

21

\$~

\*

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

+

CS(OS) 1149/2015 & I.As. 8721-8722/2015

SUMAN LATA SHARMA

..... Plaintiff

Through: Mr. Vikash Sharma, Advocate.

versus

VINOD KUMAR SHARMA & ORS

..... Defendants

Through: Mr. Dharm Vir Singh, Advocate for  
defendants No.1 and 2.

%

Date of Decision: 03<sup>rd</sup> November, 2017

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

### **J U D G M E N T**

**MANMOHAN, J (Oral)**

1. Present suit has been filed for partition, possession, cancellation of Relinquishment Deed dated 16<sup>th</sup> June, 2011 and permanent injunction.
2. Plaintiff has primarily instituted the present suit for a declaration that the Relinquishment Deed executed and registered by her in favour of her brothers-defendants No.1 and 2 respectively with respect to an immovable property left by the father of the parties was got executed from her fraudulently on the promise of being paid Rs.1 crore. It is stated that on the date of execution of the Relinquishment Deed only Rs.10 lacs was paid to the plaintiff. In support of the said contention, learned counsel for plaintiff relies upon the Settlement Receipt dated 16<sup>th</sup> June, 2011 executed by the

defendants.

3. Consequently, the plaintiff in the present suit prays for a declaration that the Relinquishment Deed dated 16<sup>th</sup> June, 2011 is null and void and further that she be declared owner of 1/4<sup>th</sup> share in the said property and the defendants be restrained from dealing with the property in question.

4. On 20<sup>th</sup> July, 2016, the learned Predecessor of this Court had observed that even if what the plaintiff claims is found to be true, the only relief which the plaintiff would be entitled would be the relief of recovery of balance amount of Rs.90 lacs may be with interest and not the relief of cancellation. However, learned counsel for plaintiff states that the plaintiff is not willing to confine her relief to recovery of damages.

5. In fact, on the last date of hearing, when this Court had heard the matter, it had pointed out that the Relinquishment Deed did not mention that it was being executed against any consideration. Consequently, this Court had drawn the attention of the parties to the doctrine of *pari delicto*, because even if the averments in the plaint were to be believed, then also both the parties had acted fraudulently. This Court had also drawn the attention of the learned counsel for parties to the judgment of this Court in ***Vinod Popli Vs. Ragini Popli & Ors.,(2015) 219 DLT 294.***

6. Today, learned counsel for plaintiff states that even if it is presumed that the Relinquishment Deed is vitiated by fraud by plaintiff and defendants, then also this Court should cancel both the Relinquishment Deed as well as the Settlement Receipt dated 16<sup>th</sup> June, 2011.

7. He submits that this Court must do substantial justice and the plaintiff should not be rendered remediless.

8. Learned counsel for plaintiff states that if the signatures of the defendants on the Settlement Receipt dated 16<sup>th</sup> June, 2011 are compared with their banks signatures, it would be apparent that they had executed the said document. He states that the defendants have concealed the Settlement Receipt dated 16<sup>th</sup> June, 2011 from the Registrar.

9. Upon a reading of the plaint and the documents filed, this Court finds that every time the plaintiff points one finger at the defendants, three fingers point back to the plaintiff. From the pleadings on record and arguments advanced, it is apparent that the plaintiff is equally at fault and was a part of the alleged fraud.

10. None of the parties had disclosed to the Registrar while getting the Relinquishment Deed registered that the said document was being executed against consideration.

11. In fact, if the plaintiff's plaint is to be believed, then certainly the plaintiff had not executed a Relinquishment Deed. If the parties including the plaintiff had disclosed the "actual transaction" as now put forward in the plaint, then the Registrar would not have registered the document as a Relinquishment Deed.

12. Consequently, the plaintiff upon her own averments is guilty of hiding the true nature of transaction between the parties and of defrauding the revenue as stamp duty on transaction of sale is separate and distinct from a Relinquishment Deed.

13. Accordingly, this Court is of the view that the plaintiff on her own averments is a party to a fraud and had not disclosed true, correct and complete facts to the Registrar while getting the Relinquishment Deed registered.

14. This Court is of the opinion that the principle of *pari delicto* is clearly applicable to the present case. In **Vinod Popli Vs. Ragini Popli** (Supra) this Court had culled out the principle of *pari delicto*. The relevant portion of the aforesaid judgment is reproduced hereinbelow:-

*“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.

15. Accordingly, keeping in view the fraudulent conduct of the parties as also the legal position as explained above, this Court is of the view that the present suit is barred by principle of *in pari delicto*. Consequently, present suit and pending applications are dismissed.

**MANMOHAN, J**

**NOVEMBER 03, 2017**

js