

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.5967 and 6000 of 2016

COMMON ORDER :

The 1st petitioner in both the Revisions is the plaintiff in O.S. No.1590 of 2012 on the file of VII Senior Civil Judge, City Civil Court, Hyderabad. The respondent in both the Revisions is the defendant in the said suit.

The suit O.S. No.1590 of 2012

2. The said suit was filed by the 1st petitioner against the respondent for specific performance of contract basing on an agreement of sale dt.14.09.2010 and for delivery of possession of the plaint schedule property which is a double storied house bearing Municipal No.16-2-51/C, admeasuring 253.33 sq.yds., at Akbarbagh, Malakpet, Hyderabad.

3. There was a written statement filed in the above suit on behalf of the respondent, which the respondent denies was signed by her through an advocate N.S. Reddy, whom the respondent denied to have engaged as her counsel.

4. In the said written statement there was an admission purported to have been made by the respondent admitting the execution of the said agreement of sale but claiming that she did not receive full consideration as agreed and seeking Rs.2,75,000/- towards balance consideration from the 1st petitioner.

5. The suit was decreed on 30.10.2013 and the 1st petitioner was directed to deposit remaining sale consideration of Rs.2,75,000/- to the credit of the suit within one month, and on such deposit, the respondent was

directed to execute and register a sale deed in favour of the 1st petitioner, failing which the 1st petitioner was granted liberty to get sale deed executed through process of law. It was further stated that after execution of the sale deed, the 1st petitioner is entitled to get possession of the plaint schedule property.

The E.P. No.230 of 2013

6. E.P. No.230 of 2013 was filed by the 1st petitioner for execution of the above decree and on 10.06.2014, sale deed was executed by the said Court in favour of the 1st petitioner and was registered on 01.09.2014 as document No.3624 of 2014 before the Sub-Registrar, Azampura, Hyderabad.

7. On 11.05.2015, the respondent was dispossessed through Court and possession was delivered to 1st petitioner.

I.A.No.236 of 2015 and E.A.No.178 of 2015 filed by respondent

8. On 15.05.2015, the respondent filed I.A.No.236 of 2015 under Section 151 CPC to set aside the decree dt.30.10.2013 in O.S. No.1590 of 2012 of the VII Senior Civil Judge, City Civil Court, Hyderabad. On the same day she also filed E.A. No.178 of 2015 under Section 47 of CPC to cancel the registered sale deed Doc. No.3624 of 2014 dt.01.09.2014 and restore possession of the plaint schedule property to her.

9. In both these applications, it is the contention of the respondent that on 11.05.2015, some officials from the Court came to her, showed her the order in E.P. No.230 of 2013 in O.S. No.1590 of 2012 of the VII Senior Civil Judge, City Civil Court, Hyderabad and dispossessed her from the suit

schedule property; at that time she was unable to understand as to what was transpiring and could not do anything; and that she informed her youngest son about the same and he immediately came from Goa.

10. She contended that on 12.05.2015 she engaged Sri S.Balchand, Advocate, and on verification, she came to know about the filing of the suit, filing of written statement or counter purported to be signed by her, passing of judgment and decree, filing of E.P. No.230 of 2013 etc.,; she stated that she obtained immediately certified copies of all the relevant papers and documents from the Court; and after going through the said papers and documents was astonished to see the fraudulent act done and the forgery of her signatures from time to time.

11. She alleged that the suit filed by the 1st petitioner is vexatious; that she did not personally receive any notice or summons from the Court and she did not engage Sri N.S.Reddy, Advocate as her counsel to represent her. She denied signing vakalathnama or engaging Sri N.S. Reddy and T.Shekar Babu, Advocates or signing written statement and counter affidavits filed in the case and alleged that the entire signatures purporting to be hers are forged and fabricated. She denied entering into any agreement of sale either in 2002 or 2010 as was alleged by the 1st petitioner and contended that signatures on the said agreements do not belong to her and are also forged and fabricated.

12. She contended that she had no need or necessity to sell the suit schedule property to any third party, much less to the 1st petitioner, and the receipts dt.12.12.2002 and 27.12.2002 do not bear her signatures and the

signatures on the said receipts are forged and fabricated. She contended that signatures on the letter dt.25.10.2004, 24.02.2006 and 07.06.2012 are not her signatures and the same are forged and fabricated. She denied that any of the acknowledgment cards bear her signature.

13. She alleged that one of her sons by name Kalesh Kumar was a vagabond, had a history with the Police and he caused trouble to her and her husband and debts incurred by him were cleared by her and her youngest son; and on many occasions, she had and her youngest son got him released by going to the Police station. She alleged that she had strong reason to believe that the 1st petitioner in connivance with her son Kalesh Kumar had done the mischievous and fraudulent act, played fraud on the Court and obtained a fraudulent decree in O.S.No.1590 of 2012.

14. According to her, the notice sent in I.A.No.822 of 2012 in O.S. No.1590 of 2012 appears to have been received by Kalesh Kumar and on the said notice, his signature is identified by the son of the 1st petitioner. She alleged that a look at the cause title of the petition in the I.A. makes it clear that the petitioner therein (1st petitioner in the Revisions) is unmarried and therefore the question of identifying the signature of Kalesh Kumar by son of 1st petitioner does not arise. She alleged that the suit summons appears to have been received by Kalesh Kumar and his signature was identified by the 1st petitioner/plaintiff; and the signature of the 1st petitioner on the suit summons does not belong to her. She contended that she was never informed about the receipt of the notice or summons from the Court and it is

not within her knowledge and it is a mala fide and fraudulent act of 1st petitioner and Kalesh Kumar.

15. She contended that a party who secures judgment by taking recourse to fraud should not be allowed to enjoy the fruits of the decree; that she was deprived of the suit schedule property because of fraud played by 1st petitioner in collusion with others; and a decree obtained by fraud on the Court is a nullity and *non est* in the eye of law.

16. She therefore prayed in I.A. No.236 of 2015 filed under Section 151 CPC to set aside the decree in O.S. No.1590 of 2012 and in E.A. No.178 of 2015 filed under Section 47 of CPC to cancel the registered sale deed Doc.No.3624 of 2014 dt.01.09.2014 and restore possession to her.

The Counter of 1st petitioner

17. The 1st petitioner filed counter opposing both applications.

18. She denied all the allegations leveled by the respondent in both applications and contended that the applications are not maintainable. She contended that respondent and her son Shiva Kumar have knowledge of the entire proceedings which took place on 11.05.2015; if the signatures of the respondent on the written statement or counter do not belong to respondent, the respondent ought to seek a remedy from a handwriting expert; after due process of law, the Court had executed a registered Doc.No.3624 of 2014 in E.P. No.230 of 2014; there is no wrongful or illegal dispossession of the respondent from the suit schedule property; and it is the respondent who is playing fraud in collusion with others.

19. It is also contended that it was the respondent who executed the receipts dt.12.12.2002, 27.12.2002 and 14.09.2010 in presence of attesting witnesses who are her son Kalesh Kumar and two others; that respondent received Rs.7,00,000/- out of Rs.9,75,000/- and later executed agreement of sale dt.14.09.2010 in front of Kalesh Kumar and two others, who attested it. It is also claimed that respondent got issued legal notice through Sri N.S.Reddy, Advocate on 07.06.2012 which is also signed by her calling upon 1st petitioner to cancel the agreement of sale.

20. It is contended that on account of adamant acts of the respondent in respect of the agreement of sale dt.14.09.2010, 1st petitioner had to file the suit and also seek ad interim injunction in I.A. No.822 of 2012 against the respondent restraining her from alienating the suit schedule property; that respondent filed a counter in the said I.A.; and the interim order was made absolute on 24.01.2013. It is alleged that respondent filed written statement in the suit after signing it and later the suit was decreed.

21. It is also alleged that after the suit was decreed, 1st petitioner got issued a legal notice dt.28.11.2013 to the respondent to execute the registered sale deed in her favor and respondent replied vide reply notice dt.02.12.2013 through Sri N.S.Reddy, Advocate.

22. It was further alleged that respondent put a lock on the plaint schedule property and escaped therefrom and so 1st petitioner filed application to break open the lock and for delivery of possession; and on 11.05.2015, she obtained possession.

The order in I.A.No.236 of 2015 and E.A.No.178 of 2015 of the Court

23. Before the VII Senior Civil Judge, City Civil Court, Hyderabad respondent examined herself as P.W.1 and two other witnesses as P.Ws.2 and 3 and marked Exs.P1 and P2.

24. P.W.3 is a handwriting expert who compared the signatures of the respondent on the Vakalathnama, written statement, counter in I.As., agreement of sale dt.14.09.2010, receipts etc., and he gave Ex.P.1 report stating that the respondent did not sign the said documents.

25. To rebut the above evidence, the 1st petitioner did not examine any witness except herself as R.W.1.

26. By common order dt.25.10.2016, the Court below allowed I.A.No.236 of 2015 in O.S.No.1590 of 2012 and set aside the decree dt.30.10.2013 passed in it. It also allowed E.A. No.178 of 2015 and cancelled the registered sale deed Doc.No.3624 of 2014 dt.01.09.2014, marked a copy of the order to the Sub-Registrar, Azampura for necessary action, and directed that the respondent be put in possession of the suit schedule property. It also directed its office to issue warrant of redelivery of the property to the respondent.

27. It placed reliance on the evidence of P.Ws.1 to 3 and Ex.P1 and it also verified, invoking Section 73 of the Evidence Act, 1872, whether the signatures of the respondent exist on the Vakalathnama, written statement etc., and gave a finding that they do not contain the respondent's signatures. It observed that 1st petitioner did not say anything in her Chief Examination

about Ex.P1 and she was not aware of the documents filed by the respondent. It held that 1st petitioner knows Kalesh Kumar for a long time, but she stated that she cannot examine him. The Court rejected the contention of the 1st petitioner that respondent cannot question the decree or sale deed executed by the Court under Section 47 CPC and held that all questions arising between the parties to the suit in which the decree is passed and relating to the execution, discharge or satisfaction of the decree shall be determined by the Executing Court and not by way of separate suit. It held that a decision obtained by fraud and misrepresentation cannot be allowed to be enjoyed. It held that the admitted signatures of the respondent did not tally with her disputed signatures in any of the documents, and the decree was obtained by stage managing service of suit summons and other notices, and so the applications are maintainable, and respondent is entitled for relief in both applications.

CRP. No.5967 of 2016 and CRP. No.6000 of 2016

28. Challenging the order dt.25.10.2016 in I.A. No.236 of 2015 in O.S. No.1590 of 2012, 1st petitioner filed CRP. No.5967 of 2016. She also filed CRP. No.6000 of 2016 challenging the order dt.25.10.2016 in E.A. No.178 of 2015 in E.P. No.230 of 2013 in O.S. No.1590 of 2012.

29. Petitioners 2 and 3 were impleaded in both the CRPs., as co-petitioners to 1st petitioner as they were purchasers from the 1st petitioner after passing of the decree (as per the order dt.19.02.2019 in CRP. No.927, 928 and 929 of 2019 which they had filed challenging order dt.25.10.2016

I.A.No.236 of 2015 and E.A. No.178 of 2015 by seeking leave to file Revisions).

Contentions of petitioners

30. It is the contention of Sri K.V.Satyanarayana and Sri V.Surender Reddy, appearing for petitioners that there was only fraud played on the respondent, if at all, by her son Kalesh Kumar and probably the Advocate N.S. Reddy, and there is no fraud on the Court, and so both I.A. No.236 of 2015 and E.A. No.178 of 2015 are not maintainable.

31. Counsel placed reliance on the decision in **Subbaiyar Vs. S.P.Kallapvian Pillai**¹ and contended that respondent can only file a suit to set aside the decree dt.30.10.2013 in O.S.No.1590 of 2012 and she cannot file application under Section 151 CPC or invoke Section 47 of CPC.

32. It is also their further contention that once the decree of specific performance was satisfied by execution of sale deed through Court and possession of property was delivered to the 1st petitioner, the Court below becomes *functus officio* and is disabled from passing any further orders. They placed reliance on **Teluguntla Hema Bala Sundari and others Vs. Pandiri Sakuntalamma and others**².

Contentions of Counsel for respondent

33. Counsel for the respondent refuted the said contention and supported the order passed by the Court below. He placed reliance on

¹ AIR 1914 Madras 158

² AIR 1983 ANDHRA PRADESH 49

K.Pedda Linga Redd Vs. B.Sathaiah and others³, Nakirdy Rajavva Vs. yaprala Narasimha Reddy⁴, Ram Chandra Singh Vs. Savitri Devi others⁵, A.V.Papayya Sastry and others Vs. Govt. of A.P. and others⁶, Meghamala and others Vs. G.Narasimha Reddy and others⁷, Divisional Forest Officer, Eluru Vs. District Judge, West Godavari, Eluru and others⁸, Aquadev India Ltd., Ongole, Prakasam District Vs. Kode Basava Venkateshwara Rao and another⁹ and Raj Kishan Pershad and others Vs. Joint Collector-I, Ranga Reddy District¹⁰.

The Consideration by the Court

34. I have noted the contentions of the parties.

35. The finding of the court below that the signatures on the Vakalathnama, written statement, suit agreement of sale, receipts, counter in the I.As etc. do not belong to the respondent and are forgeries, is not challenged by the petitioners.

36. So it is clearly a case where a claim put forward in the suit by 1st petitioner was untrue, and it was initiated to injure the respondent, and the 1st petitioner obtained a verdict by practicing fraud on the Court.

37. In **Nagubai Ammal v. B. Shama Rao¹¹**, the Supreme Court explained:

³ 2003 (6) ALD 723

⁴ 2004 Law Suit (AP) 1276

⁵ 2004(2) ALT 15 SC

⁶ 2007 (4) SCC 221

⁷ 2010 (8) SCC 383

⁸ 2011 (2) ALT 130 (DB)

⁹ 2012 (1) ALD 376

¹⁰ 2018(6) ALT 79 (DB)

¹¹ AIR 1956 SC 593

“13. Now, there is a fundamental distinction between a proceeding which is collusive and one which is fraudulent. “Collusion in judicial proceedings is a secret arrangement between two persons that the one should institute a suit against the other in order to obtain the decision of a judicial tribunal for some sinister purpose”. (Wharton’s Law Lexicon, 14th Edn., p. 212). In such a proceeding, the claim put forward is fictitious, the contest over it is unreal, and the decree passed therein is a mere mask having the similitude of a judicial determination and worn by the parties with the object of confounding third parties. But when a proceeding is alleged to be fraudulent, what is meant is that the claim made therein is untrue, but that the claimant has managed to obtain the verdict of the court in his favour and against his opponent by practising fraud on the court. Such a proceeding is started with a view to injure the opponent, and there can be no question of its having been initiated as the result of an understanding between the parties. While in collusive proceedings the combat is a mere sham, in a fraudulent suit it is real and earnest.” (emphasis supplied)

38. When the 1st petitioner filed the suit against the respondent on basis of an agreement of sale which is proved to be not signed by the respondent, she is guilty of abuse of process of Court and playing fraud on the Court. Whether the son of the respondent, Kalesh Kumar or the Advocate N.S.Reddy helped her or not is not relevant.

39. I shall first consider whether an application under Section 151 of CPC to set aside a decree on the ground of fraud can be maintained.

40. In **Indian Bank v. Satyam Fibres (India) (P) Ltd**¹², the Supreme Court held that inherent power under Section 151 CPC can be exercised to recall a judgment or order, if it is obtained on fraud on the Court. It declared:

¹² (1996) 5 SCC 550

“22. The judiciary in India also possesses inherent power, specially under Section 151 CPC, 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 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.

23. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the court and also amounts to an abuse of the process of court, the courts have been held to have inherent power to set aside an order obtained by fraud practised upon that court. Similarly, where the court is misled by a party or the court itself commits a mistake which prejudices a party, the court has the inherent power to recall its order. (See: Benoy Krishna Mukerjee v. Mohanlal Goenka³; Gajanand Sha v. Dayanand Thakur⁴; Krishnakumar v. Jawand Singh⁵; Devendra Nath Sarkar v. Ram Rachpal Singh⁶; Saiyed Mohd. Raza v. Ram Saroop⁷; Bankey Behari Lal v. Abdul Rahman⁸; Lekshmi Amma Chacki Amma v. Mammen Mammen⁹.) The court has also the inherent power to set aside a sale brought about by fraud practised upon the court (Ishwar Mahton v. Sitaram Kumar¹⁰) or to set aside the order recording compromise obtained by fraud. (Bindeshwari Pd. Chaudhary v. Debendra Pd. Singh¹¹; Tara Bai v. V.S. Krishnaswamy Rao¹².)”

It was also held that fraud is an essential ingredient in forgery.

41. This was reiterated in **Ramprakash Agarwal Vs. Gopi Krishan.**¹³

¹³ (2013) 11 SCC 296

42. The Supreme Court, in **Ram Chandra Singh v. Savitri Devi**¹⁴ held that an application to set aside a sale under Sec.151 CPC can be maintained raising the plea of fraud on the Court.

“30. The High Court observed that the application of intervention filed by the appellant purported to be under Order 26 Rules 13 and 14(2) and Order 20 Rule 18 was not maintainable as they do not confer any power to the court for setting aside a preliminary decree on the ground that it was obtained by practising fraud. But once the principles aforementioned are to be given effect to, indisputably the court must be held to have inherent jurisdiction in relation thereto.

*31. In **Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal**¹⁵ the law is stated in the following terms: (AIR p. 537, para 43)*

“43. The Code of Civil Procedure is undoubtedly not exhaustive: it does not lay down rules for guidance in respect of all situations nor does it seek to provide rules for decision of all conceivable cases which may arise. The civil courts are authorized to pass such orders as may be necessary for the ends of justice, or to prevent abuse of the process of court, but where an express provision is made to meet a particular situation the Code must be observed, and departure therefrom is not permissible... ..

*32. In **Sharda v. Dharmpal**¹⁶ a three-Judge Bench, of which both of us were parties, held that directing a person to undergo a medical test by a Matrimonial Court is implicit by stating: (SCC p. 513, paras 52-53)*

“52. Even otherwise the court may issue an appropriate direction so as to satisfy itself as to whether apart from treatment he requires adequate protection inter alia by way of legal aid so that he may not be subject to an unjust order because of his incapacity. Keeping in view of the fact that in a case of mental illness the court has adequate power to examine

¹⁴ (2003) 8 SCC 319

¹⁵ AIR 1962 SC 527

¹⁶ (2003) 4 SCC 493

the party or get him examined by a qualified doctor, we are of the opinion that in an appropriate case the court may take recourse to such a procedure even at the instance of the party to the lis.

53. Furthermore, the court must be held to have the requisite power even under Section 151 of the Code of Civil Procedure to issue such direction either suo motu or otherwise which, according to him, would lead to the truth."

43. In my opinion the VII Senior Civil Judge, City Civil Court, Hyderabad was made to believe that it was the respondent who signed the Vakalathnama, the written statement, the suit agreement of sale, receipts, counters in the I.As., etc., and the Court below found as a fact that respondent's signature was forged on the said documents. So it is a case of fraud on the Court as well as on the respondent, and so the respondent was justified in invoking Section 151 CPC to set aside the decree dt.30.10.2013 in O.S.No.1590 of 2012. So I reject the contention of counsel for petitioners that I.A. No.236 of 2015 filed under Sec.151 CPC by the respondent was not maintainable.

44. No doubt, in **Subbaiyar** (1 supra), a Division Bench of Madras High Court held that where the plaintiff suppresses a compromise from the knowledge of the Court and obtains against the defendant an ex parte decree, the proper remedy for the defendant, though there may be other remedies open to him, is to bring a suit to set aside the decree as one obtained by fraud. In the said decision, the Madras High Court had relied upon the decision of the Privy Council in **Rajmohan Vs. Gourmohan**¹⁷.

¹⁷ (1865) 8 MIA 91

45. But this is no longer the law in the Country. In **S.P. Chengalyaraya Naidu v. Jagannath**¹⁸, the Supreme Court has held that suppression of material documents is fraud on Court and also on a party and a litigant who does it, can be thrown out at any stage of the proceeding. It declared:

“The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. It can be said without hesitation that a person whose case is based on falsehood has no right to approach the court. He can be summarily thrown out at any stage of the litigation. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.”

46. In **United India Insurance Co. Ltd. v. Rajendra Singh and others**¹⁹ the Supreme Court reiterated:

“A party complaining of fraud having been practised on him as well as on the court by another party resulting in a decree, can avail himself of the remedy of review or even the writ jurisdiction of the High Court, as there is no other alternative remedy available to him. Therefore the remedy to move for recalling the order on the basis of the newly-discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wrangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.”

47. The Madras High Court has held in **Krishnan vs. Valliammal**²⁰ that if there is a fraud on the Court or on a party, application under Section

¹⁸ MANU/SC/0192/1994MANU/SC/0192/1994 : A.I.R. 1994 S.C. 853

¹⁹ MANU/SC/0180/2000MANU/SC/0180/2000 : (2000) 3 S.C.C. 581

47 of CPC would be maintainable following the above two decisions of the Supreme Court. It held:

“16. ... a suit filed by fraud at whatever later stage the fraud committed on the part of the plaintiff came to be brought forth, the party complaining of fraud playing its part and resulting in a decree, can avail himself of the remedy of review or even the writ jurisdiction of the High Court since the remedy to move for recalling the order on the basis of the newly disclosed facts amounting to fraud of high degree, cannot be foreclosed and no court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wrangled through fraud or misrepresentation of such a dimension that would affect the very basis of the claim.

It is true that this Court has got powers to deal with such matters wherein the plaintiff has obtained a decree by playing fraud upon the other side, especially under Sec. 47 of the C.P.C., as it has been rightly resorted to by the petitioner.”

48. I respectfully follow the decisions of the Supreme Court in **S.P. Chengalyaraya Naidu** (15 supra) and **United India Insurance Co. Ltd** (16 supra), agree with the decision in **Krishnan** (17 supra), and I decline to follow **Subbaiyar** (1 supra), which is no longer good law and is deemed to be overruled by the above decisions of the Supreme Court.

49. In **Teluguntla Hema Bala Sundari and others** (2 supra), a Division Bench of this Court held that an application under Section 47 CPC to declare an auction sale in favor of a person was illegal and void cannot be maintained if the applicant is not a party to the suit in which the said application was filed. There was a dispute in that case between two auction purchasers in two different suits and so the said applications filed by one of them in the suit in which the other party was the auction purchaser was held

²⁰ MANU/TN/1141/2000 = (2001) 1 MLJ 363

to be not maintainable. The Bench reiterated that to attract Section 47, two conditions must be fulfilled i.e. (1) the question must be one arising between the parties to the suit in which the decree was passed or their representatives; and (2) the said question must relate to the execution, discharge or satisfaction of the decree.

50. In the instant case, both these conditions are fulfilled and so even E.A. No.178 of 2015 filed by the respondent to cancel the registered sale deed executed in favor of the 1st petitioner and for restoration of possession is maintainable.

51. I therefore do not find any merit in the Revisions. They are accordingly dismissed with costs of Rs.25,000/- payable by petitioner to the respondent.

52. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 03-06-2019
LSK