

THE HON'BLE SMT JUSTICE T. RAJANI

APPEAL SUIT No.464 of 1998

JUDGMENT:

This appeal is filed, impugning the judgment in O.S.No.2 of 1987 dated 29.04.1997 passed by the Subordinate Judge, Machilipatnam.

2. It is the unsuccessful plaintiffs therein, that come before this Court by way of this appeal, seeking to set aside the impugned judgment on the following grounds:

The Court below erred in holding that the first defendant is a *bonafide* purchaser for value without notice of Ex.A1. The Court below ought to have held that the defendants colluded together and fraudulently brought into existence Ex.B1 sale deed and to support it, Ex.B2, contract of sale, was brought into existence with antedate. The Court below failed to take into consideration the material circumstances and it erroneously held that the plaintiffs came to the Court with unclean hands. The Court below ought to have appreciated the reality that a compromise was effected between the vendors and their tenant even by the date of Ex.A1. The tenant, having agreed to give up his right of tenancy and deliver possession, had actually delivered possession as per the recitals of Ex.A1, in token of proof of which he attested Ex.A1. The Court below went wrong in not relying on the evidence of P.W.3, who is an attesor of Ex.A1 as well as Ex.B1. The Court below should have seen that P.W.3 questioned about Ex.B1 on the day of its registration, while there was already Ex.A1 for which

the defendants convinced P.W.3 with a false explanation. The Court below should have seen that Ex.B8 notice was got issued by the first defendant with a fraudulent intention, to give a colour of reality to Ex.B2, which has been brought into existence subsequent to the suit contract. The Court below ought to have held that Ex.B2 was subsequent to ATC.No.23 of 1986 with an antedate with a mal-intention of defeating Ex.A1 which is executed on a proper stamp paper, while Ex.B2 is a white paper contract. The Court below failed to follow the observation of this Court in CMA.No.414 of 1987 wherein it was observed that *prima facie* Ex.B2 contract appears to have been brought into existence. The Court below ought to have seen that there is no necessity to execute Ex.B4 promissory note on 05.07.1986 if really Ex.B2 was obtained on the same day and that if really Ex.B2 contract is in existence by 30.07.1986 there is no need to execute a mortgage deed.

3. Heard both sides.

4. The counsel for the appellants passed on a brief note with his contentions. The contentions are that the first defendant had knowledge of Ex.A1 even at the time of executing Ex.B2 contract of sale. He contends that the attestors of Ex.B2 contract of sale are admittedly family members and blood relations of the first defendant. The first attestor is the son of the first defendant's own brother and the second attestor is his own son. Since no other person had come forward, the above two persons were taken as witnesses and Ex.B2 was brought into existence in collusion with defendants 2 and 3. The third defendant scribed Ex.B2 contract of sale as admitted by

D.W.1. Originally in Ex.B1 sale deed, there is no reference to Ex.B2 contract of sale, though it is a material fact and subsequently the same was interpolated. There is also another interpolation. The said two interpolations are in two different hand writings. The scribe of Ex.B1 is one Vadavalli Subba Rao and the writing in the said two interpolations is different from the writing in the rest of the contents of the document. The scribe did not put his signature or his initial at the places of interpolations, which is a usual practice. The purpose of sale, mentioned in Exs.B1 and B2 is different. In giving particulars of sale consideration in Ex.B2, it has been stated that executors of Ex.B2 i.e. defendants 2 and 3 executed a pronote of Rs.5,000/- on the date of execution of the said contract of sale and they also stated that there is an arrangement to give some more amount to them within one week. The said particulars of payment of part of sale consideration are vague. Even assuming that there is no vagueness, the first defendant, who filed an elaborate written statement, did not make any reference to the above said promissory note.

In para 6(A) of the plaint, it was categorically stated that the trial Court while dismissing IA.No.64 of 1997 filed by the first plaintiff for temporary injunction categorically held that the contract of sale and sale deed executed in favour of D1 are collusive. In CMA.Nos.414 and 695 of 1987, this Court observed that the first defendant takes inconsistent stands but the Court below ignored the same. The Court below ought not to have held that the plaintiffs, by taking the plea of delivery of possession, approached the Court with unclean hands and they are not entitled for the equitable relief of specific performance. Admittedly there is litigation between the tenant of the schedule land

and defendants 2 and 3. Before execution of contract of sale, the tenant and the landlords reached a compromise, though they had not filed a compromise memo in the Tenancy Court by that time. Since they reached a compromise, the tenant signed as an attesting witness in the suit contract of sale in token of delivery of possession though it is a paper delivery. After common judgment was rendered in the above referred CMA's, IA.No.705 of 1994 was filed seeking for amendment to the plaint and para 6(A) was incorporated, seeking a new relief for recovery of possession of the plaint schedule property.

5. Defendants 2 and 3 did not appear. Defendant No.1, who is respondent No.1 herein, filed his written submissions through his counsel, raising the following points.

1. The plaintiff, who asserts that Ex.-A1 is executed on 26-08-1986, did not take any further steps either to ascertain from 1st defendant regarding his dealing with 2nd and 3rd defendants who are admittedly the title holders.
2. The plaintiff did not even give any suit Notice before he filed the suit on 21-1-1987 within 9 days from 12-1-1987, ie. the date of registration of the sale deed in favour of D1.
3. Plaintiff asserts that he came to know that defendant 2 and 3 executed the registered sale deed in favour of the 1st defendant and registered the sale deed Ex-B1 on 12-1-1987. But he did not say when he came to know about the said facts.
4. The plaintiff did not take any steps that are naturally expected to be taken in due course, by a person who asserts that he already parted with huge amounts of more than Rs.25,000/-. Surprisingly the suit O.S.No.2 of 1987 is filed on 21-01-1987 that is within a gap of 9 days from the registration of sale deed in favour of 1st defendant.

Ex.A1 and even the plaint are full of false averments and also necessary document, namely registered mortgage deed Ex.B3 dated 30-7-1986 is withheld, with an evil intention to snatch exparte interim Order of Interim Injunction. The only document filed by the Plaintiff is Ex-A1. A mere glance at the Original Document Ex-A1 reveals that it is a concocted document brought into existence with false averments, for the purpose of filing the suit and for snatching orders of temporary injunction and as such the plaintiff obtained exparte injunction order in I.A.No.64 of 1987 in O.S.No.2 of 1987 (mentioned in page 5 of Judgment of trial court at line about 12)

POINTS OF LAW: (Raised in written submissions)

- 1) The jurisdiction to decree Specific Performance is discretionary and the court is not bound to grant specific relief even if a clear case is made out that it is lawful to grant specific performance.
- 2) In this case the 1st Defendant has clearly made out that he is a bonafide purchaser, for valuable consideration in good faith and without, any notice that defendant 2 and 3 have executed any documents in favour of any other party.
- 3) Important legal ground on which the suit is liable to be summarily thrown out is that the plaintiff has approached the Court with unclean hands.

6. From the rival contentions, the following points arise for consideration:

1. Whether the lapses or weaknesses in the case of the respondents/defendants would entitle the appellants/plaintiffs for a decree of specific performance.
2. Whether the appellants/plaintiffs are entitled for the relief of specific performance, which is a discretionary

relief, requiring the plaintiffs to approach the Court with clean hands.

3. To what relief.

POINT No.1:

7. Before advertent to the weaknesses of the defendants' case, as pointed out by the appellants, it would be beneficial to remember that the weaknesses in the defendants' case cannot be a basis for the plaintiffs to seek any relief, has been too well settled and there are number of judgments in that regard. One such judgment is rendered by the Supreme Court in ANIL RISHI v. GURBAKSH SINGH¹ wherein it is categorically laid down as follows:

"...In terms of Section 102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same."

Another judgment is also rendered by the Supreme Court in RANGAMMAL v. KUPPUSWAMI² observing as follows:

"...Thus, it was the plaintiff/respondent No.1 who should have first of all discharged the burden that the sale deed executed during the minority of the appellant was genuine and was fit to be relied upon. If the courts below, including the High Court, had felt satisfied on this aspect, only then the burden could be shifted on the defendant/appellant to dislodge the case of the plaintiff that the sale deed was not genuine."

¹ 2006 (4) CTC 524

² (2011) 12 SCC 220

There is yet another judgment, rendered by the High Court of Madras in SARASWATHY v. TAMILZHARASI³ wherein it was held that

“... in order to get a relief, a duty is cast upon them and the onus is on them to prove not only the possession, but also the lawful possession of the property at the time of filing of the suit. They cannot expect the opposite party to prove the defence first ...”

8. So being the position of law, it is always the burden of the plaintiff to first discharge the burden that the law casts on him and to prove his case. Section 20(1) of the Specific Relief Act, 1963, under which the plaintiff seeks the relief is as follows:

“20. Discretion as to decreeing specific performance.- (1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.”

The aforesaid provision makes it very clear that a relief of specific performance is an equitable relief and unless the Court is satisfied that the equities are in favour of the plaintiff, which implies the truthfulness of the plaintiff, the Court is not bound to grant such relief. The weaknesses in the case of the defendant would become relevant only after the plaintiff shows to the Court that he has approached the Court with clean hands and only if he succeeds in proving his case by discharging the initial burden cast upon him.

The answer to Point No.1 can be in the above terms.

³ 2003 (3) CTC 229

POINT Nos.2 and 3:

9. The agreement between the plaintiffs and defendants 2 and 3 is marked as Ex.A1 and is dated 26.08.1986. The agreement stipulates about the mortgage debt borrowed from the first defendant by mortgaging the suit land, under a registered mortgage deed dated 30.07.1986. Hence, the recitals of Ex.A1 itself amount to admitting that there was not only a debt incurred by defendants 2 and 3 from defendant No.1 but that there was also a mortgage and a registered mortgage deed. The recitals of Ex.A1 with regard to delivery of possession are that the 'A' party i.e. the plaintiffs, shall pay taxes, payable to the Government from that Fasli, while enjoying the said land. There is no specific recital that delivery of possession is being made under the said agreement, but the above recital would imply that the plaintiff is permitted to enjoy the land from the date of that agreement.

In the plaint, the averments with regard to possession can be found in para 5. The plaintiff in clear terms avers that he is in actual possession of the suit land. He not only states that he is in possession of the suit land but also that he harvested the standing crop thereon and appropriated the same; he raised dalva crop and the same will be ready for cutting by the end of March 1987 and that he spent huge amount for the dalva crop. While denying the possession of the defendants over the said property, he asserts that he alone is in exclusive possession and enjoyment of the plaint schedule land and contends that the first defendant, under the guise of the nominal sale deed, said to have been executed by defendants 2 and 3, is trying to trespass into the plaint schedule land; the first defendant has

absolutely no right to enter into the plaint schedule land. He subsequently makes an amendment to the plaint at para 6(A) by explaining the need for the amendment, in the following terms:

“6(A). Though it was stated in the contract of sale that the possession of the suit land was given to the plaintiff, in fact there was no actual delivery of the suit land to the plaintiff as it was admittedly in the possession of the tenant. This court as well as High Court in the injunction petition I.A.No.328 of 1987 and the High Court in CMA.No... of 1999 held that the plaintiff was not put in physical possession of the property. Hence it is necessary that in granting the relief of specific performance of the contract of sale, the court is to direct the defendants to put the plaint schedule property in possession of the plaintiff. (Amended as per order in IA.No.705 of 1994 dated 19-07-1996).

By the date of the suit contract of sale the suit land was admittedly in possession of the tenant and ATC.No.23 of 1986 filed by the defendants (2) and (3) before the Special Officer for eviction was pending. Though it was recited by the suit contract of sale that the land was delivered to the plaintiff it was only a paper delivery, as the defendants represented that they would take delivery of the property from the tenant and deliver the same to the Plaintiff immediately after the compromise petition is filed before the Rent Controller. Accordingly, Defendants 2 and 3 compromised the matter and took delivery of possession from the tenant. By that time the suit land was trespassed and defendants 2 and 3 asked the plaintiff to take possession of the land as there was already a recital in the contract that the land was delivered to the plaintiff and as nothing is to be done in the suit land. After the execution of the suit contract of sale in favour of the plaintiff, Defendants 1 to 3, in collusion, fraudulently and with a view to cause wrongful gain to them and wrongful loss to the plaintiff, fabricated the contract of sale and a registered sale deed in favour of the first defendant, with false recitals and with an anterior date. There was a semblance of possession of the suit land. Plaintiff is a very old man and the Defendants are very influential, hazardous and dangerous persons who have no respect for law and order. So the plaintiff filed I.A.No.328/1987 for issue of Temporary injunction, restraining the Defendants from interfering with the possession of the said lands.

The defendants filed I.A.No.64 of 1987, to appoint a receiver to take possession of the schedule property and to deposit the sale proceeds into court. This court dismissed I.A.No.328 of 1987, the injunction petition, holding that the plaintiff was not put in possession of the suit property, holding that the contract of sale and that the sale deed executed in favour of the first defendant are collusive, and antedated, fraudulent documents and that the first defendant is not purchaser for value. This court allowed I.A.No.64/87 filed by the first defendant and appointed a Receiver. The Plaintiff filed A.A.O.No.695/87 in the High Court against the orders in the receiver petition, I.A.No.64/87 and also filed A.A.O.No.414 of 1987 against the orders in I.A.No.328 of 1987 and the High Court allowed A.A.O.695 of 197 dismissing the receiver petition I.A.No.64 of 1987 filed by the defendants. (Amended as per order in I.A.No.705 of 1996 dated 19-7-1996).

10. In his evidence as P.W.1, the plaintiff does not state anything about possession at the time of execution of Ex.A1 and he states that on the date of execution of Ex.A1, defendants 2 and 3 already filed eviction petition against one Venkata Subbaiah, who is the tenant and son-in-law of the plaintiff, on the ground that he fell due arrears of rent. It is stated that tenant was ready to give vacant possession of the suit land, provided the landlord fore-goes the rents. According to him, by the time of Ex.A1, there was paddy crop in the suit land, raised by the tenant and defendants 2 and 3 told him that they would adjust the matter with their tenant. In Ex.A1, though it was recited that the vacant possession of the land should be delivered to him, it was not done so in fact, and as per terms of Ex.A1, he should pay the balance of amount by 05.10.1986 and defendants 2 and 3 should execute a registered sale deed in his favour. He was always ready with cash to get the sale deed executed, provided they adjust the matter in dispute with the tenant. As the matter was not settled between them,

defendants 2 and 3 and their tenant, the sale deed could not be executed. Later the matter was settled between them and the suit land was delivered by defendants 2 and 3. Since then, he requested them to take the balance of the consideration and execute a sale deed, but they were avoiding on some pretext or the other. He further states that one month prior to the date of Ex.A1, both defendants 2 and 3 borrowed cash of Rs.10,000/- from the first defendant by mortgaging the suit property under a simple mortgage deed and defendants 2 and 3 assured that they would discharge the mortgage debt and hand over the land to him on the date of execution of the sale deed. He told the first defendant also about the fact of Ex.A1 and about his paying Rs.25,000/- as advance to defendants 2 and 3.

While it was so, defendants 1 and 3 in collusion with each other, got a registered a sale deed in favour of the first defendant and when he went to the suit land in pursuance of the execution of agreement of sale, Ex.A1, to harvest the crop, defendant No.1 came and raised an objection stating that he purchased the same from defendants 2 and 3. Hence, he filed the suit and separate application for temporary injunction. An order was passed dismissing his application holding that he was not in physical possession of the suit land and another application filed by the defendant to appoint receiver was allowed. Against those orders, he filed revisions before this Court and order in receiver petition was set aside and revision petition against dismissal of his application for temporary injunction was dismissed. The defendants deposited amount in the Court and harvested the crop and subsequently, they continued to be in possession. Hence, he filed an application for appointment of receiver.

11. In the background of the facts stated in the chief-examination and the plaint, the trustworthiness of the plaintiffs needs to be understood. The contention of the counsel for the appellants that the recital of possession in Ex.A1 is only a formal recital and that, in fact, no possession was handed over on that date and that after the compromise between the tenant and defendants 2 and 3, the possession was taken by defendant No.1 and hence, he had to seek for amendment asking for recovery of possession, is highly incomprehensible. Based on a formal recital in Ex.A1 the plaintiff could make so many averments with regard to possession, which would only show that he suppressed an important aspect of Ex.A1 and claimed possession under Ex.A1. He also did not stop there, he filed petition for temporary injunction claiming possession and any amount of explanation coming from him with regard to the subsequent amendment under para 6(A) would not explain the reasons for suppressing the fact of non-delivery of possession and for putting forth a positive case of possession. As already observed, he simply does not say that he is in possession of the property but he says that he spent huge amount for raising crops. From the manner in which the plaint itself is drafted, it can be said that the plaintiff did not come to the Court with clean hands, but, however, the said aspect can be further discussed in order to further bring to light, the untrustworthiness of the plaintiff. He seeks the Court to rely on the observations made by this Court in CMA.Nos.414 and 695 of 1987, to decree the suit. The plaintiff filed IA.No.328 of 1987 seeking for temporary injunction, which was dismissed by the Court below and a receiver application filed by the defendants in IA.No.64 of 1987 was allowed. Against both

the orders, the plaintiff went in appeal. This Court dismissed the revision filed against the injunction petition and allowed the appeal so far as the receiver application is concerned.

12. The observations with regard to allowing the appeal against the receiver application are sought to be relied upon by the plaintiff wherein this Court observed that there are observations in the order in IA.No.328 of 1987 to the effect that Ex.B9 contract of sale was executed under peculiar circumstances and Ex.B1 pronote clearly rules out the possibility of advance being paid under the agreement of sale. Similarly, the mortgage bond Ex.B2 does not indicate that it has anything to do with the contract of sale Ex.B9. It was observed that the first defendant therein took inconsistent stands, in the sense, he claims that he obtained a contract of sale and paid money as advance but at the same time he claims that he lent Rs.10,000/- and obtained a mortgage bond and if really there was contract of sale, there was no need for defendants 2 and 3 borrowing money either under the pronote or under the mortgage bond. So *prima facie*, Ex.B9 contract of sale appears to have been brought into existence subsequent to the termination of tenancy proceedings.

13. Equally categorical are the observations of this Court with regard to the possession of the plaintiff on the suit land. The appeal filed against the dismissal of injunction petition would clearly show that the plaintiff tried his best to prove his possession, which was, allegedly, taken under Ex.A1 and when only he became unsuccessful in the appeal filed against the dismissal of injunction petition, he sought for or was rather forced to seek an amendment in his plaint.

14. The order of this Court in Rev.CMP.No.10697 of 1989 shows that a joint memo was filed by the parties stating that the defendant, who is the first respondent herein, was in possession and raised the crops for the years 1989-90 and permission was given to him to furnish security of Rs.2,500/- and take the crops. It was recorded that the parties agreed for the suit to be disposed of with the above terms. Hence, the above would go to show that it was the first defendant, who was put in possession of the suit land after the termination of ATC proceedings. Hence, the averment in the plaint that defendants 2 and 3 being in possession of the suit property after the compromise with the tenant is also a false averment and would once again support the view that the plaintiff came to the Court with unclean hands, He being a party to the joint memo filed in the review civil miscellaneous petition, cannot be expected to aver that defendants 2 and 3 took delivery of the possession of the suit property. Hence, seen from any angle, neither the averments in the plaint nor the evidence of the plaintiff as P.W.1 would reflect any credibility and trustworthiness, which would entitle him for an equitable relief of specific performance.

15. In the CMA's, this Court, though made observations with regard to Ex.B9, observed that it is for the trial Court in O.S.No.2 of 1987 to decide as to which agreement of sale is genuine and which of it is acted upon. The joint memo, filed by the parties, would only show that the first defendant was in possession of the suit property and there were bonafides on his part to seek for appointment of the receiver. Hence, the conduct of the first defendant subsequent to allowing

CMA.No.144 of 1987 would only show that the *prima facie* opinion that was arrived at by this Court in the above CMA is not correct.

16. The contention with regard to interpolations in the sale deed is also not merited. Nowhere does the law require the interpolations to be initialed by the scribe. If the truth of the contents of the documents, containing interpolations, is proved by other circumstances, the document would not be vitiated by the simple reason that it contains interpolations, which are not initialed by the scribe. The interpolations are nevertheless made in the sale deed. It is not the case of the plaintiff that they are subsequent to the registration of the sale deed. Hence, it has to be understood that the parties have interpolated the facts only in agreement with each other and that they are not done for the benefit of any one party to the sale deed. When parties to the deed are in agreement for the changes in the sale deed, there cannot be any embargo curtailing their freedom to make such interpolations and alterations. In any case, the plaintiff is not a person, who would be prejudiced by such interpolations, as he has to fall or stand on his own legs. Even if there are no interpolations, the case of the first defendant does not get affected. If as contended by the plaintiff that the sale deed is a fraudulent document, the parties would not make it evident by interpolations. Unless they are not true, the facts constituting the interpolations need not be recited at all. It would suffice to make a recital that consideration passed, without attempting to explain the manner in which the consideration passed and without leaving any scope for anyone to comment on the interpolations.

17. Let me go further to understand the truth of the case. The defendants 2 and 3 have filed their written statement, though thereafter they did not choose to contest the suit. But the probabilities of the case, if can be gathered from the pleadings, would also help in deciding the suit. The circumstances under which Ex.A1 was executed are explained in the written statement of defendants 2 and 3, which seem to be highly probable. The reasons for which they brought the suit schedule property for sale, though are different in Exs.A1, B1 and B2, would show there were reasons compelling them to sell the suit schedule property and when a person is compelled by numerous circumstances to sell the property, it is possible that he puts forth some of the circumstances in each of the documents. It is not necessary that all the circumstances, compelling him to go for sale of the property, should be recited in each of the documents. The contents of the written statement would show that the defendants 2 and 3 proposed to sell the suit schedule property and that they took Rs.2,000/- from the first defendant and subsequently, Rs.3,000/- from him on 05.07.1986 and a pronote was executed. The third defendant wanted to improve his business and as he had to discharge the loan taken from the first defendant and also because the suit schedule property was not fetching good income, they decided to sell the property for a consideration of Rs.50,000/-. The first defendant agreed for the same and the Court case was also mentioned in the agreement and as the case was not coming to an end, a mortgage deed was executed in favour of the first defendant and subsequently, a sale deed was executed in favour of the first defendant. On the proposal of their tenant, the plaintiff, who is his father-in-law, came forward to

purchase the property by paying the sale consideration immediately and the tenant also undertook to get the first defendant agree for the contract with the plaintiff and if, in any case, the first defendant does not agree for the same, it was agreed that the same can be registered to the first defendant. Under the aforesaid facts and circumstances, Ex.A1 got to be executed.

18. The contentions in the written statement become probable, by the facts that the mortgage is mentioned in Ex.A1 and that the tenant, attested Ex. A1, by endorsing a false statement of possession being delivered to the plaintiff, knowing fully well that possession is with him. It was only the tenant who was on better terms on the date of Ex.A1, by taking the property into a disputed area, by not vacating the land and driving the landlords to Court. It is probable that he might have been under the impression that under the difficult situation faced by the first defendant, he can bring him to the terms of Ex.A1 and thereby assured the plaintiff as such. The plaintiff made his false statement of possession, so strong a foundation to his case, that it makes it difficult for him to eat his words. His effort to take off his foot from his earlier stand on possession, fails, the explanation for it being totally irreconcilable with it. No amount of explanation offered by him, for making an amendment at paragraph 6(A) of his plaint, would meet the parameters of truth.

19. A judgment was rendered by a Division Bench of this Court in CMA.Nos.359 to 362 of 2017 dated 24.10.2017 to which I am a party and few of the observations, touching upon the norms for granting an equitable relief, in that case injunction, were made by us, by relying

on the decisions of the Supreme Court, which are apt to be noted here. They are as under:

“Litigants, who come to Court with “unclean hands”, are not entitled to be heard on the merits of their case. (*Amar Singh v. Union of India* [(2011) 7 SCC 69]. 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. (*Amar Singh; Dalip Singh v. State of U.P.* [(2010) 2 SCC 114]).

Litigants must observe total clarity and candour in their pleadings, especially when it contains a prayer for injunction. A prayer for injunction, which is an equitable remedy, must be governed by the principles of “uberrima fides”. (*Amar Singh* [(2011) 7 SCC 69]; *Hari Narain v. Badri Das* [(AIR 1963 SC 1558)]; *Welcome Hotel v. State of A.P.* [(1983) 4 SCC 575]; *G. Narayanaswamy Reddy v. Govt. of Karnataka* [(1991) 3 SCC 261]; *S.P. Chengalvaraya Naidu v. Jagannath* [(1994) 1 SCC 1]; *A.V. Papayya Sastry v. Govt. of A.P.* [(2007) 4 SCC 221]; *Prestige Lights Ltd. v. SBI* [(2007) 8 SCC 449]; *Sunil Poddar v. Union Bank of India* [(2008) 2 SCC 326]; *K.D. Sharma v. SAIL* [(2008) 12 SCC 481]; *G. Jayashree v. Bhagwandas S. Patel* [(2009) 3 SCC 141] and *Dalip Singh* [(2010) 2 SCC 114].

A plaintiff, applying ex-parte, comes under a contract with the Court that he will state the whole case fully and fairly to the Court. If he fails to do that and the Court finds, when the other party applies to dissolve the injunction, that any material fact has been suppressed or not properly brought forward, the plaintiff is told that the Court will not decide on the merits; and, as he has broken faith with the Court, the injunction must go. (*Amar Singh* [(2011) 7 SCC 69]; *Castelli v. Cookf* [68 ER 36 = (1849) 7 Hare 89]. If there is an important misstatement, Courts should never hesitate to discharge the order at once, so as to impress upon all Suitors, the importance of dealing in good faith with the Court when ex-parte applications are made. (*Amar Singh* [(2011) 7 SCC 69]; *Republic of Peru v. Dreyfus Bros. & Co.* [38 Ch D 348 = 55 LT 802].

It is the rule of the Court, and one which is of the greatest importance to maintain, that when an applicant comes to the Court, to obtain relief on an ex-parte statement, he should make a full and fair disclosure of all material facts—facts, not law. He must not misstate the law if he can help it—the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that, if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement. (*Amar Singh* [(2011) 7 SCC 69]; *R. v. Kensington Income Tax Commr., ex p Princess de Polignac* [(1917) 1 KB 486 (CA)]).

Suppression of facts by the party against the beneficiary, and prima facie evidence to show that there is truth in these allegations, would not entitle the party to seek injunction”

20. This is all remembered only to remind, if not to tell, the plaintiff that a decree of specific performance cannot be sought for unless the essential condition, of being clean, required for seeking such an equitable relief, is fulfilled. That much would suffice as the reason for dismissing the appeal.

The points are answered accordingly.

In the result, the appeal is, thus, dismissed. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

T. RAJANI, J

October 30, 2017
DSK