

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.3261 OF 2016
IN
FIRST APPEAL NO.327 OF 2016**

Amrutbhai M. Mistry

... Applicant

Vs.

Kanaiyalal Purshottamdas Shah & Ors. ... Respondents

**WITH CONNECTED APPLICATIONS
NOTIFIED ON THE BOARD DATED 1.3.2017**

Ms.Anjali Awasthi with mr.Nitesh Acharya for the Applicant
Mr.S.N. Vaishnava with Nupur Muherjee and Vipul Shukla for
Respondents

CORAM: Mrs.MRIDULA BHATKAR, J.

**DATED: 1st March, 2017
(in Chambers)**

P.C. :

1. Pursuant to the order dated 28.2.2017, the learned Counsel for both the sides are present. The learned Counsel for the applicants submits that though the structures are demolished and the applicants have lost the possession, the respondents i.e., the original plaintiffs and the respondents have obtained the decree in the original suit by playing fraud on Court. She submitted that

though the applicants were not owners of the land, they represented that they were owners of the land and the decree was obtained. The decree obtained by fraud is a nullity. She relied on the judgment of the Supreme Court in the case of **A.V. Papayya Sastry vs. State of Andhra Pradesh**¹ and especially para 22 thereof as under:

“22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.”

2. She also relied on the observations in para 22 of **Indian Bank vs. Satyam Fibres (India) Pvt. Ltd.**² which is as under:

"22. The judiciary in India also possesses inherent power, specially under Section 151 C.P.C., to recall its judgment or order if it is obtained by Fraud on Court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the Decree obtained by fraud. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the Constitution of the Tribunals or Courts themselves so

1 (2007) 4 SCC 221

2 (1996) 5 SCC 550

as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Court's business".

3. The learned Counsel for the respondents contended that the documents disclosing the fraud were not with the applicants when they filed application before the trial Court as obstructionist under Order 21 of the Code of Civil Procedure.

4. The learned Counsel for the respondents i.e., the original plaintiffs, has submitted that the respondents are the decreeholders and have filed suit for declaration and possession. The suit was decreed in their favour and they were declared as owners of the suit land i.e., Survey No.118(part 1). The plaintiffs have undivided share and right in the suit property. However, subsequently, the plaint was amended and it was made as 118. He further submitted that the decree passed in favour of the applicant/accused is confirmed till the Supreme Court in the Special Leave to Appeal filed by the defendants was dismissed on 12.4.2013. It is further submitted that the obstructionist had filed Chambers Summons which was dismissed by the trial Court so also the First Appeal was dismissed by this Court on 28.2.2017.

Then, while these applicants have challenged the order of this Court which was confirmed by the Supreme Court and the Supreme Court by order 6.5.2016 has further directed the obstructionist to hand over the possession on or before 31.7.2016. Thereafter, these present applicants have filed review applications before this Court. However, they have also filed review in the First Appeal, however, the First Appeal Nos.327 of 2016 to 334 of 2016 were dismissed. The learned Counsel has further submitted that in the said First Appeals, these obstructionists who were appellants, have taken a ground that the decree is a nullity because it was obtained by fraud. However, the said ground was dealt with by the learned Single Judge of this Court and has dismissed all the appeals by order dated 10.2.2017.

5. The observations made by the Supreme Court in the case of **A.V. Papayya Sastry (supra)**, are binding on this Court and the other Courts. However, after going through the relevant portion of the order passed by the learned Single Judge on 10.2.2017 in the First Appeals, which were filed by the applicants, it appears that this Court had considered this point of fraud and has rejected it. The applicants are claiming tenancy rights through the original

defendant No.2 against whom the decree is passed and the original plaintiffs are declared owners, which is confirmed by the Supreme Court.

6. Under such circumstances, no ground is made out to entertain these applications for review under Order 47 as also under section 115 of the CPC. Accordingly, the Civil Applications for review are dismissed.

(MRIDULA BHATKAR, J.)