Attorney (GPA). In the year 1994, due to martial discord, plaintiff went under mental depression and went to the jungles of Raipur, Madhya Pradesh and Ayodhya. He stayed there for long and was even listed as voter of Ayodhya Parliamentary Constituency. He lost touch with the real world and was dependent upon defendant no.1 to get the suit property vacated from the tenants. Later on, he came to know that defendant no. 1 has filed the eviction petition against the tenants showing himself to be the landlord. Plaintiff moved an application for impleading him as a party to the suit as defendant no.1 was only the power of attorney holder and not the owner. But, he did not pursue the said application. In October, 2004, when the plaintiff came out of depression and reclusiveness and came to Chandigarh, he made ample attempts to know the action of defendant no.1. Defendant no.1 had died by that time. He came to know that the plaintiff was arrayed as defendant no.1 in Civil Suit no. 177 of 1994 for specific performance of the contract filed by defendant no.1. In that suit, it was alleged that plaintiff had entered into an agreement to sell his 1/ 3rd share in the suit property as well as the shares of Bal Krishan Gupta and Gian Chand Gupta. The said suit was decreed on 21.05.1994 on the grounds of compromise. In-fact, no compromise had ever taken place.

The plaintiff had never appeared before the Court and whole exercise is fraudulent, coloured by fraud, misrepresentation and impersonation. He never engaged any lawyer in the said civil suit to represent him. His signatures were obtained on the agreement to sell dated 02.02.1993 by fraud on the stamp papers under the pretext that the cases for eviction of the tenants were to be filed. The signatures of the plaintiff on the statement dated 21.05.1994 are forged and work of an imposter. Hence, the suit.

5. The legal representatives of defendant no.1 contested the suit on the grounds *inter alia* that the plaintiff agreed to sell his share as well as the share of Gian Chand Gupta and Bal Krishan Gupta being their lawful attorney to defendant no.1 vide agreement to sell dated 02.02.1993 and received the full and final consideration sale price of the property. Defendant no.1 had become the owner and landlord for all intents and purposes. Plaintiff had appointed Sh. Jagan Nath as his special attorney to execute the deed of transfer in respect of his share in the suit property. Since, he failed to honour his commitment, defendant no.1 has to file suit for specific performance, bearing no. 177 of 06.05.1994. Plaintiff appeared before the Court and the matter was compromised. The statement of the plaintiff was recorded in the Court on 21.05.1994 and on the basis thereof, the decree was passed. The plaintiff had personally appeared in the Court and suffered the statement, which was duly signed by him. His presence has been rightly marked by the Court. He was fully aware of the passing of the judgment dated 21.05.1994. The application moved by the appellant-plaintiff in the rent petition for being impleaded

as party was dismissed by the Court, which was not further challenged by the plaintiff. All other averments raised in the plaint were controverted.

6. Defendant no.2 also filed the separate written statement, wherein the facts regarding allotment of the industrial shed and the record maintained by CITCO has been pleaded.

7. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the judgment or decree dated 21.05.1994 is null and void, as has been procured by practicing fraud, if so to what effect?OPP
2. Whether plaintiffs are entitled to permanent injunction, as prayed for?OPP
3. Whether the suit is within limitation?OPD
4. Whether the plaintiffs have not approached the Court with clean hands, if so to what effect?OPD
5. Whether no cause of action has accrued to the plaintiff?OPD
6. Relief.

8. Initially the suit of the plaintiff-appellant was dismissed by the learned trial Court vide judgment and decree dated 20.02.2012. He preferred the appeal, which was allowed by the learned Additional District Judge, Chandigarh vide judgment and decree dated 21.12.2012. The case was remanded to the learned trial Court with a direction to re-hear the parties and record the findings on individual issues in accordance with law. Thereafter, the learned trial Court on appreciating the evidence on record and contentions raised by learned counsel for the parties recorded the issue-wise findings and ultimately dismissed the suit filed by the appellant-plaintiff vide impugned judgment and decree dated 07.10.2013.

9. Appellant-plaintiff preferred the appeal against the said judgment, which has also been dismissed by the learned First Appellate Court vide impugned judgment and decree dated 28.04.2015. Hence, this Regular Second Appeal.

10. I have heard Mr.A.S.Jattana, Advocate, learned counsel for the appellant and have carefully gone through the paper book.

11. Initiating the arguments, learned counsel for the appellant contended that initially suit filed by the plaintiff-appellant was dismissed by the learned trial Court vide judgment and decree dated 21.12.2012. But, the appeal filed by him was allowed by the learned First Appellate Court, Chandigarh and the matter was remanded back to the learned trial Court for fresh decision on individual issues.

12. He contended that all the documents relied upon by the appellant-plaintiff are based on fraud. Defendant no.1 has obtained the signatures of plaintiff on plain papers, revenue stamps and stamp papers. Those papers have been manipulated to prepare the agreement to sell, power of attorney etc. In-fact, the appellant-plaintiff had never executed those documents in favour of defendant no.1. He further contended that moreover, the learned Civil Judge in Civil Suit No. 4536 of 2013, titled as Smt. Shashi Gupta widow of Sadhu Ram Gupta has dismissed the suit for declaration filed by Smt. Shashi Gupta challenging the cancellation of the Will dated 30.04.1994 and in that judgment the documents relied upon by the plaintiff have been found to be forged and fabricated. Thus, he contended that one Court has held the documents relied upon by the defendants-respondent to be forged. He further contended that Regular

Second Appeal against the said judgment is pending. Thus, he contended that in the presence of the judgment dated 21.11.2014, passed by the learned Civil Judge, in Civil Suit no. 4536 of 2013, the defendants-respondent are not entitled for any relief.

13. He further contended that the plaintiff-appellant has never appeared in the proceedings of Civil Suit No. 177 of 1994 nor he made any statement before the Court. Some imposter has appeared before the Court and signed the statement on the basis of which the impugned judgment and decree dated 21.05.1994 have been passed. He contended that as the said judgment and decree have been passed on the basis of the fraud played with Court, the same are liable to be set aside. He further contended that in the year 1994, due to martial discord, plaintiff had went into depression. He had renounced the world and went to the jungles of Raipur, Madhya Pradesh and Ayodhya where he meditated for long and ultimately came out of said depression and reclusiveness in October 2004. After that when he made the inquiry, he came to know about the impugned judgment passed in Civil Suit no. 177 of 1994. Thus, he contended that the impugned judgment and decree dated 21.05.1994 is illegal, based on fraud and misrepresentation and the learned Courts below have wrongly dismissed the suit.

14. I have duly considered the aforesaid contentions and the same are totally devoid of merits.

15. The present suit has been filed by the appellant-plaintiff to assail the judgment and decree dated 21.05.1994 passed by the learned Civil Judge, Chandigarh in Civil Suit No. 177 of 1994 for specific

performance of agreement to sell dated 02.02.1993. The said judgment has been passed by the learned Civil Judge on the basis of compromise between the parties and the statement suffered by the appellant-plaintiff. The appellant-plaintiff has taken very flimsy grounds to assail the validity of the judgment and decree dated 21.05.1994, that his signatures were obtained on some blank papers, revenue stamps, power of attorney's and stamp papers. He has also alleged that he never appeared before the Court in the proceedings of Civil Suit no. 177 of 1994 and never suffered any statement dated 21.05.1994 before the Court on the basis of which the decree has been passed. He has taken a specific plea that some imposter was produced before the Court in his place to suffer the said statement.

16. The plea raised by the appellant that he has renounced the world in the year 1994 due to mental depression and was not aware of the proceedings of the Civil Suit No. 177 of 1994 appears to be concocted in order to project his absence from the proceedings of that suit and to gain time as the present suit has been filed in the year 1995 i.e. after about 11 years of the passing of the decree. It is alleged that he was mentally unstable from the year 1994 to 2005 and had gone to the jungles of Raipur, Madhya Pradesh and Ayodhya for mediating. The statement of the plaintiff and his witnesses on this aspect carries no veracity. If, the plaintiff-appellant was under mental depression and has renounced the world, then what was the need for him to get his vote prepared for Ayodhya Parliamentary Constituency. This fact contradicts the story projected by the plaintiff-appellant. In-fact it appears that he has got prepared his vote at Ayodhya only to create the evidence that he was

away from Chandigarh and was not aware of the proceedings. But, this fact is not disputed that in the year 1996, he has moved an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (for short CPC) in the eviction proceedings for being impleaded as a party. If, the plaintiff-appellant was under mental depression and has renounced the world, the moving of said application was not expected. The learned First Appellate Court has also referred another application dated 19.10.1996 Ex.D-5, attributable to appellant-Ved Parkash. Ex.D-7 is the another reply filed by appellant Ved Parkash requesting that the rent may not be released. Appellant-Ved Parkash has also admitted in the cross-examination that he was contesting a recovery suit before the Debt Recovery Tribunal, Jaipur. Thus, the plaintiff-appellant was indulging in numerous litigation's during the period 1994 to 2005. All these documents and circumstances totally negates the plea of the plaintiff-appellant that he was in reclusiveness during the period from year 1994 to 2005.

17. As per the provisions of Section 114 *illustration* (e) of the Indian Evidence Act, 1872 (for short 'Act') all the judicial and official acts are presumed to have been regularly performed. The appellant-plaintiff has tried to render the judicial proceedings false by taking the plea that he never appeared before the Court in the proceedings of Civil Suit no. 177 of 1994 nor he suffered any statement dated 21.05.1994, on the basis of which the compromise decree dated 21.05.1994 has been passed. A specific plea has been taken by the plaintiff that some imposter had appeared and signed the statement. Appellant-plaintiff has not

adduced any expert evidence to show that the statement dated 21.05.1994 purported to have been made by him does not bear his signatures and is the result of some impersonation. The simple denial of the plaintiff-appellant that he did not appear before the Court and did not suffer any statement dated 21.05.1994, is no ground to render the judicial proceedings suspicious, illegal and invalid.

18. Appellant-plaintiff has admitted his signatures on the general power of attorney and other relevant documents. But, he has alleged that his signatures were obtained on blank papers by the opposite party fraudulently. Plaintiff has himself pleaded that he is a qualified Homeopath doctor and has also been conducted the business. So, he is a well educated person. It is not believable that such a person will sign the blank paper/stamp papers. There is no material on record to show that appellant-plaintiff had initiated any criminal action against respondent-defendant no.1 Sadhu Ram Gutpa for preparing those forged documents. The plea of fraud raised by the appellant is also not established as the story projected by him that he was under mental depression and reclusiveness since the year 1994 to 2005 is a concocted story. Moreover, the plea of fraud has to be proved like a criminal charge, whether raised in civil or criminal proceedings, beyond reasonable doubt. Reference can be made to case **Union Of India vs M/S.Chaturbhai M. Patel & Company 1976 CLJ 166.**

19. Appellant-plaintiff cannot have any advantage from the judgment passed by the learned Civil Judge, Chandigarh in Civil Suit No. 4536 of 2013, decided on 20.11.2004 as that Civil Suit was filed by Smt.

Shashi Gupta, widow of deceased defendant no.1-Sadhu Ram Gupta for seeking declaration that deed of cancellation of the Will dated 30.04.2009 executed by appellant-Ved Parkash cancelling the will dated 30.06.1992 in her favour with respect to 1/ 3rd share of the plot in dispute was malafide, illegal and inoperative. In that case, the Court was concerned only with the cancellation of the Will dated 30.06.1992 by the defendant. Learned Civil Court has observed that it was the right of the defendant to execute the Will in favour of any person and to get it cancelled. It was also observed that the plaintiff had died during the pendency of the suit. His legal representatives have not come on record to contest the suit and the suit has become infructuous after the death of defendant and no direction can be given to a dead person. So, that judgment has nothing to do with the validity of the judgment and decree dated 21.05.1994 passed by the Court on the basis of the statement made by deceased-appellant.

20. The suit of the plaintiff-appellant is also hopelessly time barred. The plaintiff has failed to establish that the decree dated 21.05.1994 is result of fraud or impersonation. Thus, it cannot be denied that the appellant has appeared before the learned Civil Judge on 21.05.1994 and suffered the statement, which led to passing of the decree. So, he cannot deny his knowledge with respect to passing of the decree dated 21.05.1994. The learned First Appellate Court has also categorically observed that there was voluminous evidence to show that plaintiff was aware of the decree in question in the year 1996-97. The limitation to challenge the decree dated 21.05.1994 was three years. But, the suit has been filed on 11.11.2005 i.e. after more than 11 years. So, the

suit filed by the appellant-plaintiff was hopelessly time barred.

21. Thus, keeping in view my aforesaid discussion, the plaintiff-appellant has not been able to establish that he did not appear in the proceedings of the Civil Suit no. 177 of 1994 to suffer the statement dated 21.05.1994, on the basis of which the decree dated 21.05.1994 was passed. So, there was nothing to assail the validity and illegality of the decree dated 21.05.1994 passed in Civil Suit no. 177 of 1994. Therefore, there is no ground to interfere with the concurrent findings recorded by the learned Courts below.

22. Resultantly, no question of law, much less, the substantial question of law arises in the present appeal.

23. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

May 16, 2016

s.khan

(DARSHAN SINGH)
JUDGE