

**In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh**

CIVIL REVISION PETITION No. 3988 of 2018

Between:

K. Eswaraiah

... Petitioner

and

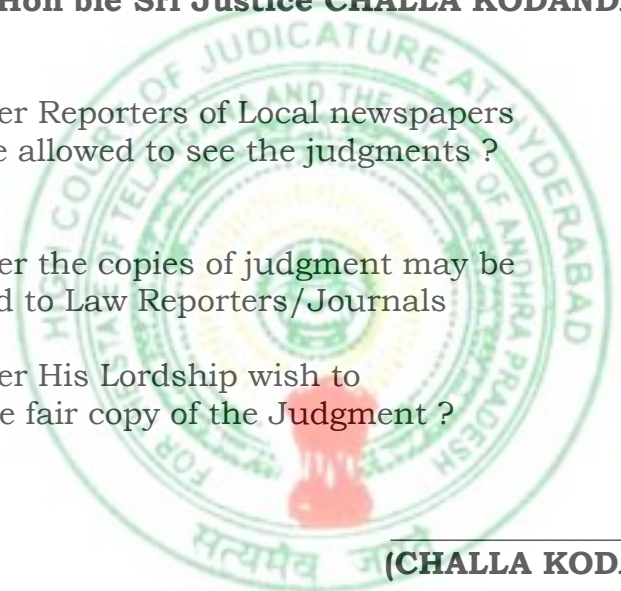
Bagadi Ganesh & others

...Respondents

Date of Judgment Pronounced: 14-09-2018

Submitted for Approval:

The Hon'ble Sri Justice CHALLA KODANDA RAM

- 
1. Whether Reporters of Local newspapers may be allowed to see the judgments ? Yes/No
 2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
 3. Whether His Lordship wish to see the fair copy of the Judgment ? Yes/No

(CHALLA KODANDA RAM, J)

*** The Hon'ble Sri Justice CHALLA KODANDA RAM**

CIVIL REVISION PETITION No. 3988 OF 2018

% Dated 14.09.2018

Between:

K. Eswaraiah

... Petitioner

and

Bagadi Ganesh & others

...Respondents

! Counsel for the petitioner : Sri N. Aswartha Narayana

^ Counsel for the respondents : Sri K.G. Krishna Murthy, Senior
Counsel for Sri K. Ram Mohan

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>HEAD NOTE:

? Cases cited:
CS (OS) No. 166 of 1997
2004(3) ALD 126 (SC)



THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 3988 OF 2018

ORDER :

Against the Order dated 07.06.2018, whereby and where under the II Additional District Judge, Hindupur dismissed I.A. No. 187 of 2018 filed by the petitioner – defendant No.4, under Section 151 of the Code of Civil Procedure, seeking dismissal of the suit i.e. O.S.No.31 of 2012 filed by the 1st respondent for specific performance of agreement of sale dated 03.03.2011 said to have been executed by Respondents 2 to 4 - Defendants 1 to 3, as power of attorney holders of the petitioner herein – defendant No.4, this Civil Revision Petition is filed.

The brief facts are as follows:

The case of the 1st respondent - plaintiff is that on 03.03.2011, when Respondents 2 to 4 approached the 1st respondent and offered to sell the suit property, the latter, after verifying the title deed and registered General Power of Attorney dated 03.11.1986 said to have been executed by the petitioner in their favour, agreed to purchase the suit property, for Rs. 35 lacs and paid Rs. 25 lacs as advance, with a condition to get the document executed in favour of the 1st respondent in 12 months from the date of the agreement dated 03.03.2011. But however, Respondents 2 to 4, on one pretext or the other, had been postponing performing their part of contract in terms thereof. Hence, on 26.02.2012, the 1st respondent claims to have issued a notice to respondents 2 to 4, marking a copy to the petitioner - 4th defendant. Though the said notice was received by all of them, the petitioner only got issued a reply stating that he got cancelled GPA

dated 03.11.1986 on 12.01.2012 itself. It is the further case of the petitioner that the acts done by respondents 2 to 4 as the agents of the petitioner, by virtue of the Registered GPA, dated 03.11.1986, are binding on the petitioner and that to avoid execution of the sale deed, the petitioner and respondents 2 to 4 have colluded and played fraud on him.

During the pendency of the suit, I.A.No. 131 of 2015 was filed to implead Defendants 5 to 10 as parties. Admittedly, the petitioner herein is the father of Defendants 5, 6 and 8 to 10. 7th defendant is purchaser of the suit property. After executing the suit agreement dated 03.03.2011, partition was affected between the petitioner and his sons on 21.04.2011 and a registered sale deed, dated 02.01.2016 was executed in favour of the 7th defendant and that the petitioner also executed gift deeds dated 09.05.2011 in favour of Defendants 8 to 10. While so, the 1st respondent sent notices in I.A.No. 131 of 2015 to the proposed parties, but the same were returned un-served and hence, they were set *ex parte*. Thereafter, on behalf of the 1st respondent - plaintiff, P.Ws.1 and 2 were examined and Exs.A1 and A2 were marked. On behalf of respondents 2 to 4, D.Ws.1 and 2 were examined and Exs.B1 and B2 were marked. At the stage of adducing evidence on behalf of the present petitioner - 4th defendant, I.A.No. 187 of 2018 was filed on 02.04.2018 praying to dismiss the suit on the ground that the 1st respondent played fraud on the Court. It is further averred that the 1st respondent took notices and summons on defendants 5 to 10 but the same were returned for, the addressees are in America and Bombay and that instead of taking summons by substituted service, the 1st

respondent ought to have taken the same to their respective addresses. It is further stated that the plaintiff as P.W.1, in his cross-examination, has feigned ignorance of impleading defendants 5 to 10. The 1st respondent filed the counter stating that the petitioner is the father of defendants 5, 6 and 8 to 10 and the 7th defendant got property through one of the sons of the petitioner. The petitioner is aware of impleading defendants 5 to 10 as parties to the suit and setting them *ex parte*.

The learned II Additional District Judge, after going through the material and the judgments relied on by the petitioner herein, held that the evidence recorded on either side has to be read as a whole; that a single statement in the cross-examination of the plaintiff as P.W.1 is not a ground to dismiss the suit at this stage; that the petitioner can take advantage of the ignorance of the plaintiff as P.W.1 during the course of arguments in the suit; that the averments of the petition are not sufficient to dismiss the suit on the ground of fraud and misrepresentation of facts and hence, dismissed the Application.

Learned counsel for the petitioner submits that the 1st respondent - plaintiff had lied before the Court during the course of examination, by denying his knowledge of sending notices to defendants 5 to 10, taking substituted service and setting them *ex parte*. In that view of the matter, it is clear that the plaintiff has played fraud on the Court which disentitles him for the decree of specific performance and hence, the suit is liable to be thrown out in exercise of the power vested under Section 151 of the Code of Civil Procedure (for short, 'the CPC'), emphasizes the learned counsel. When queried on the aspect of maintainability of the

Application under Section 151 CPC, for throwing out the suit itself at the stage of recording evidence, the learned counsel placed on record the judgment of the High Court at Delhi in CS (OS) No. 166 of 1997, dated 22.12.2010, in the case of **Swarn Singh v. Surinder Kumar** as an authority to support his case that under Section 151 CPC., dismissal of the suit, on the ground of concealment of material facts which amounts to playing fraud upon the Court, can be made.

Learned Senior Counsel Sri Krishna Murthy appearing on behalf of the 1st respondent – plaintiff refutes the argument of the learned counsel for the petitioner and cites the judgment of the Supreme Court in **Shipping Corporation of India Limited v. Machado Brothers**¹ to support his contention that the Court exercising the power under Section 151, first, has to consider whether exercise of such power is expressly prohibited by any other provisions of the Code. He would further contend that inasmuch as the petitioner is seeking dismissal of the suit on the alleged ground of playing fraud, at best, he could have resorted to / file an Application under Order 7 Rule 11 CPC.

The learned counsel for the petitioner submits that the argument of the learned Senior Counsel is not tenable as Order 7 Rule 11 can be resorted to only in certain circumstances and in the present case, the same has no application and accordingly, Section 151 CPC is maintainable.

At the outset, it may be noted that as on date, the suit is at the stage of arguments. It is also submitted across the Bar that as the lower Court is not willing to grant adjournment, the respective

¹ 2004(3) ALD 126 (SC)

parties have, in fact, advanced their arguments and the matter is reserved for orders. Even for argument sake, assuming that there is an element of untruth spoken to by the 1st respondent - plaintiff in the suit, which, according to the petitioner, is evident from the deposition of P.W.1, the said argument can as well be appreciated by the learned Judge while passing the judgment and decree. Merely because a party has taken a particular stand, which may, ultimately, turn out to be untrue, there is no reason for another party to the proceedings to assume that the same would not be considered by the Court while appreciating the arguments and granting relief. At this point of time, it is only a speculation on the part of the petitioner that the Court may not consider the said aspect.

Further, the judgment of the Delhi High Court, on which reliance has been placed, can be distinguished. In the said case, the plaintiff initially, having pleaded a particular set of facts, subsequently, sought amendment of the plaint to bring in an entirely new set of facts which the Court found to be shockingly untrue and thus, the Application came to be allowed by the Single Judge which resulted in the matter being carried before the Division Bench, which had dismissed amendment of the plaint and the said order was upheld by the Supreme Court. Here, it may be noted that the Single Judge as well as the Division Bench, in the process of considering the Application made under Order 6 Rule 17 CPC for amendment of the plaint appeared to have given a categorical finding as to how a grossly mis-statement of facts were made which had shocked the conscience of the Court and thus, as a matter of fact, a finding was recorded with respect to the fraud.

But in the Application said to have been filed under Section 151 CPC., the Court only need to rely on the findings already recorded and thus, probably there is no difficulty for the Court in rendering the judgment on the said peculiar facts of the case. When a question is raised as to the maintainability of an Application under Section 151 CPC., the learned Judge had taken resort to applying the principles analogous to the principles set out for considering rejection of the plaint under Order 7 Rule 11 CPC. The same is evident from the observations of the Delhi High Court, which can be better appreciated by quoting paragraph 29, as under:

“I do not agree with the contentions of the learned counsel for the plaintiff that for moving an application under Section 151 for dismissal of the suit there has to be a particular stage or merely because issues have been framed, therefore, the case must be necessarily be put to trial if that is the interpretation to be given to the Section 151 of the Code of Civil Procedure it will not only limit but also prohibit the Court in passing effective orders, scuttling the efforts of unscrupulous litigant in dragging the defendant to face a tortuous trial which ultimately must fail on the ground that the case of the plaintiff is not based on truth or the “satya”. The Supreme Court in case titled *Abdul Gafur & Anr. V. State of Uttarakhand & Ors.* (2008) 10 SCC 97 has laid down that the application under Order 7 Rule 11 for rejection of the plaint can be filed at any stage and even in a case where parties have adduced evidence, if the Court feels that the plaint is liable to be rejected on any of the grounds mentioned under the said section, it can do so. The purpose of this interpretation is only to highlight that the Court should not be found to be powerless in cutting short the journey of a trial by rejecting the plaint in a given case if the Court feels so. On the basis of same analogy Section 151 can be used by the Court at any stage of the trial, as it is repository of inherent powers of the Court to pass such orders in the interest of justice as the situation may warrant in a given case including the trial of the case.”

In coming to the above conclusion, the learned Judge also had relied on the judgment of the Supreme Court in **S.P. Chengalvaraya Naidu v. Jagannath** (AIR 1994 853). A careful

reading of the judgment in **Naidu's case** discloses that the same was passed considering the orders of the High Court, wherein refusal of the trial Court for passing final decree on account of there being fraud in obtaining the decree was an issue. In other words, what was before the Supreme Court was not a case where the Application under Section 151 came to be rejected or accepted, for throwing out a case by the trial Court. For the above reasons, with great respect, I am unable to agree with the judgment of the Delhi High Court in **Swarn Singh's case** (supra) that a suit can be thrown out by resorting to Section 151 CPC.

In view of the above discussion, and also in view of the fact that the suit is already reserved for orders, there being no merit in the Revision, I do not find any reason warranting interference of this Court exercising reversionary jurisdiction, under Article 227 of the Constitution of India and the same is liable to be dismissed.

The Civil Revision Petition is accordingly, dismissed. No costs.

At this stage, learned counsel for the petitioner submits that as per the information provided by his counterpart, the petitioner's counsel did not have an opportunity to submit his arguments, but however, the learned Judge had closed the arguments and in those circumstances, he seeks a direction to the learned Judge to consider hearing of the arguments on the part of the petitioner. If, as submitted by the learned counsel, the arguments are closed, the Court below may consider giving an opportunity to the petitioner for advancing the arguments, on the date that may be fixed and if the learned counsel does not argue on the said date, it should be

presumed that he has no interest and the learned Judge may proceed to dispose of the suit on merits.

CHALLA KODANDA RAM, J

14th September 2018

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