

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

201

RSA-2504-1994 (O&M)
Date of decision : 05.09.2023

Jaspal Kaur

..... Appellant

versus

Mohinder Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

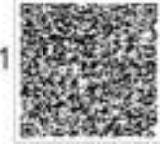
Present: Mr. Baldev Raj Mahajan, Senior Advocate with
Ms. Prerna Malhotra, Advocate
for the appellant.

Mr. Amit Jain, Senior Advocate with
Mr. Anupam Mathur, Advocate
for the respondent.

PANKAJ JAIN, J. (ORAL)

1. Defendant is in appeal aggrieved of judgment and decree passed by Additional District Judge, Patiala dated 05.05.1994 whereby suit of the plaintiff has been decreed reversing finding recorded in judgment and decree passed by Sub-Judge Ist Class, Fatehgarh Sahib. For convenience, parties hereinafter are referred to by their original position in the suit i.e. the appellant as defendant and respondent as plaintiff.

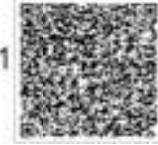
2. Plaintiff filed suit seeking decree of declaration to the effect that he is owner in possession of the suit land as described in the head note of the plaint and that the judgment and decree dated 29.10.1979 passed by Court of Sub-Judge, Ist Class, Bassi Pathana obtained by defendant against him in suit No.309 of 03.10.1979 is null and void and is not binding on his



rights.

3. Plaintiff claimed to be owner in possession of the suit land. It was pleaded that husband of the defendant Darbara Singh used to appear in offices on behalf of the plaintiff. About two and a half years back, Darbara Singh told the plaintiff that he was required to appear before the revenue authority to make statement to the effect that plaintiff himself was in cultivating possession of his land. Darbara Singh misrepresented him that it was necessary to make statement before the Officer in question lest Government might allot his land to landless farmers. On the pretext of giving that statement, the plaintiff was made to appear before the Court resulting in consent decree. He was robbed of his land. Plaintiff further pleaded that he is in possession of the land in dispute and came to know that a decree has been passed against him only a day before filing of the suit when the defendant along with Darbara Singh threatened to dispossess him.

4. Suit was contested by the defendant. Defendant pleaded that she was widow of Ranjit Singh son of the plaintiff. Ranjit Singh died about nine and half years back. After his death, her father-in-law i.e. plaintiff contracted her second marriage with Darbara Singh who is also related to plaintiff being son of his brother-in-law. It was denied that the decree is result of undue influence of Darbara Singh over plaintiff as alleged. Defendant claimed that after death of his son Ranjit Singh, plaintiff neglected to maintain defendant. A family dispute arose between the parties. The same was settled with the intervention of the relatives in the



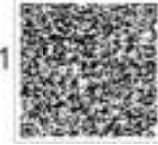
month of July, 1979. As per the said family settlement, suit land fell to the share of defendant in lieu of her maintenance. The same was transferred by plaintiff in favour of defendant, making her absolute owner of the suit land by way of decree sought to be challenged by present suit.

5. On the basis of the pleadings, Trial Court put the suit to trial on following issues:-

- “(i) Whether the Judgment and decree 29.10.1979 is illegal, null and decree void inoperative and not binding on the plaintiff as alleged in the plaint? OPP
- (2) Whether the suit land fell to the share of the defendant in lieu of her maintenance in the family settlement which took place after the death of her husband Ranjit Singh? OPD
- (3) Whether the plaintiff is the possession of owner the suit land and is entitled to the declaration prayed? OPP.
- (4) Whether the suit is not maintainable in the present form ? OPD
- (5) Whether the plaintiff is estopped from challenging the decree in question ? OPP”

6. Plaintiff appeared as PW-1 in support of his pleadings. Defendant examined DW-1 Vidya Parkash, Reader posted in the Court that passed the decree dated 29.10.1979 and counsel who represented plaintiff Mohinder Singh in the earlier suit as DW-2. She herself appeared as DW-4.

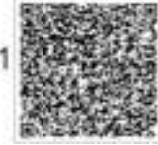
7. Trial Court answered issue No.1 against the plaintiff and in favour of the defendant holding that from the testimony of DW-1 Vidya Parkash-Reader of the Court, it is clear that the statement of the plaintiff was recorded by the then Sub-Judge, Ist Class in his own hand. Mohinder Singh was identified by his counsel who proved the same while appearing as DW-2. Thus, there is no evidence to support coercion as claimed by the



plaintiff while suffering impugned judgment and decree dated 29.10.1979. Issue No.2 and 3 were decided in favour of the defendant and against the plaintiff. Resultantly, the suit filed by the plaintiff was dismissed.

8. In appeal filed by the plaintiff, Lower Appellate Court reversed the finding on issue No.1 to 3 holding that from the evidence adduced, it is evident that there was no family settlement between the parties and the judgment and decree dated 29.10.1979 was result of fraud and misrepresentation. Reversing the findings of the Trial Court on issues Nos. 1 to 3, Lower Appellate Court allowed the appeal filed by the plaintiff.

9. Learned senior counsel appearing for the defendant-appellant has assailed the judgment passed by Lower Appellate Court asserting that the Lower Appellate Court wrongly went into the issue with respect to existence of family settlement. He submits that the issue was whether plaintiff suffered a valid decree in favour of defendant. Once it was proved on record that plaintiff himself appeared before the Court in the earlier lis and suffered a statement leading to passing of decree, there was no occasion for the Lower Appellate Court to look beyond decree. The plaintiff appeared before the Court. He suffered statement in favour of the defendant, thus he by filing this suit cannot be allowed to claim that he was under undue influence of Darbara Singh. Mr. Mahajan further asserts that the falsity of the plaintiff-respondent is evident from the fact that he concealed material fact regarding defendant being related to him. Thus, whole of the claim filed by the plaintiff being based upon lies and being

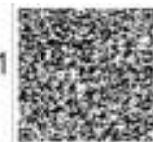


untruthful merits rejection.

10. Mr. Jain, learned senior counsel representing the respondent has taken this Court to the testimony of Vidya Parkash DW-1 who at the relevant point of time was posted as Reader in the Court of Sub-Judge Ist Class, Fatehgarh Sahib and statement of Shri SMS Bajwa, Advocate-DW2 who represented plaintiff in the earlier suit. He submits that from the joint reading of their statements, it is evident that statement alleged to have been made by the plaintiff in the earlier suit as a defendant leading to passing of the decree in dispute was never even read to the plaintiff. He further has drawn attention of this Court to the testimony of defendant-Jaspal Kaur-DW4. He agrees that she admitted that there was no dispute ever between the parties and thus there was no occasion for any settlement as claimed. Darbara Singh being closely related to plaintiff was looking after his affairs. Plaintiff, Mohinder Singh had full faith in Darbara Singh after death of his son Ranjit Singh. Mohinder Singh who lost his young son was in fragile state of mind. The respondent as well as Darbara Singh knowing well his condition robbed him of all his land. Thus, it is evident that the decree was result of fraud and undue influence exercised by Darbara Singh as well as appellant-defendant on the plaintiff and the same needs to be quashed.

11. I have heard counsel for the parties and have carefully gone through the records of the case.

12. On being specifically asked as to who is in the possession of the suit land, counsel for the respondent has referred to the admission made by



defendant in her testimony admitting plaintiff to be in possession of the suit land. Mr. Mahajan is not in a position to dispute the said fact.

13. Present suit has been filed challenging the decree dated 29.10.1979 by Mohinder Singh claiming that the same was result of fraud. Jaspal Kaur claims that the decree was suffered by Mohinder Singh out of his own free will and is a valid decree.

14. The issue that falls for consideration before this Court is:

(i) whether the decree dated 29.10.1979 passed in favour of Jaspal Kaur is result of fraud and undue influence or is a valid consent decree?

15. Reverting to the suit of 1979, this Court finds that in the memo of parties of the plaint, Jaspal Kaur has been referred to as the wife of Darbara Singh. Meaning thereby, on the said date, she had already re-married and ceased to be daughter-in-law of Mohinder Singh. She claims in the plaint that there is a dispute in the family qua her right of maintenance, which stands settled by way of family settlement whereby Mohinder Singh agreed to transfer whole of his land in her favour. Written statement was filed on behalf of Mohinder Singh admitting all the pleadings raised in the plaint. In written statement, it was prayed that the suit be decreed. Statement of Mohinder Singh was recorded on 23.10.1979, wherein Mohinder Singh admitted factum of family settlement and that it is his daughter-in-law Jaspal Kaur who is in possession of the land as owner of the same.

16. On the basis of the aforesaid statement made by Mohinder Singh, suit was decreed on 29.10.1979.



17. In the present suit, Mohinder Singh has pleaded that the impugned decree is a result of fraud and undue influence. The same has been detailed in plaint. The precise pleadings in the plaint read as under:-

“4. That about 2-1/4 years back said Darbara Singh brought the plaintiff to Bassi and he told the plaintiff that the plaintiff has to appear before the revenue authorities to inform them that the plaintiff had been cultivating his land personally and if this statement is not made the Government would allot his land to landless tenants. As the plaintiff has full confidence in Darbara Singh, so the plaintiff has no reason to disbelieve the representation of said Darbara Singh. So acting on the said representation the plaintiff accompanied said Darbara Singh to Bassi.

5. That the plaintiff was brought to court compound Bassi by said Darbara Singh and was made to sit under a tree for some time as he wanted to find out whether the concerned officer was present or not. After some time he got a paper thumb marked by him and was made to appear before the officer whether the plaintiff told the officer that he had been cultivating his land personally and was not given to anyone on Batai or chakota. Then the plaintiff was made to thumb mark on one or two places. All this was done believing the representation made by Darbara Singh to be true and in good faith and there was no reason to disbelieve him. The plaintiff did not state that he had parted with the ownership and possession of his land in favour of the defendant. The defendant was also present there at that time. So it is very clear that the decree in question is result of fraud and misrepresentation played by the

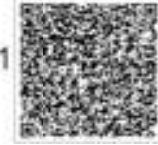


defendant through her husband upon the plaintiff. In the alternative the decree in question is collusive even as per the allegations of the defendant in written statement and according to the evidence produced by the defendant to the effect that the said suit was got filed by the plaintiff himself from the defendant to get the land in suit transferred, otherwise there was no lis or controversy between the parties regarding the suit land and said suit was filed with the prior consent of the plaintiff.”

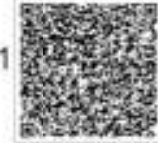
18. Jaspal Kaur in her written statement denied the afore-mentioned averments and responded as under:-

“4) All the contents of and allegations in para no.4 of plaint are wrong and are dented. The allegations to the effect that about 2^{1/4} years back from the date of filing of this suit, said Darbara Singh brought the plaintiff to Bassi and he told the plaintiff that the plaintiff has to appear before the revenue authorities to inform them that the plaintiff had been cultivating his land personally and if this statement is not made, the Government would allot his land to landless tenants and plaintiff had full confidence in said Darbara Singh and the plaintiff has no reason to disbelieve the alleged representation of Sh. Darbara Singh and acting on alleged representation, the plaintiff accompanied said Darbara Singh to Bassi, are wrong and are denied. Said Darbara Singh never represented the plaintiff as alleged nor the plaintiff accompanied said Darbara Singh as alleged.

5) Pare no.5 of the plaint is wrong and is denied. The allegations to the effect that the plaintiff was brought to Court compound Bassi by said Darbara Singh and was



made to sit under a tree for some time and said Darbara Singh wanted to find out whether the concerned officer was present or not and after some times he got paper thumb marked by him and was made to appear before the officer and he told the officer that he had been cultivating his land personally and was not given to any one on Batai or Chakota and the plaintiff was made to thumb mark on one or two places and alleged act was done believing the alleged representation allegedly made by Darbara Singh to be true and in good faith and the plaintiff did not state that he had parted with ownership and possession of his land in favour of the defendant, are wrong and are dented. The real facts are that the defendant is daughter-in-law of the plaintiff. After the death of said Ranjit Singh plaintiff neglected to maintain the defendant, so a family dispute took place between the parties which resulted into a family settlement with the interventions of the relations in the Month of July 1979. In the above said family settlement suit land fell into the share of the defendant in lieu of her maintenance and the same was transferred in favour of the defendant by the plaintiff and as such the defendant was made and declared to be absolute owner of the suit land by the plaintiff and the defendant was put into possession of the suit land as its absolute owner and a decree to that effect has been passed by Sub Judge Ist Class, Bassi on 29-10-1979 in suit No.309 dated, 3-10-1979. The plaintiff himself through his counsel appeared in the court of Sh, Chanan Singh then Sub Judge IInd Class, Bassi Pathana and filed written statement admitting the claim of the defendant to be correct and the learned Sub Judge recorded the



statement of the plaintiff on oath to that effect which was thumb marked by the plaintiff and was also signed by his counsel and the said decree had settled rights of parties with respect to the suit land and the plaintiff and the Hon'ble Court can not go behind earlier decree. The defendant being a daughter-in-law of plaintiff constitute a Joint Hindu family with him.

In the above said suit the plaintiff came on his own in the court compound, engaged his counsel and the plaintiff filed the written statement through his counsel and made his statement on oath in the Court of Ld. Sub Judge IInd Class, Bassi.

The story of the plaintiff as alleged in paras 3 to 5 of the plaint is false, concocted and made up story and there is an intelligent brain behind the story.”

19. Darbara Singh referred to in the pleadings is none-else, but husband of defendant Jaspal Kaur. Despite there being specific allegation against him, he opted not to appear in the witness box to rebut the same. Undue influence by Darbara Singh has been pleaded by plaintiff. The expression ‘undue influence’ has been defined under Section 16 of the Indian Contract Act which reads as under:-

“16. 'Undue influence' defined.—

(1) A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of



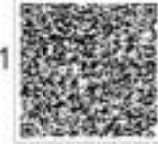
another—

- (a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
 - (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.
- (3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall be upon the person in a position to dominate the will of the other.

Nothing in the sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872 (1 of 1872).”

20. In ***Ladli Prasad Jaiswal v. The Karnal Distillery Co. Ltd., Karnal & Ors***, reported as ***AIR 1963 Supreme Court 1279***, Apex Court explaining ‘undue influence’ held as under:-

“The doctrine of ‘undue influence’ under the common law was evolved by the Courts in England for granting protection against transactions procured by the exercise of insidious forms of influence spiritual and temporal. The doctrine applies to acts of bounty as well as to other transactions in which one party exercising his position of dominance obtains an unfair advantage over another. The Indian enactment is founded substantially on the rules of English common law. The first sub-section of Section 16 lays down the principle

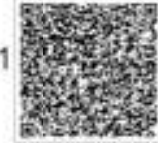


in general terms. By subsection (2) a presumption arises that a person shall be deemed to be in a position to dominate the will of another if the conditions set out therein are fulfilled.' Sub-section (3) lays down the conditions for raising a rebuttable presumption that a transaction is procured by the exercise of undue influence. The reason for the rule in the third subsection is that a person who has obtained an advantage over another by dominating his will, may also remain in a position to suppress the requisite evidence in support of the plea of undue influence.”

21. The same was further elaborated by Supreme Court in the case of *Afsar Shaikh & Anr. v. Soleman Bibi & Ors.*, reported as *AIR 1976 Supreme Court 163*, wherein it was held that:

“The law as to undue influence in the case of a gift inter vivos is the same as in the case of a contract. Sub-section (3) of Section 16 contains a rule of evidence. According to this rule, if a person seeking to avoid a transaction on the ground of undue influence proves-

- (a) that the party who had obtained the benefit was, at the material time, in a position to dominate the will of the other conferring the benefit, and
- (b) that the transaction is unconscionable, the burden shifts on the party benefiting by the transaction to show that it was not induced by undue influence. If either of these two conditions is not established the burden will not shift. As shall be discussed presently, in the instant case the first condition had not been established; and consequently, the burden never shifted on the defendant. The Privy Council in *Raghunath Prasad v. Sarju Prasad*, (*AIR 1924 Privy Council 60*)



expounded three stages for consideration of a case of undue influence. It was pointed out that the first thing to be considered is, whether the plaintiff or the party seeking relief on the ground of undue influence has proved that the relations between the parties to each other are such that one is in a position to dominate the will of the other. Upto this point, 'influence' alone has been made out. Once that position is substantiated, the second stage has been reached - namely, the issue whether the transaction has been induced by undue influence. That is to say, it is not sufficient for the person seeking the relief to show that the relations of the parties have been such that the one naturally relied upon the other for advice, and the other was in a position to dominate the will of the first in giving it. Upon a determination of the issue at the second stage, a third point emerges, which is of the onus probandi. If the transaction appears to be unconscionable, then the burden of proving that it was not induced by undue influence is to lie upon the person who was in a position to dominate the will of the other. Error is almost sure to arise if the order of these propositions be changed. The unconscionableness of the bargain is not the first thing to be considered. The first thing to be considered is the relation of the parties. Were they such as to put one in a position to dominate the will of the other.”

22. Does present case satiate the aforesaid parameters laid down in binding precedents. After the fraud and undue influence was pleaded by plaintiff in the plaint, he reiterated the same in his testimony. In cross-examination of Mohinder Singh not even a suggestion was put to him that

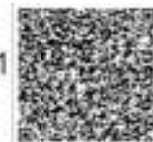


he was not taken by Darbara Singh to the Court misrepresenting that he needs to appear before the revenue authority to save his land.

23. So far as influence of Darbara Singh on Mohinder Singh is concerned, following admission made by appellant-Jaspal Kaur who appeared as DW-4 can be safely relied:-

“It is correct that Darbara Singh had been looking after all the household affairs of the plaintiff after the death of Ranjit Singh. I myself and Darbara Singh had accompanied the plaintiff at the time the decree was got passed from the court. It is incorrect that Darbara Singh brought the plaintiff to the court on the pretext that his statement was to be recorded before the Tehsildar as to who was cultivating the suit land otherwise the same will be forfeited to the State. It is incorrect that we obtained the signatures of the plaintiff outside the country on blank papers by fraud. The market value of the suit land is much more than Rs.100/-. It is correct that Mohinder Singh had full faith in Darbara Singh. It is correct that after the death of Ranjit Singh Darbara Singh was managing all the house-hold affairs of the plaintiff.”

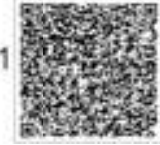
24. Thus Darbara Singh admittedly had influence over Mohinder Singh at the relevant time. The fact that he married his widowed daughter-in-law to Darbara Singh also leads to the same inference. Keeping in view the aforesaid evidence that has come on record, this Court finds that the Lower Appellate Court rightly appreciated the evidence to come to the conclusion that Darbara Singh exercised influence over Mohinder Singh.



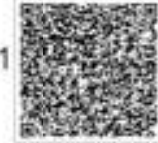
25. Now coming on to statement made by Mohinder Singh, Vidya Parkash Reader at the relevant point of time in the Court of Sub-Judge, 1st Class, Fatehgarh Sahib who appeared as DW-1. He in his testimony claimed that statement was recorded by Presiding Officer in his own hand. However, he feigned ignorance whether statement of Mohinder Singh was recorded by the Presiding Officer in his presence or not. Further he also expressed his ignorance about the fact of the statement having been read over to Mohinder Singh. Mr. SMS Bajwa, Advocate who represented Mohinder Singh in the suit of 1979 while appearing as DW-2 in the present suit claimed that the statement of the defendant was recorded by the Reader i.e. Vidya Parkash with his hand. He further admitted that the statement was never read out to Mohinder Singh in his presence. It creates doubt whether statement of Mohinder Singh was indeed read out to him or not. Apart from that it creates doubt over finding recorded by Trial Court that Mohinder Singh was identified by his counsel at the time of making statement in initial suit.

26. Coming to the validity of claim of defendant regarding family settlement on the basis of which earlier suit was decreed, while culling out the principles regarding family settlement, Supreme Court in the case of ***Kale and others v. Deputy Director of Consolidation and others***, reported as ***AIR 1976 Supreme Court 807***, observed as under:-

“10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:



- (1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;
- (2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;
- (3) The family arrangement may be even oral in which case no registration is necessary;
- (4) It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;
- (5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property 'It which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the Courts will find no



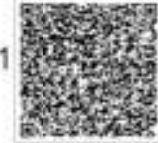
difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.”

27. In the present case, Jaspal Kaur while appearing as DW-4 admitted that there was no dispute between her and Mohinder Singh with respect to the property. Once she was re-married to Darbara Singh, the relationship came to an end. Where was the dispute settled by way of family settlement. In fact it neither existed nor was anticipated.

28. Thus, family statement propounded by Jaspal Kaur in the initial suit cannot be said to be bonafide. In the initial suit, Jaspal Kaur has been mentioned as wife of Darbara Singh. Meaning thereby, on the date suit was filed, she had already re-married. Thus, there was no reason for Mohinder Singh to part away his entire property admitting her right of maintenance when indeed he had no duty to maintain her. It is extremely difficult to visualize such family settlement where Mohinder Singh would give everything to Jaspal Kaur in lieu of nothing and without there being any obligation. Supreme Court in the case of *Santosh v. Jagat Ram & Anr.* reported as **(2010) 3 SCC 251** while dealing with somewhat similar situation observed as under:-

“We are anguished to see the attitude of the Court, who passed the decree on the basis of a plaint and a Written Statement, which were filed on the same day. We are also surprised at the observations made by the Appellate Court that such circumstance could not, by



itself, prove the fraudulent nature of the decree.

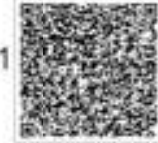
A fraud puts an end to everything. It is a settled position in law that such decree is nothing, but a nullity.”

29. Taking note of the abuse of process by the parties, in obtaining consent decrees by fraud, Supreme Court in the case of ***Smt. Badami (Deceased) By her L.R. v. Bhali reported as (2012) 11 SCC 574***, hold that:-

“19. Presently, we shall refer as to how this Court has dealt with concept of fraud. In ***S.B. Noronah v. Prem Kumari Khanna, 1979(2) RCR (Rent) 445*** while dealing with the concept of estoppel and fraud a two-Judge Bench has stated that it is an old maxim that estoppels are odious, although considerable inroad into this maxim has been made by modern law. Even so, “a judgment obtained by fraud or collusion, even, it seems a judgment of the House of Lords, may be treated as a nullity”. (See Halsbury’s Laws of England, Vol. 16 Fourth Edition para 1553). The point is that the sanction granted under Section 21, if it has been procured by fraud or collusion, cannot withstand invalidity because, otherwise, high public policy will be given as hostage to successful collusion.

20. In ***S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others, 1994(1) R.R.R. 253*** this court commenced the verdict with the following words:-

“Fraud-avoids all judicial acts, ecclesiastical or temporal” observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is



a nullity and non est in the eyes of law. Such a judgment/decreed by the first court or by the highest court - has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.”

21. In the said case it was clearly stated that the courts of law are meant for imparting justice between the parties and one who comes to the court, must come with clean hands. A person whose case is based on falsehood has no right to approach the Court. A litigant who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If a vital document is withheld in order to gain advantage on the other side he would be guilty of playing fraud on court as well as on the opposite party.

22. In ***Smt. Shristi Dhawan v. M/s. Shaw Brothers, 1992(1) RCR (Rent) 442*** it has been opined that fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It has been defined as an act of trickery or deceit. The aforesaid principle has been reiterated in ***Roshan Deen v. Preeti Lal, 2002(2) S.C.T. 106, Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education and other, 2003(4) S.C.T. 318 : 2003(8) SCC 319*** and ***Ram Chandra Singh v. Savitri Devi and others, 2003(8) SCC 319.***

23. In State of ***Andhra Pradesh and another v. T. Suryachandra Rao, AIR 2005 Supreme Court 3110*** after referring to the earlier decision this court observed as follows:-

“In ***Lazars Estate Ltd. v. Beasley, 1956(1) QB 702*** Lord Denning observed at pages 712 & 713, “No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.” In the same



judgment Lord Parker LJ observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. ”

24. Yet in another decision *Hamza Haji v. State of Kerala & Anr., AIR 2006 Supreme Court 3028* it has been held that no court will allow itself to be used as an instrument of fraud and no court, by way of rule of evidence and procedure, can allow its eyes to be closed to the fact it is being used as an instrument of fraud. The basic principle is that a party who secures the judgment by taking recourse to fraud should not be enabled to enjoy the fruits thereof.”

30. In view of the aforesaid facts, this Court finds that the fraud committed on Mohinder Singh is evident from the record as discussed in preceding paras. Whole of the allegations of fraud is against Darbara Singh husband of the defendant. He could not gather courage to enter in the witness box. All these facts cumulatively prove the case of the plaintiff in the present case. Thus, no fault can be found with the findings recorded by Lower Appellate Court.

31. Finding no merit in the present appeal, the same is ordered to be dismissed.

32. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

05.09.2024
Dinesh

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable :	Yes