

RSA-162-2020 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Decided on : 29.08.2023

Surat Singh now deceased through LR

. . . Appellant(s)

Versus

Gram Panchayat of Village Gumar

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate
for the appellant(s).

SANJAY VASHISTH, J. (Oral)

CM-425-C-2020

For the reasons set out in the application, the same is allowed.

Consequently, the delay of 06 days in re-filing the accompanying appeal is hereby condoned.

Civil Miscellaneous application stands disposed of.

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1. Present Regular Second Appeal (RSA) has been filed by the defendant (appellant herein) against the concurrent finding of decretal of suit by the Courts below, which was filed by the Gram Panchayat.
2. Plaintiff – Gram Panchayat (respondent herein) filed a suit for declaration, to the effect that judgment & decree dated 11.04.1990, passed in Civil Suit bearing No.301 of 1988, by the Court of learned Senior Sub Judge, Sonipat, are wrong, void and illegal and for consequential relief of permanent injunction, restraining the defendant from dispossessing the plaintiff from the land comprised in Khewat No.21/22 (old No.390), Khata

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No.21 (old No.488), Rectangle and Killa No.45/1 min South (Gair Mumkin Gora), situated within the revenue estate of village Gumar, Tehsil Ganaur, District Sonipat.

2. In broader sense, plaintiff filed the suit for challenging the judgment & decree dated 11.04.1990 by submitting that same is wrong, illegal, null & void, which has been obtained by playing an act of fraud. When the defendant (appellant herein) appeared and filed his written statement, he took a specific stand that earlier to the impugned judgment & decree, there was a Civil Suit No.145/1986, for seeking a decree of permanent injunction against the Gram Panchayat. That suit had been decreed, however, there is no challenge to the judgment & decree, passed in Civil Suit No.145/1986. In the written statement, defendant pleaded that his declaratory rights over the land in question has been declared by way of impugned judgment & decree, and in fact, plaintiff has no concern with the said land.

3. After inviting all the required pleadings from the respective parties, learned Trial Court, vide order dated 01.08.2012, framed the following seven issues:-

- “1. Whether the judgment and decree dated 11.4.1990 passed in Civil Suit No.301 of 1988 decided on 11.4.1990 and subsequent mutation No.2560 are null and void and have no bearing on the rights of plaintiff and defendant has no concern with the suit property as alleged ? OPP.
2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ? OPP.
3. Whether the suit of the plaintiff is not maintainable in the present form ? OPD.
4. Whether the plaintiff has not affixed the ad-valorem

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court fees on the plaint ? OPD.

5. *Whether the plaintiff has not come to the court with clean hands and has suppressed the material facts from the Court ? OPD.*
6. *Whether the suit of the plaintiff is time barred ? OPD.*
7. *Relief.”*

4. After appreciating the evidence led by the respective parties, while examining the record, learned Trial Court held that initially, one Civil Suit No.145/1986, had been instituted by the defendant, and there being an objection by the Gram Panchayat that the Civil Court has no jurisdiction to decide the issue of ownership of the land belonging to the Gram Panchayat, defendant, withdrew his claim regarding rights/declaration, and confined his prayer only on the issue of injunction. Relevant extracted para passed in the Civil Suit No.145/1986, which has also been noticed by the learned Trial Court, is reproduced here-below:-

“At the very outset, the learned counsel for the plaintiff had given up his claim regarding declaration. Even otherwise, in view of section 13 of the Village Common Lands Act, any dispute which arises as to the lands which are Shamlat and belong to the Gram Panchayat, the jurisdiction of the court is barred. Since the learned counsel for the plaintiff has given up his claim for declaration, no finding is being given on the same. I would restrict my finding on the claim of the plaintiff for permanent injunction.”

5. Therefore, learned Trial Court held that the claim/relief, which had been given up by the defendant earlier in the Civil Suit No.145/1986, was again sought by way of Civil Suit No. 301/1988, which is the subject matter in the present suit. Thus, Trial Court held that the relief claimed/sought is barred in view of the provisions of Order 23 Rule 1 of

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Civil Procedure Code (CPC), and defendant was precluded from instituting any fresh suit in respect of same subject matter.

Even, learned Trial Court found that defendant played fraud with the Court, which in fact, was a deliberate attempt of deception with the design to secure some unfair or undeserved benefit by taking undue advantage of another. Learned Trial Court also noticed that by playing fraud one gains but other loses.

Examining the conduct of the defendant, relevant extracted finding given by learned Trial Court, noticed in the judgment is reproduced as under:-

“However, the defendant Surat Singh (now deceased) had played a mischief and fraud by way of active concealment of facts by filing another civil suit No.301 of 1988 again in the year 1988 before the Court of learned Senior Sub Judge, Sonipat and he had not disclosed anywhere in the plaint of the said suit that he had already given up his claim of ownership with regard to the Suit Land in the previous suit. Even though, he clearly mentioned about the said civil suit and pleaded that a decree of permanent injunction was passed in his favour in the said suit. This clearly shows that the then plaintiff – Surat Singh (now deceased) had actively concealed the true and material facts regarding giving up of his claim of declaration of ownership with regard to the Suit Land in the suit No.145 of 1986 and again sought the same relief from the court which was clearly barred in view of provisions of order 23 Rule 4 CPC which reads as under:-

“(1)

(2)

(3)

(4) Where the plaintiff -

(a) abandons any suit or part of claim under sub rule

(1), or

(b) *withdraws from a suit or part of a claim without the permission referred to in sub rule (3),*

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject matter or such part of the claim.

16. *On a bare reading of the aforesaid provision, it is crystal clear that the plaintiff - defendant – Surat Singh (now deceased) was not legally entitled to institute the fresh suit No.301 of 1988, titled as “Surat Singh Versus Sarup Singh etc.” in which the Impugned Judgment & Decree were passed. However, he concealed the true facts and again sought the relief of declaration of ownership of Suit Land despite giving up the same.*

*Now, it is well settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed; "Fraud avoids all judicial acts, ecclesiastical or temporal". 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 the leading case of **Lazarus Estates Ltd. v. Beasley, (1956) 1 All ER 341 : (1956) 1 QB 702 : (1956) 2 WLR 502, Lord Denning** observed:*

"No judgment of a court, no order of a Minister, can be allowed to stand, if it has been obtained by fraud."

*In **Duchess of Kingstone, Smith's Leading Cases, 13th Edn., p.644**, explaining the nature of fraud, de Grey, C.J. stated that though a judgment would be res judicata and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was*

'mistaken', it might be shown that it was 'misled'. There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside, if the court was imposed upon or tricked into giving the judgment. It has been said; Fraud and justice never dwell together (fraus et jus nunquam cohabitant); or fraud and deceit ought to benefit none (fraus et dolus nemini patrocinari debent).

Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of 'finality of litigation' cannot be stretched to the extent of an absurdity that it can be utilized as an engine of oppression by dishonest and fraudulent litigants.

In S.P. Chengalvaraya Naidu (dead) by LRs. V. Jagannath (dead) by LRs. & Ors. (1994) 1 SCC 1 : JT 1994 (6) SC 331, Hon'ble Supreme Court had an occasion to consider the doctrine of fraud and the effect thereof on the judgment obtained by a party. In that case, one A by a registered deed, relinquished all his rights in the suit property in favour of C who sold the property to B. Without disclosing that fact, A filed a suit for possession against B and obtained preliminary decree. During the pendency of an application for final decree, B came to know about the fact of release deed by A in favour of C. He, therefore, contended that the decree was obtained by playing fraud on the court and was a nullity. The trial court upheld the contention and dismissed the application. The High Court, however, set aside the order of

*the trial court, observing that "there was no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". B approached this Court. Allowing the appeal, setting aside the judgment of the High Court and describing the observations of the High Court as 'wholly perverse', **Hon'ble Justice Kuldip Singh**, stated: "The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with cleanhands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax- evaders, bank-loan- dodgers and other unscrupulous persons from all walks of life find the court - process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation".*

*(emphasis supplied) The Hon'ble Supreme Court of India proceeded to state: "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**".*

The Hon'ble Court concluded: "The principle of 'finality of litigation' cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants"."

6. Thus, it was concluded that the impugned judgment and decree dated 11.04.1990, was obtained fraudulently by defendant - Surat Singh.

7. Another submission addressed before this Court by the appellant/defendant is that the suit filed by the plaintiff is time barred, which has been instituted after the lapse of around 22 years.

Court has noticed that the impugned decree dated 11.04.1990, was an *ex-parte* decree, and there is no document on record from which, it could be ascertained that the plaintiff had requisite knowledge of passing of the said judgment & decree.

8. Moreover, fraud exercised by defendant Surat Singh (now deceased) vitiated the whole basis of impugned judgment & decree. Therefore, defendant was not even allowed to take this plea as same would have amounted to provide legitimacy to his fraudulent act.

9. I have gone through the impugned judgment & decree, passed by the learned First Appellate Court as well. The observations made by learned First Appellate Court, in paragraph Nos. 16 & 17, are as under:-

“16. If we take a look on the evidence available on record, Ex.P-2 is the jamabandi for the year 1985-86, in which, the suit land has been shown as owned by Panchayat deh and in the column of cultivation, “Khud Kast” has been mentioned. Therefore, when ownership of the land is vested in Gram Panchayat, in view of Section 13 of the Punjab Village Common Land (Regulation) Act, any dispute with regard to the title of the land can only be decided by Collector and not by the Civil Court. It may be mentioned that learned Additional Civil Judge (Senior Division), Ganaur, rightly took judicial notice of the photocopy of the judgment dated 24.12.1986 passed by the Court of Mrs. Aruna Goel, the then learned Sub Judge IInd Class, Sonipat, titled as “Surat Singh Versus Gram Panchayat”, in which suit, present appellant had given up his claim regarding declaration of the land by giving up the claim of title and, therefore, an *ex parte* decree of permanent injunction was passed in favour of Surat Singh. However, concealing the said facts, Surat Singh again instituted another Civil Suit No.301 of 1988 “Surat Singh Versus Sarup Singh etc.”, which was decided on 11.04.1990

and by concealing the facts obtained the judgment Ex.P-5 and decree Ex.P-6. Therefore, it was an act of perpetuated calculated fraud by present appellant to usurp the land belonging to the Gram Panchayat. The present appellant concealed the earlier judgment and decree, in which, the appellant had already given up his claim of ownership in the previous suit No.145 of 1986 titled as "Surat Singh Versus Gram Panchayat." All the facts were not fully stated by the appellant, hence, it was active concealment of facts, which is covered under the definition of fraud. Any judgment and decree obtained by fraud are nullity and can be even challenged in collateral proceedings and limitation to challenge the same would start only from the date of knowledge of fraud. Any decree passed by the Court when jurisdiction is not there, is nullity and this court is satisfied that the present appellant obtained the judgment and decree dated 11.04.1990 by playing fraud upon the Court. The Courts are guardian of the public property. Possession of public property in the garb of placing Kurari or by putting Bitoras or cow dung-cakes is no possession in the eyes of law. The Panchayat cannot be deprived of its right in the property by the judgment and decree obtained by fraud by present appellant. The contentions raised by learned counsel for the appellant that plaintiff has not mentioned the area of land in para No.2 of the plaint or that a separate suit does not lie for setting aside ex-parte judgment and decree, have no force because appellant is bound to restore the land to Gram Panchayat which is public property and when the judgment and decree in favour of appellant has been set-aside, the entire land, for which, the said judgment and decree pertained, is liable to be restored to the panchyat. It may again be mentioned that since appellant had played fraud, so any judgment and decree obtained by way of fraud can be set-aside in any collateral proceedings and even by filing any fresh suit. Hence, the learned Additional Civil Judge (Senior

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Division), Ganaur, has given good reasons while decreeing the suit and by setting aside the judgment and decree dated 11.04.1990 passed in Civil Suit No.301 of 1988, which was in favour of appellant. Thus, the findings of the learned Additional Civil Judge (Senior Division), Ganaur in the impugned judgment dated 10.03.2017 are up held.

17. As a sequel to my discussion above, this Court does not find any illegality or infirmity in the findings recorded by the learned lower Court and the findings of learned lower Court are affirmed. The appeal is dismissed. Lower court record alongwith a copy of this judgment be sent back. Appeal file be consigned to record room after due compliance.”

10. In view of above, I do not find any substance in the submissions addressed by counsel for the appellant/defendant, therefore, the findings recorded by the learned Courts below are worth to be affirmed. Even no question of law, much less, any substantial question of law arises for consideration in the present appeal for causing any interference in the impugned judgment & decree passed by the Courts below.

Thus, for the reasons recorded herein-above, the instant appeal *sans* merits, and thus, dismissed. The judgments & decrees passed by both the Courts below are affirmed.

Civil Miscellaneous application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

August 29, 2023

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No