

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 323 of 2015

- Ashok Kumar Gupta, Aged About 50 Years, S/o Late Shri Ramjhool Gupta R/o Narmada Nagar, Bilaspur, Tahsil- Bilaspur, Civil And Revenue Distt. Bilaspur, Chhattisgarh .

---- Appellant

Versus

1. M/s K. D. Resources Private Limited , Bilaspur, Through The Director, Kailash Khushlani, Son Of Shri Jeevatram Khushlani, R/o Vyapar Vihar, Bilaspur, Tahsil- Bilaspur, Civil And Revenue Distt. Bilaspur, Chhattisgarh
2. Kailash Khushlani S/o Shri Jeevatram Khushlani, Aged About 42 Years R/o Vyapar Vihar, Bilaspur, Director, M/s K.D.Resources Private Limited, Bilaspur, Chhattisgarh
3. Mahesh Kumar Singh S/o Shri Chunni Lal Singh, Aged About 40 Years R/o Lajpatrai Nagar, Marwadi Line, Bilaspur, Tahsil- Bilaspur, Civil And Revenue Distt. Bilaspur, Chhattisgarh
4. Manish Gupta S/o Shri Narayan Prasad Gupta, Aged About 33 Years R/o Vikas Nagar, 27 Kholi, Bilaspur, Tahsil- Bilaspur, Civil And Revenue Distt. Bilaspur, Chhattisgarh
5. Bharat Lal Gupta S/o Late Shri Ramjhool Gupta, Aged about 60 Years R/o Peepartarai, Tahsil- Kota, Civil And Revenue Distt. Bilaspur, Chhattisgarh
6. Sushil Gupta S/o Late Shri Ramjhool Gupta, Aged About 52 Years R/o Near Bheem Chowk Aadharsh Studeo, Ratanpur, Tahsil- Kota, Civil And Revenue Distt. Bilaspur, Chhattisgarh
7. Kishore Gupta S/o Late Shri Ramjhool Gupta, Aged About 36 Years R/o Near Hatri Chowk, Beside- Pradhan Sound Service, Juna Bilaspur, Tahsil- Bilaspur, Civil And Revenue District- Bilaspur, Chhattisgarh
8. Rajeev Gupta S/o Late Shri Ramjhool Gupta, Aged About 32 Years R/o Near Hatri Chowk, Beside- Pradhan Sound Service, Juna Bilaspur, Tahsil- Bilaspur, Civil And Revenue District- Bilaspur, Chhattisgarh
9. Rajkumar Gupta S/o Late Shri Ramjhool Gupta, Aged About 51 Years R/o New Famous Studio, Main Road, Takhatpur, Tahsil- Takhatpur, Civil And Revenue Distt. Bilaspur, Chhattisgarh
10. Sharad Gupta S/o Late Arjun Lal Gupta, Aged About 40 Years R/o Near Government Hospital, Subham Medical Stores, Main Road Kota, Tahsil- Kota, Civil And Revenue Distt. Bilaspur, Chhattisgarh
11. Sachin Gupta S/o Late Arjun Lal Gupta, Aged About 37 Years R/o Near Government Hospital, Subham Medical Stores, Main Road Kota, Tahsil- Kota, Civil And Revenue Distt. Bilaspur, Chhattisgarh

12.Smt. Geeta Devi Gupta Wd/o Late Shri Ramjhool Gupta, Aged About 68 Years
R/o Near Hatri Chowk, Beside- Pradhan Sound Service, Juna Bilaspur, Tahsil-
Bilaspur, Civil And Revenue District- Bilaspur, Chhattisgarh

13.Smt. Meena Devi Gupta W/o Shri Mahendra Lal Gupta, Aged About 41 Years
R/o Kilaward, Pachrighat, Juna Bilaspur, Tahsil- Bilaspur, Civil And Revenue
Distt. Bilaspur, Chhattisgarh

14.State Of Chhattisgarh, Through The District Collector, Bilaspur, Chhattisgarh

---- Respondents

For Appellant	:	M.K. Bhaduri, Advocate
For Respondent 1 to 13	:	Mr. Ratnesh Kumar Agrawal, Advocate
For Respondent No. 14	:	Mr. Rajendra Tripathi, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Arvind Singh Chandel

Order On Board By
Justice Prashant Kumar Mishra

11/09/2017

1. This appeal is directed against the order passed by the Third Additional District Judge, Bilaspur dismissing the appellant's application under Section 14 of the Limitation Act, and as a consequence dismissing the suit as barred by limitation.
2. Facts of the case, briefly stated, are that an area ad-measuring 9592 Sq.ft. bearing Khasra No. 1547/1 belongs to Ramjhool Gupta, out of which, an area ad-measuring 3180 Sq.ft. was allotted to the plaintiff in a family settlement. Ramjhool had executed a sale agreement in favour of Mahesh Kumar Singh and Manish Kumar Gupta for the entire area i.e. 9592 Sq.ft. In this agreement, the plaintiff/appellant signed as consenter. The remaining area of above Khasara was also a part of

separate agreement in favour of Manish Gupta in which Arjunlal and Sashi had consented. Subsequently, Mahesh Kumar and Manish Gupta filed a civil suit bearing No. 5-A/2008 for specific performance of contract which was disposed of by way of compromise in the Lok Adalat on 08/01/2009. The judgment and decree passed by the Lok Adalat was subsequently modified without notice to the present plaintiff.

3. According to the plaintiff, his father- Ramjhool was possessed of only 9592 Sq.ft of land in the revenue records yet by amending the decree, the area was increased to 11006 Sq.ft. The plaintiff was not paid any consideration for execution of the sale deed. For execution of said decree including the amended decree passed by the Lok Adalat, an execution case was preferred by the decree holders, Manish Gupta and Mahesh Kumar Singh and in execution thereof, the Court of First Additional District Judge, Bilaspur executed the sale deed in favour of defendant no.1 on 16/09/2009.
4. Challenging the dismissal of his application under Section 47 of the Civil Procedure Code, 1908, the present appellant preferred W.P.(227) No. 3740/2011 which was dismissed as withdrawn on 14/07/2011 with liberty to approach the appellate/revisional forum. The appellant, thereafter, preferred M.A. No. 90/2011, which was also dismissed as withdrawn with liberty to avail remedy available to the appellant under the relevant provisions of law. The present suit was thereafter filed seeking relief mentioned in para 1 of this order.
5. It is informed to this Court that the appellant had preferred another suit

in the court of Civil Judge, Class-II bearing Civil Suit No. 8-A/2010 which was dismissed as not maintainable on 21/10/2010, against which first appeal bearing Civil Appeal No. 32-A/2010 was also dismissed by the Court of Fifth Additional District Judge, Bilaspur on 18/02/2013.

6. Be that as it may, in the present suit, the substantial plea of the appellant is of obtainment of amendment in the decree by fraud, as he was never noticed at the time of amendment of the decree to increase the suit land in Civil Suit No. 5-A/2008. Since, the decree has been passed by the Lok Adalat and the sale deed has been executed by the Court which has passed the decree in Lok Adalat, any prayer in this suit to set aside the sale deed executed by the executing Court in course of execution of decree passed by the Lok Adalat, is in fact a prayer for setting aside the decree of Lok Adalat to the extent prayed for in the plaint.
7. The trial Court has passed the impugned order dismissing the appellant's application under Section 14 of the Limitation Act while holding the suit to be barred by limitation. We are not considering the validity of the impugned order in as much as, even if the impugned order is set aside, the appellant's suit is not maintainable in view of the law laid down by the Supreme Court in an extremely recent case decided on 7th of September 2017 in the matter of **Bhargavi Constructions & Anr. v. Kothakapu Muthyam Reddy & Ors., bearing Civil Appeal No. 11345 of 2017** holding thus in paragraph Nos. 27, 28, 29, 40 and 41.

“(27) In our considered view, the aforesaid law laid down by this Court is binding on all the Courts in the country by virtue of mandate of Article 141 of the Constitution. This Court, in no uncertain terms, has laid down that challenge to the award of Lok Adalat can be done only by filing a writ petition under Article 226 and/or Article 227 of the Constitution of India in the High Court and that too on very limited grounds.

28) In the light of clear pronouncement of the law by this Court, we are of the opinion that the only remedy available to the aggrieved person(respondents herein/plaintiffs) was to file a writ petition under Article 226 and/or 227 of the 12 Constitution of India in the High Court for challenging the award dated 22.08.2007 passed by the Lok Adalat. It was then for the writ Court to decide as to whether any ground was made out by the writ petitioners for quashing the award and, if so, whether those grounds are sufficient for its quashing.

29) The High Court was, therefore, not right in by passing the law laid down by this Court on the ground that the suit can be filed to challenge the award, if the challenge is founded on the allegations of fraud. In our opinion, it was not correct approach of the High Court to deal with the issue in question to which we do not concur.

40) We, however, make it clear that the respondents (plaintiffs) would be at liberty to challenge the legality and correctness of the award dated 22.08.2007 passed by the Lok Adalat by filing the writ petition under Article 226 or/and 227 of the Constitution in the High Court in accordance with law.

41) We also make it clear that we have not examined

the merits of case of either parties which is the subject matter of the suit and hence the writ court, in the event of writ petition being filed, would decide the writ petition strictly in accordance with law without being influenced by any of our observations. ”

8. The law laid down by the Supreme Court in the matter of Bharvagi (Supra) is binding on this Court, therefore, the present suit preferred by the appellant which in fact is a suit for setting aside the sale deed having its origin in the decree passed by the Lok Adalat, is not maintainable.
9. The present appeal, is therefore, deserves to be and is hereby dismissed though on a different ground than the one on which the trial Court has passed the impugned order. Liberty is reserved in favour of the appellant to move appropriate writ under Article 226 or / and 227 of the Constitution of India claiming the reliefs which he has claimed in the present suit.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Arvind Singh Chandel