



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.06.2023

PRONOUNCED ON : 25.07.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Appeal No.443 of 2020
in Application No.7185 of 2019
in E.P.No.17 of 2012
in Arbitration Award No.1 of 2011
and Arb.O.P.SR.No.37500 of 2023

V.K.John

...

Appellant /
Obstructor

versus

S.Mukanchand Bothra & HUF (Deceased),
Represented by Mukanchand Bothra ,
S/o.Srichand Bothra,
No.44, Veerappan Street,
Sowcarpet,
Chennai - 600 079.

1.M.Karishma Bothra
2.M.Gagan Bothra
3.Sandeep Bothra

...

Respondents /
Decree Holders /
Claimants

[impleaded as per order passed in Appl.No.4189 of 2019 dated 26.06.2019]



4.A.Philip

...

Respondent /
Judgment Debtor/
Respondent

PRAYER: Appeal filed under Order XIV Rule 12 of O.S. Rules, praying to allow the appeal and set aside the order dated 03.12.2019 passed by the learned Master in A.No.7185 of 2019 in E.P.No.17 of 2012 in Arbitration Award No.1 of 2011.

For Appellant : M/s.Abraham Markoss
for M/s.King and Patridge

For Respondent Nos.1 to 3 : Mr.M.Gagan Bothra
Party-in-Person

For Respondent No.4 : No Appearance

J U D G M E N T

This Appeal has been preferred by the appellant to set aside the order dated 03.12.2019 passed in Application No.7185 of 2019 in E.P.No.17 of 2012 in Arbitration Award No.1 of 2011.

2. Heard the learned counsel for the appellant and the second respondent / party-in-person and perused the materials available on record.

The case of the appellant in brief:-

3. The respondents 1 to 3 / decree holders had filed the Execution Petition for executing the arbitral award dated 21.02.2011 by bringing the



suit schedule property for sale; during the said proceedings, the appellant who is the third party has filed an application in A.No.7185 of 2019 to stop the sale by claiming that the suit property belongs to him; the arbitral award has been fraudulently obtained by the decree holders against the fourth respondent / A.Philip, who is not the owner of the schedule mentioned property; however the learned Master had chosen to dismiss the application on the observation that Section 47 C.P.C. is not applicable to arbitral award. Aggrieved over the same, the appellant has filed this appeal.

4. The learned counsel for the appellant submitted that the schedule mentioned property originally belonged to one Appu John who was issueless and died intestate; the appellant being the only surviving legal heir of Appu John, the award holder ought to have impleaded him in the arbitration proceedings; the award holder had managed to get the award by impleading a fictitious person by name A.Philip who was styled as the legal representative of Appu John; the learned Master failed to appreciate the fact that the award holder had fraudulently obtained the award without the knowledge of the appellant and his intention is just to grab the property



through illegal means; the appellant had filed C.R.P.No.676 of 2013 to set aside the impugned award passed by the sole arbitrator but the award holder has suppressed the same; the appellant had filed the suit in C.S.No.423 of 1995 for partition of the property and it has been decreed in his favour.

4.1. In fact the appellant has filed Original Application in O.A.No.293 of 1995 in C.S.No.423 of 1995 and in which an order has been passed by restraining Appu John and his representatives from alienating, altering and demolishing the properties in any manner; the appellant has also filed applications to implead himself as a party to the proceedings and it had been allowed; this appellant is not a party to the arbitral proceedings; the arbitral award dated 21.02.2011 against the fourth respondent is pursuant to an arbitration clause contained in a purported sale agreement dated 20.04.2007 said to have been executed by late Appu John and it is not legally sustainable; the schedule mentioned property cannot be brought for sale; the person who participated in the arbitration proceedings is not the owner of the same; the learned Master without properly considering the claim application filed by the appellant had dismissed the same.



4.2. Though it is a general principle that the Executing Court cannot go behind the decree, when the appellant asserts that the decree itself is not executable then the Executing Court ought to have gone into the said aspect and rendered a finding; in appropriate cases, the Executing Court has to find out the true effect of the decree; if a decree obtained by fraud it is a nullity, the arbitral award obtained by playing fraud can also be only nullity and hence it can be so declared by any Court including the Executing Court; even for any extraneous reasons, the application is not maintainable under Section 47 C.P.C., the Court can exercise power to consider the application under Section 115 C.P.C.; even if a wrong provision of law is quoted, the Court is competent to consider the application as though it is maintainable under the right provision. In support of his above contentions, the learned counsel for the appellant has cited the following decisions:-

- i. AIR 1972 SC 1371 [Bhavan Vaja and others vs. Solanki Hanuji Khodaji Mansang and others]*
- ii. (2006) 3 SCC 605 [N.Khosla vs. Rajlakshmi (dead) and others]*
- iii. AIR 2004 CAL.267 [Saraswat Trading Agency vs. Union of India (UOI) and others]*
- iv. AIR 2008 CHH 75 [R.S.Bajwa and Company vs. State of Chhattisgarh and others]*



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- v. *AIR 1991 ORI 36 [Radhi Dei and others vs. Lalit Bihari Mohanty]*
- vi. *2009 SCC Online Del 4383 [Gotham Entertainment Group LLC and others vs. Diamond Comics Pvt. Ltd.]*
- vii. *2007 (94) DRJ 407 [Nitish Arora vs. State of Delhi and others]*
- viii. *Civil Appeal No.10521 of 2023 dated 04.10.2019 [Pruthvirajsinh Nodhubha Jadeja (d) by lrs. vs. Jayeshkumar Chhakaddas Shah and others]*

5. The respondents 1 to 3 are the decree holders represented by the second respondent Mr.M.Gagan Bothra, who appeared in-person submitted that the suit schedule property belongs to one Appu John and there is a sale agreement executed between the father of the respondents 1 to 3 and Appu John in respect of the suit property; there is an arbitration clause in the sale agreement for selling the property for a sum of Rs.3,20,00,000/- and that binds both the parties to the agreement; judgment debtor is the legal heir of late Appu John; the father of the respondents 1 to 3 has paid a sum of Rs.1,50,00,000/- as advance amount and the said Appu John had agreed to hand over the possession within six months.



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5.1. The parties had agreed to invoke an arbitration clause in the agreement in the event of any dispute arises between them, besides the right to seek relief of specific performance; so they agreed to appoint one Mrs.Vedavalli Kumar as a sole arbitrator; since Appu John failed to perform his contract, the matter was referred to Arbitration as per clauses 7 and 8 of the agreement for sale dated 20.04.2007; subsequently the vendor Appu John died; his legal representative who succeeded his estate was called upon to pay the balance sale consideration to execute the sale deed; since he also refused and the matter was taken up to the arbitrator; the legal heir of Appu John did not appear before the arbitrator and he was set *ex parte* and an award has been passed on 21.02.2011.

5.2. As per the said award, the judgment debtor is liable to execute the sale deed and deliver the possession in favour of the award holder on receiving the balance sale consideration if any, after adjusting the damages of Rs.55,50,000/- to be paid by the judgment debtor for causing delay in performance between the period from 21.01.2008 to 21.02.2011. It is further awarded that the award holder is entitled to adjust Rs.1,50,000/- per month as damages from and out of the balance sale consideration of



Rs.1,14,50,000/- till the date of execution of the sale deed. So as per the arbitration award, the judgment debtor was directed to execute the sale deed and deliver possession within one month. Since the judgment debtor failed to execute the sale deed and deliver the schedule mentioned property, the appellant has filed the Execution Petition for execution of the sale deed and delivery of possession.

5.3. The Civil Court decree cannot be equated to an arbitral award. As per Section 47 C.P.C. all questions arise between the parties to the suit in which the decree was passed shall be determined by the Executing Court executing the decree and not by way of filing a separate suit; since the impugned award has been passed in a suit the appellant is not entitled to file a petition under Section 47 C.P.C., one A.Philip who is the legal representative of Appu John is a party to the arbitration proceedings and hence the arbitral award would very much bind the property.

5.4. The Superior Courts have held that adjudication means 'adjudicating the dispute between the parties by means of a judgment



pronounced by the Court'. Since an arbitrator cannot be considered as a Court and an arbitration is not adjudication, the award cannot be considered as a decree. If the appellant is aggrieved due to the arbitration award passed by this Court, he has to take recourse by filing an application under Section 34 of the Arbitration and Conciliation Act, 1996 and challenge the same. Section 5 of the Arbitration Act bars the jurisdiction of the judicial authority. Except it is provided in the Act the appellant cannot file an application. In support of the above contentions, the second respondent / party-in-person has cited the following judgments:-

- i. Civil Revision No.53 of 2022 dated 27.05.2022 [M/s.Bharat Pumps & Compressors Ltd. Vs. M/s.Chopra Fabricators & Manufactures Pvt. Ltd.]*
- ii. C.R.P.No.85 of 2022 dated 21.12.2022 [State of Tripura & others vs. Shri Ashes Deb, Contractor]*
- iii. O.S.A.No.157 of 2008 dated 05.12.2018 [P.Ponram vs. M/s.Tamilnadu Cements Corporation Ltd.]*

Discussion:-

6. The appellant who claims himself as the legal heir of K.John has preferred this appeal by challenging the order of the learned Master in rejecting the application filed under Section 47 C.P.C. by making claim over



the schedule mentioned property. The award holder has got an arbitral award in his favour pursuant to the alleged sale agreement dated 20.04.2007 executed between himself and Appu John. The arbitration award is said to have been passed in view of the refusal on the part of the party to the sale agreement to execute the sale deed.

7. It is stated by the second respondent that his father is the award holder and he died; and the second respondent as the legal heir of his father has a duty to recover the dues. The agreement of sale is said to be containing an arbitration clause. As per the arbitration clause in case of any dispute the matter should be referred to Arbitration. Since the vendor Appu John died, the award holder had impleaded A.Philip as the legal representative of the deceased in the arbitration proceedings and obtained the arbitral award. The very contention of the appellant is that A.Philip is not a legal representative and that Appu John himself has got only 1/3rd share in the schedule mentioned property and to the knowledge of the appellant, Appu John did not execute any sale agreement in favour of the deceased award holder. The schedule mentioned property is a potential property situated in



Nungambakkam, Chennai and it measures nearly 8 grounds and 2338 sq.ft.

and the sale agreement is said to have been executed on 20.04.2007 for a sale consideration of Rs.3,20,00,000/- (Rupees Three Crores Twenty Lakhs).

8. The appellant has filed a suit as early as in the year 1995 for partition by claiming 1/3rd share in the schedule mentioned property in C.S.No.423 of 1995. In the said suit, Appu John was the first defendant. The appellant has also filed Original Application in O.A.No.293 of 1995 in C.S.No.423 of 1995 and got an order of interim injunction, restraining the defendants, their men and servants from alienating, altering and demolishing the suit property. The interim injunction granted on 25.04.1996 and it was made absolute on 22.07.1996 till the disposal of the suit. The sale agreement is said to have been executed only during the time when the injunction was in force. Admittedly, the appellant is not a party to the arbitration proceedings. According to the appellant, there is an arbitration clause in the sale agreement that would bind Appu John and subsequent to



his death, the same has been invoked against his legal representative by name A.Philip and the said Philip was a party to the arbitral proceedings.

9. The award holder has got an arbitral award and as per the award A.Philip (who claims to be the legal heir of late Appu John) to execute the sale deed in favour of the deceased first defendant. It is claimed by the respondents that all those issues could be matter for consideration only in a suit and they cannot be raised by the appellant by way of filing an application under Section 47 C.P.C. before the Executing Court. The Application was dismissed by the Court on the observation that the Executing Court can not go behind the decree.

10. Though it is held time and again that the Executing Court cannot go behind the decree, the power of the Executing Court can be exercised in order to find out the true effect of the decree. In other words, it is the duty of the Executing Court to find out whether the decree is executable or not. To throw more light, it is appropriate to refer the judgment of the Hon'ble Supreme Court held in *Bhavan Vaja and others vs.*



Solanki Hanuji Khodaji Mansang and others reported in **AIR 1972 SC 1371**. In the judgement it is held as under:-

“19. It is true that an executing court cannot go behind the decree under execution. But that does not mean that it has no duty to find out the true effect of that decree. For construing a decree it can and in appropriate cases, it ought to take into consideration the pleadings as well as the proceedings leading up to the decree. In order to find out the meaning of the words employed in a decree the court, often has to ascertain the circumstances under which those words came to be used. That is the plain duty of the execution court and if that court fails to discharge that duty it has plainly failed to exercise the jurisdiction vested in it. Evidently the execution court in this case thought that its jurisdiction began & ended with merely looking at the decree as it was finally drafted. Despite the fact that the pleadings as well as the earlier judgments rendered by the Board as well as by the appellate court had been placed before it, the execution court does not appear to have considered those documents. If one reads the order of that court, it is clear that it failed to construe the decree though it purported to have construed the decree. In its order there is no reference to the documents to which we have made reference earlier. It appears to have



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been unduly influenced by the words of the decree under execution. The appellate court fell into the same error. When the matter was taken up in revision to the High Court, the High Court declined to go into the question of the construction of the decree on the ground that a wrong construction of a decree merely raises a question of law and it involves no question of jurisdiction to bring the case within Section 115, Civil Procedure Code. As seen earlier in this case the executing court and the appellate court had not construed the decree at all. They had not even referred to the relevant documents. They had merely gone by the words used in the decree under execution. It is clear that they had failed to construe the decree. Their omission to construe the decree is really an omission to exercise the jurisdiction vested in them.”

11. So the position of law on the above aspect as held is that the Executing Court has to construe the decree in order to find out its true effect, whenever such need arises. There cannot be any quarrel on that point. However it is claimed by the award holder that Section 47 C.P.C. proceedings is not applicable to the arbitral award.



12. The second respondent has cited the judgment of the Allahabad High Court held in *M/s.Bharat Pumps & Compressors Ltd. vs. M/s.Chopra Fabricators & Manufactures Pvt. Ltd. [Civil Revision No.53 of 2022 dated 27.05.2022]* in support of his above contention. In the said judgment the learned single Judge of the Allahabad High Court relied on the judgment of the Hon'ble Supreme Court held in *Paramjeet Singh Patheja vs. ICDS Ltd.* reported in *AIR 2007 SC 168*. In fact the said judgment of the Hon'ble Supreme Court has been followed by the Allahabad High Court in its another judgment held in *Larsen & Toubro Limited vs, Maharaji Educational Trust* reported in *2011 (2) AWC 1682*. The relevant part of *M/s.Bharat Pumps & Compressors Ltd. vs. M/s.Chopra Fabricators & Manufactures Pvt. Ltd. [Civil Revision No.53 of 2022 dated 27.05.2022]* which deals about these earlier judgments with regard to Section 47(2) C.P.C. r/w Section 2(2) C.P.C. is extracted as under:-

“21. Following the judgement in Pramjeet Singh Patheja (supra), this Court in Larsen & Tourbro Limited (supra) has observed as under:-

16. The matter can be viewed from another angle. Section 47 CPC provides for questions to be determined by the Court executing the decree. The said section reads as under:



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"47. Questions to be determined by the Court executing decree.- (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(2) Omitted by the Code of Civil Procedure (Amendment Act, 1976, S.20 (w.e.f. 1.2.1977) (3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation I.- For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.- (a) for the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution,



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discharge or satisfaction of the decree within the meaning of this section."

It is, thus, clear that in order to invoke section 47 CPC, there must be a decree. Section 2 (2) CPC defines the decree. For a decision or determination to be a decree, it must necessarily fall within the fore-corners of the language used in the definition. Section 2 (2) CPC defines decree to mean "formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include - (a) any adjudication from which an appeal lies as an appeal from an order, or (b) any order of dismissal for default."

Explanation. A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.



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17. The use of words "adjudication" and "suit" used by Legislature clearly goes to show that it is only a court which can pass a decree in a suit commenced by plaint adjudicating the dispute between the parties by means of a judgment pronounced by the Court. The Hon'ble Apex Court in the case of *Paramjeet Singh Patheja vs. ICDS Ltd.*, AIR 2007 SC - 168 after considering the definition of decree as contained in CPC in paragraph 29 has held that "it is obvious that an arbitrator is not a Court, an arbitration is not an adjudication and, therefore, an award is not a decree". Again in paragraph 31, it has been held that words "decision", and "Civil Court" unambiguously rule out an award by arbitrators to be a decree. In the said case, the Hon'ble Apex Court while considering the question as to whether an insolvency notice under Section 9 of the Presidency Town Insolvency Act, 1909 can be issued on the basis of an arbitration award, held that such notice cannot be issued for the reason the arbitration award is neither a decree nor an order for payment within the meaning of Section 9(2) of the Insolvency Act and it is not rendered in a suit. Thus, the award not being covered under the definition of a decree, objection with respect to its validity can only be raised as provided under Section 34 of the Act and not by taking resort to section 47 C. P. C."



13. Section 2(2) C.P.C. defines a 'decree' as under:-

“2(1).....

2(2) “decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include - (a) any adjudication from which an appeal lies as an appeal from an order, or (b) any order of dismissal for default.”

14. Section 47 C.P.C. empowers the Executing Court to deal with certain issues as prescribed thereunder:-

“47. Questions to be determined by the Court executing decree - (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

[* * * *]



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(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

[Explanation I.-For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.-(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and (b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.]”

15. The application filed under Section 47 C.P.C. in common parlance known as a claim application and it will be filed before the Executing Court. In the case in hand, the appellant has raised the contention of non-executable nature of the award. According to him, the award has been passed on a property over which the respondent to the arbitration proceeding does not have any title and execution of the award would amount



to conveying a property which belongs to a third property to the award holder. Similar view has been expressed by the Division Bench of this Court in *P.Ponram vs. M/s.Tamilnadu Cements Corporation Ltd. [O.S.A.No.157 of 2008 dated 05.12.2018]* and it is held as under:-

“8. The Award passed by the Tribunal cannot be equated with a decree in a suit. However, the execution can be laid to give effect to the award. Section 47 of the Civil Procedure Code deals with consideration of all questions arising between the parties to the suit in which, a decree was passed. Therefore, the aforesaid provision cannot be extended to the arbitration Tribunal. After all, the object of the Arbitration and Conciliation Act, 1996, is that any Award passed must be subjected very little external interference except to the extent permissible, which is inclusive of Civil Court.

9. In the case on hand, the respondent has also filed the original petition challenging the Award. Therefore, having undertaken the aforesaid exercise raising the very same grounds, it is not open to it to file an application invoking the provision under Section 47 of the Civil Procedure Code, even assuming the same is maintainable in law.



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10. Thus, looking from any perspective, we are of the considered view that the order of the learned single Judge cannot be sustained in the eye of law. There is no need for remand when the application itself is not maintainable. In such view of the matter, we are inclined to allow this Original Side Appeal. Accordingly, the order passed by the learned single Judge is set aside and original side appeal stands allowed. However, we make it clear that we have not expressed anything on the maintainability of the original petition filed nor on the issues raised therein. No costs. Consequently, connected civil miscellaneous petition is also dismissed.”

16. The second respondent cited yet another judgment of the High Court of Tripura held in *State of Tripura & others Vs. Shri Ashes Deb, Contractor [C.R.P.No.85 of 2022 dated 21.12.2022]*. The said judgment also speaks about the necessity to invoke Section 34 of the Arbitration Proceedings. In the said case, it is held as under:-

“13. In the scheme of the Arbitration Act, a challenge against an arbitral award can be made by taking recourse to Section 34 of the Arbitration Act and that too on the grounds set out under Sub-Section (2-A) of Section 34 of the Act. It has



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surfaced from the record that the present petitioner against whom the arbitral awards were made did not prefer any application under Section 34 the Act. After the time prescribed for filing such application expired, the respondent award holder approached the Court by filing a petition under Section 36 for enforcement of the arbitral award. Only then, the petitioner-State against whom the arbitral awards were passed raised objection under Section 47, CPC. Section 5 of the Arbitration Act clearly provides that "Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part", which implies that the only remedy available to the aggrieved party against whom an arbitral award is passed, is Section 34 of the Arbitration Act. Obviously, the petitioner-State did not avail such remedy to resist the execution within the time prescribed under the law. Petitioner raised objection to resist the execution only by filing an application under Section 47, CPC despite the specific remedy available under Section 34 of the Arbitration Act. In view of the prohibition imposed under Section 5 of the Act, objection except under Section 34 of the Act is not entertainable."



17. However, one similarity found in the cases involving the above judgments cited by the second respondent is that the applicants in all the three claim applications involved in the above cases are parties to the arbitration proceedings and they are not third parties.

18. The appellant has initiated several proceedings and is in fact running from pillar to post by making the same claim. In fact the appellant has preferred Applications Nos.3800 to 3802 of 2012 to implead himself as an additional respondent in the execution proceedings initiated by the award holder and got himself added as a party to the proceedings.

19. The appellant has also filed Civil Revision Petition in C.R.P.No.676 of 2013 to quash the arbitration award on the ground of fraud and collusion among the sole arbitrator and the award holder. However, the said Civil Revision Petition was dismissed on the observation that the appellant as the legal representative of Appu John can file an application under Section 34 of the Arbitration and Conciliation Act before the Court and set aside the arbitration award. The above observation was made in the



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context that the appellant is not entitled to maintain a Civil Revision Petition under Article 227 of the Constitution of India and that the word '*party*' in Section 34 of the Arbitration and Conciliation Act, 1996, is inclusive of the legal representative of a '*party to an arbitration agreement*'. However, the Court while dealing the Civil Revision Petition did not have the occasion to deal with the point whether the appellant can seek appropriate remedy before the Execution Court by filing a claim application.

20. The appellant had filed a suit in C.S.No.423 of 1995 for partition in respect of the suit schedule property and the same has been decreed and the appellant is found to be entitled to a preliminary decree and declared to be the owner for 1/3rd share in the schedule property. The pleadings of the appellant in the said suit is that the properties originally belonged to one Mrs.Elise John, W/o.V.K.John; Elise John died on 01.03.1984 leaving behind the defendants 1 and 2 of that suit and one K.John; the first and second defendants are Appu John and his sister Leelie Seetharam; appellant is the son of K.John, who died on 20.12.1985 leaving



behind the appellant as his sole legal heir; hence the defendants 1 and 2 are the paternal uncle and paternal aunt of K.John.

21. It is claimed in the said suit that a Will was executed by the appellant's grandmother on 02.02.1974 and in which the suit schedule property was bequeathed in favour of the Appu John and his sister Leelie Seetharam. Appu John died intestate and unmarried. The appellant is found to be the owner of an undivided 1/3rd share in the suit property and accordingly C.S.No.423 of 1995 is decreed.

22. After the arbitral award was passed by the sole arbitrator, the award holder was keen in getting the arbitral award registered in the concerned Sub Registrar Office. Since the request of the award holder was rejected he had filed a Writ Petition in W.P.No.18489 of 2011 and the same was dismissed. Writ Appeal filed by the award holder in W.A.No.931 of 2012 was also dismissed.

23. Now coming back to the powers of the Executing Court in entertaining the application filed by the appellant to decide about the



executable nature of the award, the appellant endeavoured to make out a point that any award or decree obtained by fraud can be challenged in any Court, even in collateral proceedings. In *N.Khosla vs. Rajlakshmi (dead) and others* reported in (2006) 3 SCC 605, the Hon'ble Supreme Court has held that '*fraud clocks everything and avoids all judicial acts*'. In the case involved in the above judgment, a decree of the Court was challenged and it is held that the fraudulent decree can be challenged, even in any collateral proceedings.

24. Much stress is given by the respondent / award holder about the 'decree' subjected to challenge in the above judgement and sought the Court to take exception for award. While the impact of the decrees are concerned it is the settled principle of law that even an erroneous would bind between the parties but if a decree was passed due to fraud or collusion it is *non-est* in law. The law can not be different when some thing is fraudulent and it is a nullity. Nullity by its very nature indicates no value. Hence there can not be any difference between a decree or award, if it is tainted with fraud and they are simply *non-est*.



25. By virtue of a decree passed by the Civil Court in C.S.No.423 of 1995, the appellant is not only the owner for 1/3rd share exclusive right in the schedule property but he also has a right of inheritance in respect of the share of the other sharer Appu John, who was issueless and died intestate. The sale agreement claimed by the respondent / award holder is seen to be relating to a huge extent of land measuring 8 grounds and 2338 sq.ft. in a potential area like Nungambakkam, Chennai. Throughout the proceedings in C.S.No.423 of 1995, the appellant and his deceased aunt alone were shown as the legal heirs of the deceased Appu John and a person named A.Philip was nowhere. But respondent's arbitration award seen to have been passed by impleading A.Philip as the legal representative of the deceased Appu John. This appellant was neither a party to the arbitration agreement nor a party to the arbitral award.

26. The arbitral award has been passed by setting A.Philip *ex parte*. A person who is unrelated and not interested in the suit property has been shown as a party to the arbitration proceedings and the award has been passed *ex parte*. The persons who are interested were not aware of anything



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about the sale agreement, arbitration proceedings or the arbitration award.

What other features should a fraudulent act have? Fraudulent acts and its fruits have no legal sanction and in the eyes of law they don't have any legs to stand, be it a decree or an award. The distinction between decree and award in the context of Section 47 C.P.C. can be taken advantage by an award holder only when his award has any legal validity.

27. As held by the Hon'ble Supreme Court '*fraud clocks everything*' and it conveniently escapes from all judicial acts. If the award is rendered as a nullity it is needless to state that such an award is an inexecutable one. Nullity and inexecutability are the prime exceptions that can be very well dealt by the Executing Court in the process of construing the impact of the decree or award, especially when the party taking out the application is not a party to the proceedings involving the award or decree.

28. A wrong doer cannot take advantage of his own wrongs. Hence the respondent who managed to get a self-designed award through short-cut



can not be allowed to cling on to it, by suggesting a circuitous route to the appellant through Section 34 of the Arbitration and Conciliation Act.

29. Even if the appellant's application is not maintainable under Section 47 C.P.C., due to any hyper-technical reasons, his application is very well maintainable under the residuary provision of Section 151 C.P.C. and hence the order of the Executing Court is liable to be set aside.

30. In fine, this Appeal is allowed with costs and the order of the learned Master dated 03.12.2019 in A.No.7185 of 2019 in E.P.No.17 of 2012 in Arbitration Award No.1 of 2011 is set aside.

25.07.2023

Speaking order

Index : Yes

Neutral Citation : Yes

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Appeal No.443 of 2020 in Application No.7185 of
in E.P.No.17 of 2012 in Arbitration Award No.1 of
and Arb.O.P.SR.No.37500 of



R.N.MANJULA, J.

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Pre-Delivery Judgment made in
Appeal No.443 of 2020
in Application No.7185 of 2019
in E.P.No.17 of 2012
in Arbitration Award No.1 of 2011
and Arb.O.P.SR.No.37500 of 2023

25.07.2023