



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Pronounced on: 17th February, 2025

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C.R.P. 19/2021, CM APPL. 6339/2021 (stay)

GAUTAM SALUJA

S/o Sh. B.K. Saluja

R/o B101, Munrika Appartments,

Plot No. 91, Sector-9, Dwarka

New Delhi-110077

.....Petitioner

Through: Dr. (Maj.) J. C. Vashista, Advocate.

versus

1. **JITENDER KUMAR SETHI**

S/o Late Shiv Charan

...Respondent No.1

2. **ALKA SETHI**

W/o Jitender Kumar

...Respondent No.2

Both Resident of:

A-16A, Vishwas Park Extension,

Uttam Nagar, New Delhi-110059

Through: Mr. Aaditya Chopra, Advocate

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The Revision Petition under *Section 115* of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) has been filed on behalf



of the Petitioner, Mr. Gautam Saluja, to assail the Order dated 08.01.2021 of learned ADJ, Dwarka, who has dismissed the Application under Order VII Rule 11 CPC, filed by the Petitioner (Defendant) in the main Suit for Declaration of the Judgment dated 15.11.2017 in CS No. 482/2019, as null and void, on the ground that it was obtained by fraud by the Respondents/Plaintiffs.

2. ***Briefly stated***, the Respondents (*Plaintiffs in the main Suit*) had entered into an Agreement to Sell dated 12.09.2011 with the Petitioner (*Defendant in the main Suit*) in respect of the Property bearing No. A-37A admeasuring 100 sq. yds (15'x 60') out of Khasra No. 23/18 in the revenue estate of Village Possangipur, Uttam Nagar, New Delhi (*hereinafter referred to as 'Suit Property'*). The Petitioner/Defendant paid a sum of Rs.3.5 Lakhs on 12.09.2011 as earnest money out of the total sale consideration of Rs.34 Lakhs. He subsequently paid a further sum of Rs.4 Lakhs and another Agreement dated 31.10.2011 was executed with the Respondents/Plaintiffs wherein they acknowledged receiving Rs.7.51 Lakhs.

3. The property was in the name of Smt. Sudesh Kumari, mother/mother-in-law of the Respondent Nos. 1 and 2 and since the Petitioner was having a difficulty in getting the Bank Loan as a property was not in the name of the Respondents, a registered Sale Deed was executed on 29.09.2011, by the mother/mother-in-law in the name of the Respondents.

4. The Petitioner took the Bank Loan, which was given to the Respondents by way of four bankers cheques each of Rs.5 Lakhs, at the time when wood work in kitchen was still in progress. However, the Respondents with *mala fide* intention, demanded additional amount of Rs.2.5 Lakhs,



which the Petitioner paid since he had no other option. Another Agreement to Sell dated 27.01.2012 was consequently entered between the parties.

5. On 27.02.2012 at about 11:00 a.m., the Petitioner reached the Office of Sub Registrar-II, Janakpuri but the Respondents failed to turn up for registration of the Sale Documents.

6. The Petitioner felt defrauded and made a Police Complaint before SHO, Bindapur *vide* DD No. 34A dated 06.03.2012 and FIR No. 177/2013 under Section 420/34 of the Indian Penal Code, 1860 (*hereinafter referred to as 'IPC'*) registered on 22.04.2013 at Police Station Bindapur, pursuant to the directions given by the learned Metropolitan Magistrate, Dwarka, New Delhi, under Section 156(3) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'CrPC'*).

7. During the course of investigations, the Investigating Officer obtained specimen signatures of the Respondent Nos. 1 and 2, who intentionally gave distorted signatures, which did not match with the original signatures on Agreement to Sell and *Bayana* receipt dated 27.01.2012 in the FSL. The Closure Report was filed on 14.04.2018 in which a protest Petition was filed by the Petitioner, which was accepted by the Court of learned Metropolitan Magistrate and cognizance was taken for the offences under Section 420/406 IPC.

8. The Petitioner sent a legal Notice dated 13.04.2012 calling upon the Respondents, to execute the documents in his favour within 10 days, but the Respondents failed to Reply. The Petitioner then filed *CS (OS) 2751/2012 Suit for Specific Performance with consequential relief of Permanent Injunction* in this Court.



9. The Respondents were served with the summons on 13.12.2012, however, failed to file the Written Statement and their right was closed on 13.05.2013. The Petitioner led *ex-parte* evidence. The Suit was decreed in a sum of Rs.12,70,100/- along with the interest @6% p.a. from 27.02.2012 till realisation, in favour of the Petitioner.

10. The Petitioner then filed an Execution Petition bearing Ex. No. 150/2017 on 11.12.2017. While the Execution Petition was pending, the Respondents filed an Application under Order IX Rule 13 CPC, which was dismissed *vide* Order dated 05.09.2018. FAO No. 182/2019 filed by the Respondents, was also dismissed *in limine vide* Order dated 26.04.2019.

11. The Respondents then filed CS No. 482/2019 *Suit for Declaration that the Judgment/Decree dated 15.11.2017, be declared as null and void*, averring that the Decree had been obtained by fraud. The Petitioner *herein* thus, moved an Application under Order VII Rule 11 CPC for rejection of the Suit. However, the Application has been dismissed *vide* impugned Order dated 08.01.2021.

12. The *Order is challenged on the ground* that the learned ADJ failed to appreciate that the Respondents have instituted the Suit on the basis of *FSL Report dated 27.11.2015 and 29.10.2017*, but no action was taken by the Respondents on the said Report till 29.05.2019. The Suit is thus, *barred by limitation under Article 123 of the Limitation Act, 1963*.

13. Further, it is claimed that the learned ADJ failed to consider that the FSL result is neither conclusive nor proven till date. The Respondents had appeared during the trial on 18 different dates since 13.12.2012 before the learned Joint Registrar of this Court and till 26.04.2017 before the Court of



learned ADJ, Dwarka, where the case was transferred due to pecuniary jurisdiction. The learned ADJ has wrongly interpreted the ratio of the Judgment of the Apex Court in Raghwendra Sharan Singh vs. Ram Prasanna Singh, AIR 2019 SC 1430 to observe that while scrutinizing the averments in the Plaint; it is bounden duty of the Trial Court to ascertain the materials for cause of action.

14. It is further asserted that the learned ADJ failed to appreciate that the Respondents have not made any specific averments in regard to the fraud committed by the Petitioner. *As is evident from paragraph 6 of the Plaint wherein no word about the alleged fraud has been stated.*

15. Furthermore, the learned Trial Court has erred in holding the Judgment and decree dated 15.11.2017 having correlation with the criminal trial pending before the learned Trial Court. It has also not been considered that the Judgment in favour of the Petitioner had attained finality as the Application under Order IX Rule 13 CPC as well as FAO against the said Order, have been dismissed.

16. It is, therefore, submitted that the impugned Order rejecting the Application under Order VII Rule 11 CPC, be set-aside and the Suit of the Plaintiffs/Respondents be dismissed.

17. The **Respondents in their Counter-Affidavit**, have submitted that their Suit bearing CS No. 482/2019 challenging the Decree dated 15.11.2017 in favour of Petitioner, is maintainable and the Application under Order VII Rule 11 CPC filed by the Petitioner, has been rightly rejected.

18. It is asserted that a fraud was played upon the Respondents and it is a settled law that the Courts are vested with inherent powers to set-aside such



Judgments obtained by fraud. The principle of *res judicata* is not applicable where there is a fraud committed by the parties. The Agreement to Sell dated 27.01.2012 was forged by the Petitioner which is also established from the FSL Report, which formed part of the Closure Report in FIR No. 177/2013 submitted before the learned Trial Court disclosing the forgery. The principles of *res judicata* do not apply in the facts of this Case as the Judgment was obtained *ex-parte* wherein the evidence of the Respondent could not be completed.

19. It is further submitted that it is premature to conclude that the FSL Report is merely an opinion of an Expert and is non-conclusive and does not give any cause of action in favour of the Respondents. The criminal trial is still pending and the conclusive proof of the FSL Report is yet to be established.

20. The Suit of the Respondents discloses a cause of action and the question of limitation is a mixed question of fact of law and thus, a matter of trial. It is, therefore, submitted that the Application under Order VII Rule 11 CPC, has been rightly rejected.

Submissions heard and the record perused.

21. The Respondents have filed the present Suit *for Declaration of Judgement and Decree dated 23.02.2018 in CS No. 482/2019 as null and void.*

22. In this regard, reference be made to Indian Bank vs. Satyam Fiber (India) Pvt. Ltd., 1996 (5) SCC 550 wherein the Apex Court observed that since frauds effects the sovereignty, regularity and orderliness of the proceedings of the court, it amounts to an abuse of the process of the court



and the courts have inherent power to set-aside an Order obtained by practicing fraud on the Court and where the Court is misled by the party, the Court has inherent powers to recall its order. Similarly, in Ram Chander Singh vs. Savitri Devi, AIR OnLine 2003 SC 537, the Hon'ble Supreme Court of India observed that once it is held that a judgment and decree has been obtained by practicing fraud on the court, it is trite that the principles of *res-judicata* shall not apply.

23. The High Court of Kerala in Vellapan vs. Peter Thomas, AIR 1979 Kerala 194, similarly observed that the principle of *res judicata* is outside the region of fraud or collusion.

24. Now the facts of the present case need to be considered in the light of aforesaid observations, to ascertain whether the averments made in the Plaint disclose that the Judgement has been obtained by fraud. Respondents (*Plaintiffs in the main Suit*) had entered into an Agreement to Sell dated 12.09.2011 and two subsequent Agreements to Sell dated 31.10.2011 and 27.01.2012, with the Petitioner (*Defendant in the main Suit*) in respect of Suit Property, but the respondents failed to appear before the Registrar to execute the Sale Deed.

25. Feeling cheated, the Petitioner (Defendant in the Main Suit) filed the Criminal Complaint with the Police on 06.03.2012. He then also filed the first CS (OS) No. 2751/2012 for *Specific Performance* of the Agreements to Sell dated 12.09.2011, 31.10.2011 and 27.01.2012.

26. Admittedly, the Respondents (who were the Defendants in the first Suit), were duly served and they contested the Suit for a long time and had been appearing during the trial of the said Suit till April, 2016. However,



they failed to file their Written Statement in the four years and eventually stopped appearing and were proceeded *ex-parte*.

27. The Respondents *herein* were therefore, aware about the existence of these Agreements to Sell since 2012, when the Legal notice dated 13.04.2012 was served followed by the filing of first Suit for Specific Performance. If according to the Respondents, the documents were fraudulent or forged the most appropriate proceedings to prove their defence, was to contest the Suit by filing the Written Statement and by adducing the evidence. For reasons best known to the Respondents, they chose not to file the Written Statement and contest the said Suit, which ultimately resulted in an *ex-parte* Judgement and Money Decree dated 15.11.2017 in favour of the Petitioner *herein*.

28. It is also pertinent to observe that the decree dated 15.11.2017 which is under challenge is a *Money Decree* in the sum of Rs.12,70,100/- to be paid by the Petitioner to the Respondents under the impugned Agreements to Sell and not *Specific Performance of the Agreements to Sell, which are being alleged to be forged*. No averment has been made that the amounts were not received by him or that they were not liable to return the money.

29. The Application under Order IX Rule 13 CPC filed on behalf of the Respondents, for setting-aside the *ex-parte* Decree dated 15.11.2017, was dismissed on 05.09.2018; FAO filed thereafter, had also met the same fate on 26.04.2019. The Decree thus, attained finality. It is evident that the cause of action to challenge the Agreement to Sell arose way back in 2012, when the Documents were first produced by the Petitioners in their first *Suit for Specific Performance*.



30. As has been rightly contended on behalf of the Petitioner, the fraud is alleged in respect of the original Agreement to Sell dated 12.09.2011, but not even an *iota* has been said about what kind of fraud was practiced by the Petitioner in execution of the Agreements to Sell in respect of which *ex-parte* decree was granted. It is a Judgment which has been delivered on merits, on the basis of evidence led by the Petitioner in the said Suit.

31. In fact, the entire perusal of the Complaint in the present Suit only refers to the original Agreement to Sell being forged and fabricated and not a single averment is made that the judgement itself has been obtained by fraud.

32. *The Complaint is bereft of any details in respect of how the Judgement is fraudulent and does not disclose any cause of action.*

33. ***The second aspect for consideration is whether the Respondents have filed the Suit in Limitation.*** According to the Respondents, the Closure Report along with the FSL Report got filed on 14.04.2018 in FIR No. 177/2013 under Section 420/34 IPC which was got registered by Petitioner. It is only then that they came to know about the Agreements to Sell being forged and filed the present Suit in 2019 for getting the judgement and Decree dated 15.11.2017 declared *Null and Void*.

34. However, it cannot be overlooked that FSL Report is only an opinion and supporting evidence and cannot be treated as substantive piece of evidence. As has been held in S. Gopal Reddy vs. State of A.P., 1996 SCC (4) 596 that the expert evidence constitutes opinion rather than direct substantive evidence, and that it must not replace substantive evidence. Furthermore, an expert testimony necessitates corroboration, which can only be gained through clear, direct or circumstantial evidence.



35. The Apex Court has further emphasized in State of Karnataka vs J. Jayalalitha, 2017 (6) SCC 263 that an Expert witness does not provide factual testimony; rather merely offers advisory insights. The Apex Court has cautioned against complete reliance on expert opinions alone, which was reaffirmed in the case of Jalapathi Reddy vs Baddam Pratapa Reddy, (2019) 14 SCC 220.

36. The *cause of action* for challenging the Agreements to Sell did not arise on the date of filing of the FSL Report along with Closure Report on 14.04.2018 before the Ld. MM. The learned Metropolitan Magistrate may have not accepted the Closure Report and taken cognizance on the Charge-Sheet, but that in itself does not give any new cause of action in favour of the Respondents.

37. The alleged cause of action is that the Agreements to Sell were forged about which the Respondents were well aware since 2012. It is not from the FSL report that they came to know for the first time that the documents were forged; but if these documents were not executed by them, they should have challenged the authenticity then only and not waited till 2019 to file the present Suit bearing CS No. 482/2019.

38. Moreover, as discussed above, the FSL report is only *Opinion Evidence*, which cannot be the sole basis for asserting that it is only in 2017 that the respondent became aware of the Agreements to Sell being forged.

39. ***The limitation for filing a Suit for challenging those Agreements has to be calculated from 2012. The Suit to challenge the Agreements to Sell being forged has been filed in 2019 i.e. beyond a period of three years and is clearly barred by limitation.***



40. The Petitioner is correct in claiming that the Suit *does not disclose any cause of action* to support the allegations of Judgement/Decree being obtained by fraud. *It also is barred by limitation.*

41. Consequently, the impugned Order dated 08.01.2021 dismissing the Application under Order VII Rule 11 CPC by the Petitioner, is hereby set-aside. The Application under Order VII Rule 11 CPC is allowed and the Suit of the Respondents bearing CS No. 482/2019 is hereby, rejected.

42. The Revision Petition is disposed of accordingly. Pending Application(s), if any, also stand disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 17, 2025/RS