APPLICATION Nos.2809 and 2819 of 2016
IN
C.S.NO.968 of 2015

M.GOVINDARAJ, J.

A.No.2809 of 2016 is filed by the defendants 4 and 2 to reject the plaint in C.S.No.968 of 2015 and A.No.2809 of 2016 is filed by the 1st defendant to reject the plaint in C.S.No.968 of 2015.

2. The 1st respondent/plaintiff has instituted a suit in C.S.No.968 of 2015 to declare the judgment and decree passed in C.S.No.947 of 2006.

3. The short background of the suit is as follows:

Originally T.V.Ramsamy and R.Vasuki parents of the plaintiff borrowed loans from the 2nd defendant bank namely State Bank of India by mortgaging certain properties. Later the debt was assigned to 4th defendant bank. The 4th defendant bank initiated recovery proceeding in O.A.No.1851 of 2001, which was decreed and recovery was executed in D.R.C.No.54 of 2012 by the Recovery Officer. The 3rd defendant mother of the plaintiff said to have received a notice dated 20.11.2014 on behalf of the plaintiff. A recovery certificate was annexed with that. Thereafter, on 26.02.2015, a sale proclamation was issued. The plaintiff submitted his objection in April 2015 to which the 4th defendant issued a reply on 27.04.2015. Immediately, he approached the Debt Recovery Tribunal for appropriate relief.

4. In the meanwhile, the 1st defendant in the present suit and the purchaser of B schedule property No.J2, Ambattur Industrial Estate, SIDCO Industrial Estate measuring 9100 sq.ft, filed a suit in C.S.No.947 of 2006 for

a) declaration that the order passed by the Debt Recovery Tribunal II, Chennai dated 06.10.2003 in O.A. No.1851 of 2001 is null and void and not binding on the plaintiff as the same has been obtained by fraud with respect to the plaintiff's property;

b) Consequently, a declaration that the recovery certificate DRC No.24 of 2004 dated 30.06.2004 passed by the Debt Recovery Tribunal II, Chennai is null and void and not binding on the plaintiff

c) a permanent injunction restraining the first defendant, their men, agents, assigns, representatives, servants or anyone claiming through them from claiming any rights whatsoever on the basis of the order passed in O.A.No.1851 of 2001 and/or DRC No.24 of 2004.

d) to pay the cost of this suit

In that suit plaintiff's parents remained ex-parte and thereafter the 4th defendant and the 1st defendant entered into a compromise, whereby B schedule property was released from the recovery proceedings. The plaintiff had no knowledge about the action of the 4th defendant in releasing the B schedule property in favour of the 1st defendant fraudulently. Infact, the 4th defendant attempt to sell the ancestral property in which the plaintiff has a share. The compromise decree obtained in C.S.No.947 of 2006 is collusive and fraudulent. Therefore, he filed the present suit to set aside the judgment and decree made on 21.06.2015 in C.S.No.947 of 2006

5. 1st and 4th defendant have filed two independent applications to reject the plaint. According to the applicants there is no cause of action to maintain the suit, the suit is barred by law and clear abuse of process of law. In support of their contention they relied on the judgment reported in T.Arivanandam vs. T.V.Satyapal and another, 1977 4 SCC 467, Hussainbhai

Allarakhbhai Dariya and others vs. State of Gujarat and Others, 2010 8 SCC 759, I.T.C. Limited vs. Debts Recovery Appellate Tribunal and Others, 1998 2 SCC 70.

6. The respondent/plaintiff filed a detailed written arguments narrating the facts leading to the filing of the present suit. According to him defendants 2 and 4 have subsisting charge over the property in view of Sec.70 of Transfer of Property Act. According to him the mortgage of lease hold rights by his father by purchase of the property got enlarged into free hold rights. Once the mortgagor becomes the title holder, the bank will get subsisting charge by virtue of Sec.70 of Transfer of Property Act. However, fraudulently the property was released in favour of the 1st defendant and thereby bringing the ancestral property for sale prejudicing him. He would rely on the judgment of Hon'ble Supreme Court in 2017 14 SCC 453, Maharaji Educational Trust vs. Housing and Urban Development Corporation Limited and others, wherein it has been held thus:

"26.With respect to the mortgaged property no doubt about it that the law is that the first charge would

be of the mortgagee that is HUDCO. In the case, properties 1 to 5 and out of item No.6 property, approximately 43 acres are admittedly under mortgage with HUDCO. The entire property No.6 was comprised of approximately 63.50 acres, out of this 21 acres had been exchanged by the Educational Trust with Avas Parishad, whether same is encumbered is in dispute. The question is whether it is the case of accession to the property. Section 70 of TP Act is extracted hereunder :

"70. Accession to mortgaged property.-If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession."

7. In M.K.Ramesh Kumar vs. Asset Reconstruction Company (India) Ltd, 2008 AIR (AP) 45, it is held thus:

9. Shri C.V. Mohan Reddy, learned Senior Counsel appearing for the petitioner extensively referred to documents annexed with the writ petition including extension deed dated 28.1.1998 executed by Smt. Krishna Balachander in favour of the Bank to show that she had given security only of leasehold rights and not *the title acquired on the basis of conveyance deed dated 11.6.1996 and argued that respondent No. 1 cannot recover its dues by disposing of the house property, which was purchased by the petitioner through registered sale deed dated 9.12.2002. He relied on the judgments of the Supreme Court in Appasaheb v. Bhalchandra , Jumma Masjid v. Kodimaniandra Deviah and K.J. Nathan v. Maruthi Rao and of Allahabad High Court in Baljit Singh v. J.I. Cunnington and argued that mortgage of the leasehold right cannot be treated as a mortgage of the title acquired by Smt. Krishna Balachander on the basis of conveyance deed executed in her favour by the State Government on 11.6.1996. Learned Senior Counsel emphasised that while executing equitable mortgage on 28.1.1998, Smt. Krishna Balachander did not make a mention of the purchase of property by her vide conveyance deed dated 11.6.1996 and, therefore, the title of the property cannot be treated to have been mortgaged in favour of the Bank entitling respondent No. 1 to take possession of the property.*

10. Shri S.R. Ashok, learned Senior Counsel appearing for respondent No. 1 relied on the judgment *of the Privy Council in Moti Lal v. Bai Mani AIR 1925 PC 86 and two Full Bench judgments of Patna High Court in Sukhdeo Das v. Kashi Prasad (FB) and Sidheshwar Prasad v. Ram Saroop and argued that the title acquired by Smt. Krishna Balachander during the currency of the equitable mortgage of leasehold rights will automatically accrue the mortgagee i.e. the Bank and being an assignee of the loan advanced by the Bank to M/s. India Rubber Products, respondent No. 1 is entitled to take action under Sections 13(2) and 13(4) qua the mortgaged property for recovery of the dues. Learned Senior Counsel referred to Clauses 2 and 8 of sale deed dated 9.12.2002 executed by Smt. Krishna Balachander in favour of the petitioner and argued that if the latter feels that he has been defrauded by the vendor, then he can avail appropriate legal remedy for recovery of the sale consideration with interest and also claim damages.*

11. We have considered the respective submissions and scrutinised the records.

12. Section 70 of the 1882 Act reads as under:

70. Accession to mortgaged property. - If, after the date of a mortgage, any accession is made to the *mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.*

13. The word "accession" used in the above reproduced provision has not been defined in the 1882 Act. Therefore, it will be useful to notice the dictionary meaning of the word. In Advanced Law Lexicon by P. Ramanatha Aiyar (3rd Edition), the author has extracted the meaning of the word "accession" from some of the judgments. The same read as under:

Accession is a mode of acquiring property as an addition to existing property by natural growth or by application of human labour. (See Cent. Dict.). In its broadest sense it may be defined to be the means by which title to the increments to one's property movable or immovable is acquired, whether by natural or artificial means (as) accession of a province to an empire. In the restricted sense, in which it is generally used in law, it applies to the acquisition of generally used in law, it applies to the acquisition of title to the increments to one's movable property, brought about by artificial means, such as labour or the addition of material other than the intermixture of goods or things *of the same kind.*

14. As per Black's Law Dictionary (7th Edition), the word "accession" means:

1. The act of acceding or agreeing (the family's accession to the kidnapper's demands).

2. A coming into possession of a right or office (as promised, the state's budget was balanced within two years after the governor's accession).

3. (International Law)

The process by which a nation becomes a party to a treaty that has already been agreed on by other nations (Italy became a party to the nuclear-arms treaty by accession). - Also termed adherence; adhesion.

4. The acquisition of title to personal property by bestowing labour on a raw material to convert it to another thing (the owner's accession to the lumber produced from his land). - Also termed (in Roman law) accession.

5. A property owner's right to all that is added to the land, naturally or by labour, including land left by floods and improvements made by others (the newly poured concrete driveway became the homeowner's property by accession).

15. In Motilal v. Bai Mani (supra), the Privy Council held that where after shares, in a company, were pledged, the company issued fresh shares and allotted them to the old shareholders taking the call money from the yearly dividend payable on the old shares, on which they had resolved to pay a fixed interest of 6 per centum per annum, the new shares were "increase or profit" and the pledgee must return them to the pledgor along with the old shares. These additional shares were, in the opinion of their Lordships of Privy Council, accessions to the shares expressly pledged or hypothecated, and the pledgor was entitled to recover them.

16. The ratio of the above noted judgment was applied by the Supreme Court in Standard Chartered Bank v. Custodian . In that case, the Supreme Court considered the question whether bonus shares, dividend and interest accrued on the pledged shares and debentures were accretions to the pledged stocks and formed part of the pledged property, which is to be returned by the pledgee only when the pledged goods are to be returned and answered the same in affirmative.Their Lordships distinguished two earlier *judgments in CIT v. Dalmia Investment Co. Ltd. and Hunsur Plywood Works Ltd. v. CIT and held:*

In our opinion the Court rightly came to the conclusion that bonus share is an accretion. A bonus share is issued when the company capitalises its profits by transferring an amount equal to the face value of the share from its reserve to the nominal capital. In other words the undistributed profit of the company is retained by the company under the head of capital against the issue of further shares to its shareholders. Bonus shares have, therefore, been described as a distribution of capitalised undivided profit. Section 94 of the Companies Act refers to the power of a limited company to alter its share capital. Under Section 94(1)(a) it has power to increase its capital share while under Clause (d) it can sub-divide its share into shares of smaller amount. Whereas in a case of sub-division an existing share is simply divided or split and it may be argued that no new share or capital is created, but there can be little doubt that in the case of issue of bonus share there is an increase in the capital of the company by transferring of an amount from its reserve to the capital account and thereby resulting in additional shares being issued to the *shareholders. A bonus share is a property which comes into existence with an identity and value of its own and capable of being bought and sold as such. Neither in Dalmia Investment nor in Hunsur Plywood case was this Court concerned with a question whether the bonus share could be regarded as an accretion or not. This Court in those cases was only concerned with a question relating to the valuation of the bonus share for tax purposes.*

On the other hand the Privy Council in Motilal Hirabhai v. Bai Mani had to consider as to whether the pledgee was required to return to the pledgor, on redemption, bonus shares which had been issued. The plea taken by the pledgee in that case was that the pledgee was only required to return the original shares which were pledged and not the bonus shares which were received. Rejecting this contention it was held that the bonus shares were received as arising out of and appertaining to the original shares and that it was impossible to contend that the right to these shares could be differentiated from the right to the original shares. Referring to Section 163 of the Contract Act the Privy Council held that:

" These shares (bonus shares) are clearly accessions to the shares expressly pledged or hypothecated, and the pledgor or his representative, the present plaintiff, is entitled to recover the same".

Applying the same logic it must follow that the dividend and interest which was received by the plaintiffs and which was relatable to the pledged stocks must also be regarded as accretions thereto.

17. In Pratap Chand v. Ram Narayan , the Supreme Court considered the question whether the 'Sir' land, which came into possession of the appellant on the extinction of the ex-proprietary tenancy of the landholder, can be regarded as accession to the mortgage and the mortgagee is entitled to half share of the lands. The facts of that case were that one Ramchandar Jat originally owned Annas - 10/8 share in Mauza Tamalawadi, while the rest belonged to others. Ramchandar executed a simple mortgage deed on July 27, 1920 in favour of Seth Ram Jiwan and two minors Ram Narain and Radhey Sham. On August 27, 1926, the appellant purchased Annas -/5/4 share belonging to the other shareholders in the village. Thereafter, he brought a suit against Ramchandar for profits. The same was *decreed. In execution of the decree, the appellant purchased the entire Annas -/10/8 share of Ramchandar in the village. Thus, he became the owner of the entire village subject be the mortgage of the respondents on Annas -/5/4 share therein. On July 27, 1932, the respondents sued Ramchandar on the basis of the mortgage deed. The appellant was a party to the suit. A preliminary decree for sale was passed in March, 1937. This was followed by a final decree. Thereafter, the property was put to sale and purchased by the respondents. The sale was confirmed on April 12, 1940. Ramchandar Jat held 'Sir' land in certain khasras with a total area of 252.49 acres. On the sale of Ramchandar's share to the appellant, Ramchandar became an ex-proprietary tenant of his 'Sir' land. Thereafter Ramchandar was ejected from his ex-proprietary tenancy sometime in 1936 and the lands came into possession of the appellant. There were certain other lands which were nominally recorded as Muafi Khairati in the name of Ramchandar's mother but were actually in the possession of Ramchandar. It appears that Ramchandar was ejected from these lands also and they came into the possession of the appellant. Further the* *appellant as a lambardar came into possession of certain other lands by surrender or otherwise. In 1942, the respondents filed a suit for partition and claimed half share in the lands of Ramchandar and others, which came into the possession of the appellant. Their case was that these lands were accession to the mortgage in their favour. The Sub-Divisional Officer rejected the plea of the respondents. Thereupon, the respondents filed a suit for declaration in the civil court. The trial court partly decreed the suit. Consequently, the respondents went up in appeal to the High Court, which was allowed to the extent of the respondents' claim to one- half share in the 'Sir' lands held by Ramchandar. On appeal, the Supreme Court noted that the mortgage covered 'Sir' plots and held:*

...We have already pointed out that the mortgage covered the sir plots also so far as the proprietary rights in them were concerned. Therefore, when Ramchandar's ex-proprietary rights came to an end and the land came into the possession of the appellant and became khudkashat, the mortgage would cover this khudkashat land to the extent of the mortgagees' share therein. It is true that if Ramchandar's ex-proprietary tenancy had

continued, the mortgagee would have no right to ask for half share in it; but when the ex- proprietary tenancy was extinguished and this land came in the possession of the lambardar (mortgagor) it was an accession to the mortgage under Section 70 of the Transfer of Property Act and the mortgagees could claim a share in it. It was however urged that accession to be available to the mortgage must be a legal accession. We however see no illegality in the accession which took place. There is also no doubt that the accession took place when the mortgage was still subsisting. Therefore, we agree with the High Court that on the ex-proprietary tenancy being extinguished, the sir land which would otherwise have remained in the exclusive possession of Ramchandar as an ex-proprietary tenant became an accession to the mortgaged property and the respondents would be entitled to half of it on their purchasing the - /5/4 share in execution of the decree on the mortgage. The fact that the rent of an ex-proprietary tenant is due to the person whose ex-proprietary tenant he becomes by virtue of the sale or mortgage with possession would make no difference after ex-proprietary tenancy is extinguished, for on such extinction the land would go to the entire *proprietary body and would thus in this case be an accession to the mortgage to the extent of the share mortgaged.*

18. In Chapsibhai Dhanjibhai Danad v. Purushottam , the Supreme Court interpreted Section 108(d) of the 1882 Act and held:

...if any accession is made to the leased property during the continuance of a lease, such accession is deemed to be comprised in the lease. If the accession is by encroachment by the lessee, and the lessee acquires title thereto by prescription, he must surrender such accession together with the leased land to the lessor at the expiry of the term. The presumption is that the land so encroached upon is added to the tenure and forms part thereof for the benefit of the tenant so long as the lease continues and afterwards for the benefit of the landlord.

19. In Sidheshwar Prasad v. Ram Saroop (supra), the Full Bench of Patna High Court interpreted Section 70 of the 1882 Act and held that there is no reason to restrict the word "accession" to physical additions to the mortgaged property and exclude incorporeal accession i.e. acquisition of an interest in the property. Some of the *observations made in that judgment, which are useful for deciding the issue raised by the petitioner, are extracted below:*

...Accretion to the mortgaged property and improvements upon it by construction of building or electric installations are obvious cases of accession. Property, however, is a bundle of rights, and enlargement or diminution of some of the rights which constitute property will be tantamount to accession within the meaning of Section 70 or, for the matter of that, Section 63. Whatever tends to increase the value of the security, either by additions made to the mortgaged property or by enlargement of the right in it, would constitute accession. On the same principle, if after the mortgage the mortgaged property is lost to the mortgagor by operation of law or otherwise and the mortgagor thereafter acquires some interest therein, though not the whole interest he owned at the time of mortgage, it is, in my opinion, an accession to the mortgaged property, so as to be available to the mortgagee. I do not see any principle or logic to deprive the mortgagee of his right to recover the mortgage debt by sale of the limited right of the mortgagor in such

bakasht lands....

Identity of interest in the mortgaged property and the accreted lands is not the foundation of the principle of accession. Wherever there is an alteration in the interests of the mortgaged property, the mortgagee will be entitled to the interest left with the mortgagor, be it an enhanced interest or diminished interest.

20. The ratio of the above noted judgments is that whatever tends to increase the value of the security either by addition made to the mortgaged property or by enlargement of the right in it, the same would constitute accession. Therefore, even though while executing deed dated 28.1.1998 for extension of the equitable mortgage of the plot, Smt. Krishna Balachander did not make a mention of conveyance deed dated 11.6.1996, the title acquired by her in the property would constitute accession within the meaning of Section 70 of the 1882 Act, and respondent No. 1 cannot be prevented from disposing of the house property for realisation of its dues by taking recourse to the provisions of the 2002 Act.

8. Secondly, once the legal proceeding was initiated to recover the debt on the ground that the suit schedule property was mortgaged to the bank a contrary stand cannot be taken which amounts to estoppel.

9. Thirdly, the suit filed by the 1st defendant was barred by law in view of Sec. 18 of RDDI Act 1993 and Sec.34 of SARFAESI Act, 2002. In a suit which is barred by law the bank had entered into compromise which is nothing but fraud.

10. To buttress his argument the plaintiff would rely on A.V.Papayya Sastry & Ors vs. Government of A.P and Ors, 2007 4 SCC 221. Since the 1st and 4th defendant have committed fraud by entering into compromise, that had seriously prejudiced the respondent/plaintiff's right he is entitled to file the present suit. The collusive act of the defendants gives rise to cause of action. Any person who is aggrieved by the collusive compromise is entitled to challenge the collusive decree as it is well settled that fraud vitiates every illegal act. Therefore, the application to reject the plaint is not sustainable.

11. I have heard the submissions made by both the sides.

12. To clarify the background, it is necessary to take note of the sequence of events. At the outset, the loan transaction was entered between the plaintiff parents and the 2nd defendant bank by mortgaging certain properties. The mortgage is admitted. The debt was assigned to 4th defendant bank. 4th defendant bank had initiated the recovery proceedings in which the mortgagors were parties. The decree was also passed against the mortgagor for recovering debt. Thus far the facts are admitted and there is no dispute over the same. The dispute revolves around B schedule property which was the subject matter in C.S.No,947 of 2006. The contention of the plaintiff is that the compromise entered between the 1st defendant and the 4th defendant in C.S.No.947 of 2006 prejudices his right. Whether it is true or not is to be seen to ascertain as to whether plaintiff has cause of action to file the suit. It is an admitted fact that B schedule property situate in SIDCO Industrial estate. Obviously, it should have been allotted for industrial purposes in favour small industry. The property stood in the name of M/s. T.V.R.Auto Systems Limited. The said property was sold in favour of the 1st defendant by

the company. The sale by the company was not challenged anywhere. The fact remains that on behalf of T.V.R Auto systems, T.V.Ramasamy and R.Vasuki merely deposited a deed conferring lease hold rights on the company in favour of State Bank of India. The lease hold rights came to an end on 27.04.2000. There was no deposit of title deed or creation of equitable mortgage in favour of the bank over the property. The 2nd defendant State Bank of India had charge over lease hold rights of the property and it was not renewed and it came to an end on 27.04.2000 as stated supra. On 31.07.1998 and 03.08.1998 the T.V.R Auto Systems purchased the property and sold it to the applicant/1st defendant on 17.03.2004. Since the lease hold rights alone were mortgaged without involving deposit of title deeds or creation of mortgage which was acquired by the company later, will not bind the borrower from selling of that property to the 1st defendant. Without disclosing the facts the bank had obtained a decree in O.A.No.1851 of 2001 on 06.10.2003 including the disputed property also. When DRC proceedings were initiated and notice was served on the applicant/1st defendant he had taken steps before Debt Recovery Officer as well as the Tribunal which were dismissed. Hence, he filed an suit for declaration that the order passed by the

Debt Recovery Tribunal is null and void. After realising that lease hold right were not enlarged into free hold rights by its extinguishment of lease hold rights on 27.04.2004 and that no valid mortgage subsisting over the property, the bank had entered into a compromise releasing the B schedule property alone from the recovery proceedings. Since the lease hold rights mortgaged with the bank got terminated on 27.04.2000 and no mortgage by deposit of title deed or equitable mortgage was created, Sec.70 of Transfer of Property Act will not apply to this case.

13. In the previous suit, T.V.R. Auto Sytems, T.V.Ramasamy and R.Vasuki, parents of the plaintiff were parties. The parents of the plaintiff had remained ex-parte and they have not chosen to agitate against the claim. Where the vendors were put on notice and the compromise decree was entered before the Court fraud or collusion cannot be attributed to the compromise reached.

14. It is well settled that as per Or.23 R.3 (A) no suit shall lie to set aside the decree on the ground that the compromise on which the decree is

based was not lawful. In the present case on hand, it cannot be said the compromise was not lawful. Further, the concerned parties who sold the property were also parties to the suit. When they were bound by the decree and they have not taken any steps to set aside the decree, the plaintiff cannot have a better title or any independent right to get it set aside. Even assuming that he has a semblance of right, he should have approached the Court to set aside the decree in the very same suit viz., C.S.No.947 of 2006 and he cannot maintain a separate suit as such, the suit is barred by law and the plaintiff has no right to sue or any cause of action arises to maintain the suit.

15. As discussed above, the sale of B schedule property was made by the T.V.R Auto systems. Without impleading the T.V.R. Auto systems the suit is not maintainable. If at all the plaintiff has any right, he could have challenged the sale made by the father to the 1st defendant. The 1st defendant as a purchaser has protected his right where the vendors, the parents of the plaintiff remained ex-parte to the proceedings. Therefore, by no stretch of imagination the genuine steps taken by the purchaser/1st defendant to protect his property can be described as fraudulent. Further bank has accepted the

fact that the lease hold rights got extinguished and it was not renewed to claim the benefit of Sec.70 of the Transfer of Property Act and hence entered into compromise. Whether the suit filed by the 1st defendant is maintainable or not, the compromise entered between the parties before this Court, cannot be called unlawful much less fraudulent. Therefore, the present suit is without cause of action and as such not maintainable.

16. As discussed above, as per Or.23 R.3(A) of C.P.C, no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. As such, the present suit is barred by law. If at all the plaintiff has right over the ancestral property he should have pursued his remedy before the Debt Recovery Tribunal and he is not entitled to delay the proceeding by filing vexatious suit. The Hon'ble Supreme Court in T.V. Arivanandam vs. T.V.Satyapal and another, 1997 4 SCC 467, it has been held thus:

> *" 2. Here is an audacious application by a determined engineer of fake litigations asking for special leave to appeal against an order of the High Court on an*

interlocutory application for injunction. The sharp practice or legal legerdemain of the petitioner, who is the son of the 2nd respondent, stultifies the court process and makes decrees with judicial seals brutum fulmen. The long arm of the law must throttle such, litigative caricatures if the confidence and credibility of the community in the judicature is to survive. The contempt power of the Court is meant for such persons as the present petitioner. We desist from taking action because of the sweet reasonableness of counsel Sri Ramasesh."

17. In the case of I.T.C. Limited vs Debts Recovery Appellate Tribunal and others, 1998 2 SCC 70, it has been held thus:

" 16. Question is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 C.P.C. Clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint."

18. In the case of Hussainbhai Allarakhbhai Dariaya and others vs. State of Gujarat and others, 2010 8 SCC 759, it has been held thus:

> *" 19. The compromise alleged was not between the parties to the suit/appeal. As noticed above, the defendants/respondents were the State of Gujarat, the Mamlatdar of Lathi, Amreli District Panchayat, the Taluka Development Officer of Lathi and the Damnagar Gram Panchayat. None of them were parties to the compromise. Even the Jamat represented by the Secretary, was not a party to the compromise. The alleged compromise was between two groups, namely, 14 persons representing the Muslim community of Damnagar and 18 persons representing the Hindu community of Damnagar. Therefore, it cannot be said to be a compromise between the parties to the suit or the appeal. Further under Order 23 Rule 3, a decree can be made in terms of the compromise only insofar as it relates to the parties to the suit. Where either plaintiff-appellants or the defendant-respondents were not parties, it cannot be said that there was a compromise between the parties to the suit or appeal.*

19. In the case of A.V. Papayya Sastry and Others Vs. Government of A.P. And Others, 2007 4 SCC 221, it has been held thus:

> "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."

In view of the ratio laid down by the Hon'ble Supreme Court in the above case, as well as in view of the discussions made above, in the considered opinion of this Court, the plaint is without cause of action barred by law and abuse of process of law and is liable to be rejected. Accordingly rejected and the applications stand allowed.

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