
(2008) 08 DEL CK 0052

In the Delhi High Court

Case No : IA No"s. 9577 of 2007, 9081 of 2007 and CS (OS) No. 1883 of 2006

Asha Sharma and Others

APPELLANT

Vs

Sanimya Vajijiya Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 20-08-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 22 Rule 10, Order 22 Rule 3, Order 7 Rule 11, 151
Transfer of Property Act, 1882 — Section 6

Citation : (2008) 08 DEL CK 0052

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Kamalakshi Singh, for the Appellant; C. Mukund, for Def 1 to Def 6, A.P. Mukund, for Def - 9 and Monica Garg, for UOI, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—This order will dispose of the defendants" application for rejection of plaint under Order 7, Rule 11, Code of Civil Procedure, CPC.

2. The plaintiffs seek declaration that documents executed by one late Ms. Satyawati Sharma, in 1995, in relation to property, being 70 Golf Links, New Delhi (hereafter "suit property") are void and illegal. In the suit, the relevant averments relating to cause of action and the plaintiffs" occasion to approach this Court,as well as the reliefs claimed, are averred as follows:

10. That after September,2003, the plaintiff made inquiries from defendants No. 7 and 8 and they were told that defendants No. 1 to 6 have applied for mutation of the property in their names, on account of objections raised in the office of defendants No. 7 and 8 regarding alleged transfer, the property could not mutated in the names of defendants No. 1 to 6. When the plaintiffs came to know of the said fact, they also filed objections to said mutation proceedings representing actual facts and upon objections of the plaintiffs, mutation proceedings are still pending and the property has not been mutated in the

names of the defendants No. 1 to 6. It is further submitted that though the defendants No. 1 to 6 are claiming to be owners of the property by virtue of 6 transfer deeds dated 30.06.1005 executed by Smt. Satyawati Sharma in their favour and claiming that Smt. Satyawati Sharma has sold 1/6th share each to defendants No. 1 to 6 but till today they have not filed the original Sale Deed on record of Suit No. of 1997. However, on inquiry and from the photo copies of the Sale Deed, the plaintiff came to know that the alleged Sale Deed in favour of the defendants No. 1 to 6 has been allegedly executed on 30.06.1995 " Serial Nos. 151789 Vol. No. 45 Book No. 1, Deed No. 2564 Sl. No. 2823 page No. 163-181, 151791 Vol. No. 45 Book NO. 1, Deed No. 2566 Sl. No. 3825 page No. 200-217, 151792 Vol. 45 Book No. 1 Deed No. 2567 Sl. No. 3826 page No. 218 to 235, 151790 Vol. No. 45 Book No. 11 Deed No. 2565 Sl. No. 3824 Page No. 182 " 199, 151794 Vol. No. 45 Book NO.1 Deed No. 2569 Sl. No. 3828 Page No. 254 to 272 and 151793 Vol No. 45 Book NO.1 Deed No. 2568 SL. No. 3827 Page No. 236 to 253 respectively.

11. That Smt. Satyawati Sharma since deceased along with one of her sons Sri Kamal Sharma was residing in the premises in dispute on the first floor, whereas, the ground floor was and is under tenancy of Indian Overseas Bank. Shri Kamal Sharma persuaded Smt. Satyawati Sharma deceased to shift to Noida and to lock the presmies in dispute. Shri Kamal Sharma had also arranged a flat at Noida for his residence where he took his mother Smt. Satyawati Sharma also. The premises in dispute i.e. the first floor and half constructed second floor was put under lock of deceased Smt. Satyawati Sharma. However, Shri Kamal Sharma being the sond had control over the keys of lock put on the property in dispute.

12. That Shri Kamal Shamra in collusion with defendants No. 1 to 6 handed over possession to them in the grab of the alleged fabricated sale deed without knowledge of Smt. Satyawati Sharma.

13. That since then i.e. 1996, the defendants No. 1 to 6 are in unauthorized occupation of the premises and were enjoying the same against the wishes of Smt. Satyawati Sharma and now against the wishes of the plaintiffs who are actual owners having inherited the property from Smt. Satyawati Sharma. 14. That the defendants No. 1 to 6 have no right to remain in possession of the premises in dispute and their possession is without any right whatsoever. A number of times the plaintiff No. 2 requested the defendants to vacate the premises and to hand over vacant and physical possession to the plaintiff, but the defendants did not do so. Now the defendants have finally refused to vacate the hand over the possession of the property to the plaintiff.

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16. That the alleged sale deed is stated to have been executed on 30.06.1995, however, Smt. Satyawati Sharma had no knowledge of the same. Smt. Satyawati Sharma died on 29.09.2003 and after her death the present plaintiff applied for being impleaded as a party in the pending suit as the legal heirs of deceased

Smt. Satyawati Sharma and it was at this stage that the plaintiffs came to know that a fraud has been played by the defendants No. 1 to 6 in collusion with Shir Kamal Sharma one of the sons of deceased Smt. ; Satyawati Sharma. The suit of the plaintiff is as such within time.

17. That the cause of action accrued in favour of the plaintiffs and against the defendants in September, 2003 i.e. on 29.09.2003 when Smt. Satyawati Sharma died; it again accrued when the plaintiffs applied under order 22 Rule 3 CPC in the pending suit for being impleaded as a party and came to know regarding the fraudulent sale as stated above. The cause of action for filing the suit for possession arose in 19 when the defendants in collusion with Shri Kamal Sharma took the possession of first floor and second floor of the property; it again accrued on all such dates when the plaintiff No. 2 on behalf of all the plaintiffs requested the defendants to vacate and hand over physical possession of the property but the defendants refused. The cause of action is still continuing in favour of the plaintiff and against the defendants. 18. That the parties to the suit are reside and work for gain at Delhi; the property is situated at Delhi within the local limit of jurisdiction of this Hon'ble Court as such the Hon'ble Court has Jurisdiction to try, entertain and decide the present suit.

19. That the value of the suit for purposes of court fee and jurisdiction for possession is fixed at Rs. 75,00,000/- being the value of the first and second floor of the property No. 70, Golf Link, New Delhi upon which the court fee of Rs. 75140/- is fixed. The value of the suit for the purposes of jurisdiction is fixed at Rs. 75,00,000/- being value of void sale deed and the Court fee of Rs. 20% is affixed. The plaintiffs further undertake to pay court fee if they are held liable to pay the same.

It is, therefore, most respectfully prayed that the Hon'ble Court may be pleased to:

(a) Pass a decree of possession in favour of the plaintiffs and against the defendants No. 1 to 6 in respect of first and second floor of property bearing No. 70, Golf Link, New Delhi and the defendants may further be directed to vacate and hand over the physical possession of the above portions to the plaintiffs; and

(b) Pass a decree for declaration in favour of the plaintiffs and against the defendants No. 1 to 6 declaring thereby that the sale deed allegedly executed by Smt. Satyawati Sharma in favour of defendants No. 1 to 6 registered in the records of Sub-Registrar at Clacutta as documents at Serial Nos. 151789 Vol. No. 45 book No. 1, Deed No. 2564 Sl. No. 2823 Page No. 163-181, 151791 Vol. No. 45 Book No. 1, Deed No. 2566 Sl. No. 3825 Page No. 200-217, 151792 Vol. No. 45 Book No. 1 Deed No. 2567 Sl. No. 3826 Page No. 218 to 235, 151790 Vol. No. 45 Book No. 1 Deed No. 2565 Sl. No. 3824 page No. 182-199, 151794 Vol. No. 45 Book No. 1 Deed No. 2569 Sl. No. 3828 Page No. 254 to 272 and 151793 Vol. No. 45 book No. 1 Deed No. 2568 Sl. No. 3827 Page No. 236 to 253 respectively dated 30.06.2005 are void ab-initio being fraudulent, without any consideration

and for other reasons as explained in the plaint and the said sale deed do not create any right in favour of the defendants No. 1 to 6;

3. The plaintiffs also aver to having approached this Court earlier, in a civil revision petition, being C.R.P.316/2004, which was decided on 4-5-2004 (hereafter "the revisional order"). A certified copy of that order has been produced along with the suit.

4. The facts relevant for deciding this application are that late Ms. Satyawati Sharma was owner of the suit property. The ground floor of that property was rented out to Indian Overseas Bank, (which was respondent No. 1 in the revision petition) by a lease deed dated 5.11.1970, which was subsequently renewed ending on 31.12.1997 on monthly rent of Rs. 10,000/- per month.

5. On 30.6.1995, Ms. Satyawati executed six sale deeds at Kolkatta in favour of six different companies who are defendants in this Court. This transaction of sale is sought to be impugned by the plaintiffs, in this suit. They claim to be heirs and legal representatives of the said Ms. Satyawati Sharma, the vendor. The ground averred for setting aside the sale is that the documents could not have been executed by the late vendor, since it was registered in Kolkata; the other ground is that the late Satyawati Sharma merely had agreed to sell the suit property, through an agreement to sell, but never executed the sale deeds, as claimed by the defendant vendors. The plaintiffs also contend that the title in the suit property could not have been conveyed since the property was subject to leasehold rights; it is also contended during the hearing that the Land and Development Office, which has been arrayed as defendant in these proceedings, had cancelled the lease, resulting in the paramount lessor re-entering the premises, thus leading to resulting invalidity of the transaction with the transferee defendants.

6. The applicant-vendees contend that consequent to the execution of the sale deeds, they became sole and absolute owners of the aforesaid property. It is contended that the suit is not maintainable, for the reason of constructive res judicata, in view of the revisional order of this Court, Late Smt. Satyawati Sharma expired on 29.9.2003. However before her death she filed a suit for possession, recovery of rent, mesne profits and injunction against the Indian Overseas Bank, the Secretary, Government of India and Land and Development Officer. In the said suit, the six companies who had purchased the property, by sale deed dated 30.6.1995 were impleaded as defendants 6 to 11.

7. The applicant defendants, who were Respondents 6 to 11, in the revision, moved an application under Order XXII Rule 10 and Order 1 Rule 10 read with Section 151 of the Code for their substitution as plaintiffs instead of Ms. Satyawati Sharma. They had, in that application contended having further sold and transferred the suit property to Master Nitish Sarda, Mr. Aditya Sarda, Master Preetesh Sarda and Master Siddesh Sarda. It was stated that the said applicants (respondents 6 to 11) and the subsequent purchasers should be transposed as

plaintiffs and the name of Ms. Satyawati Sharma should be deleted. The application was filed during the lifetime of Ms. Satyawati Sharma. After her death, an application was moved for substitution by her legal heirs, under Order XXII Rule 3. In their reply to this, the applicants (respondents 6-11 in the revision) contended that Ms. Satyawati Sharma had executed documents dated 22.12.2001 (including an agreement by which she had sold, transferred and assigned all her residuary rights, title and interest including her right/claim as prayed for in the suit together with costs, charges, interest) and other money recoverable in their favour. It was contended by the present applicants that Ms. Satyawati Sharma had also executed a registered General Power of Attorney in favour of Mr. Aditya Sarda and Ms. Neeta Sarda. The deed of agreement and the power of attorney are registered documents.

8. The trial court dismissed the plaintiff's application for impleadment. They approached this Court, in revision. The revisional order, which disposed of their challenge to the trial court's proceeding, after recounting the essential facts, and analyzing the scope of Order 22, held as follows:

22. One more aspect requires consideration. The petitioners herein have disputed and denied the execution of various documents dated 22.12.2001 purportedly executed by Ms. Satyawati Sharma in favour of respondents 6 to 11 and the General Power of Attorney. In this regard they have also relied upon the alleged deed of cancellation dated 17.4.2003. Prima facie it appears that Ms. Satyawati Sharma had executed these documents otherwise there was no need for her to execute deed of cancellation of the General power of Attorney dated 17.4.2003. Moreover the said documents have been executed for consideration as is apparent from the deed of agreement dated 22.12.2001, which mentions that a sum of Rs. 1 lakh was paid.

23. However, it is apparent that the legal heirs of Ms. Satyawati Sharma and she herself had questioned and challenged the validity of the assignment. This aspect will have to be decided and adjudicated. In the impugned order the learned District Judge has upheld the execution of the said documents without giving an opportunity and right to the petitioners to question and challenge the same. As already stated above, I am prima facie of the view that the said documents are genuine and validly executed. However, no final verdict or decision can be given in this regard without giving an opportunity to the petitioners to lead evidence and prove and establish their case. This can be done either in a separate suit or in the proceedings pending before the learned trial court. I would prefer the later option as it would cut short and help final and complete adjudication within the suit itself. This procedure, which I am accepting and adopting is recognised and accepted in several decisions of High Courts. It has been held that the validity of assignment once challenged, need not be immediately decided at the stage of deciding of the application under Order XXII Rule 10 of the Code. Court at that stage can take a prima facie view of the matter. Reference in this regard may be made to AIR 1944 137 (Nagpur) and Seethai Achi Vs. Meyappa Chettiar and

Others, . It could be also appropriate here to refer to a judgment of the Bombay High Court in the case of Jawasharlas Vs. Saraswatibai Babulal Joshi and Others, wherein it has been held as under:

12. Having regard to the provisions of O.22, R.10, Civil P.C and the authorities to which I have referred, it is apparent that no detailed enquiry at the stage of granting leave is contemplated. The Court has only to be prima facie satisfied for exercising its discretion in granting leave for continuing the suit by or against the person on whom the interest has devolved by assignment or devolution and the question about the existence and validity of the assignment or devolution can be considered at the trial of the suit on merits. This being the legal position the order passed by the learned trial Judge was correct and no interference with the discretion exercised by him is called for.

24. Keeping in view the above position of law, I set aside the impugned order dated 10.3.2004 with the following directions:

(1) The application of the petitioners under Order XXII Rule 3 of the Code is allowed and they are impleaded as legal representatives of Ms. Satyawati Sharma.

(2) The respondents 6 to 11 will be permitted to plead and establish their case on the basis of deed of agreement (assignment) and the General Power of Attorney. The respondents 6 to 11 will move an application for amendment of the written statement to rely upon the said documents dated 22.12.2001 and the same will be allowed by the learned trial court.

(3) The trial court will examine the question of validity of the alleged assignment deed dated 22.12.2001, the general power of Attorney and the other documents.

(4)The Respondents 6 to 11 will be also entitled to prove and establish the claim for mesne profits, damages and arrears of rent against respondent No. 1 and other respondents.

(5)In case the assignment is found to be legal, valid and genuine, the respondents 6 to 11 will be entitled to exemplary costs from the petitioners and the respondents 6 to 11 (and not the petitioners) will be entitled to execute the decree against other respondents.

25. A word of caution in the end. I have not examined and gone into the aspect whether the alleged deed of assignment is legal and valid u/s 6(e) of the Transfer of Property Act, 1882. Further the views expressed in this order on the question of deed of agreement, the General Power of Attorney and other documents are tentative views based upon prima facie opinion. Learned trial court will decide the question of genuiness and validity of these documents on the basis of evidence and material led by the parties.

9. It is contended, by Mr. C. Mukund, learned Counsel for the applicant defendants, that the findings and observations in the revisional proceedings,

amount to constructive res judicata, barring the maintainability of the present suit. He also submits that the plaintiffs, having preferred the revisional proceedings before this Court, where they expressly recorded that the sale deeds in their favour executed by Ms. Satyawati Sharma, in 1995 were not disputed, are now estopped from doing so. Learned Counsel relied upon the concession noticed by this Court in the order disposing of the revision, and also the averments in the revision petition, filed before this Court.

10. The applicant defendants also rely on an affidavit sworn by Shri M.K. Sharma, the late father of plaintiff Nos 2 to 4 and husband of plaintiff No. 1 (and son of Late Satyawati Sharma) dated 19-12-1994, confirming that neither he nor his heirs had any right in respect of the suit property. Similarly, he points out that the said M.K. Sharma was a witness to the transaction of sale in favour of the applicant transferees. Counsel contends that the present suit is not only vexatious, but based on blatant falsehood, and perjury, since the plaintiffs' motive is to extract money from the defendant and the further purchasers. He also pointed to the observations of this Court in the revisional proceedings, about the prima facie validity of the assignments in view of the recitals in the Power of Attorney executed by Satyawati Sharma, which she sought to cancel on a later date. He submitted that in any event the validity of that document is part of some other proceeding; however, the plaintiffs cannot challenge the transactions of 1995, in view of the admissions in the record.

11. Ms. Saundarya Singh learned Counsel for the plaintiffs, submitted that the application for rejection of the suit, (on the grounds urged) is not maintainable. It was contended by her that the late Satyawati Sharma was an old lady, who could not have executed the Sale Deeds in favour of the defendants, in Kolkatta. No doubt, some agreement to sell was executed in their favour. However, due to her age and failing health, she was made to sign several papers without being aware about their true nature and character. Counsel submitted that the court should not, at this stage, delve into the merits of the case, as that would result in an unfair procedure, and deprive the plaintiff of their right to prove the allegations in the plaint, through suitable evidence.

12. Counsel contended, on the basis of the reply to the defendants application, that a reading of the suit clearly discloses that the cause of action arose after death of Satyawati Sharma, their alleged vendor. The said vendor could not have ever conferred title in the manner alleged by them; the explanation for the documents relied on by the defendant application was only fraud played by them. In such circumstances, the issue of res judicata or estoppel did not arise.

13. Learned Counsel submitted that the plaintiffs became aware of the sale deeds only after inquiry in 2003, when they sought for mutation of the property. They had no doubt attacked the further sale or assignment of rights said to have been made in 2001, on the basis of the cancellation of general power of attorney by Satyawati Sharma, in 2003. However, that did not deprive them the right to challenge the so called sale deed, which never took place, and could not have

conferred title to the plaintiffs, in the manner averred in the plaint.

14. From the above discussion, what is discernable is that the plaintiffs, in this suit, attack execution of sale deeds by late Satyawati Sharma, on 30.6.1995, in favour of the defendant applicants. For the purpose of this discussion, it is sufficient to notice that the said defendant applicants apparently filed a suit for recovery of possession and rent from Indian Overseas Bank, which was in occupation of the suit property. Satyawati Sharma, too filed a suit for recovery of arrears of rent. During pendency of the suits, Satyawati Sharma expired. The defendant applicants (i.e transferees of 1995) filed an application under Order 22, Rule 10, to which Satyawati Sharma had registered her opposition. That application was allowed, and the present plaintiff's application to be impleaded as heirs of Satyawati Sharma, was dismissed. This Court decided the revision, filed by the present plaintiffs. The revision petition was disposed of by the revisional order.

15. In the course of the revisional order, this Court noted that:

4. On 30.6.1995, Ms. Satyawati executed six sale deeds at Kolkatta in favour of six different companies who are respondent Nos. 6 to 11 before this Court. Consequent to the execution of the sale deeds, respondents 6 to 11 became sole and absolute owners of the aforesaid property, which was earlier owned by Ms. Satyawati Sharma. The ownership of the said respondents 6 to 11 is not disputed before me by the respondent No. 1 or by the legal heirs of Ms. Satyawati Sharma who are the petitioners.

In the revision petition, filed by the plaintiffs (is part of the record, having been produced by the defendant) and, is not denied. The plaint itself avers that:

7. That in the mean time, both the suits were transferred to District Court, and the application filed by the heirs of Smt. Satyawati Sharma i.e. the plaintiffs and the application filed by the defendants No. 1 to 6 under order 22 Rule 10 were heard and decided by Shri S.N. Dhingra, the then ADJ, Delhi. Vide order dated 10.03.2004 the application of the plaintiffs under order 22 Rule 3 was dismissed and application of the defendants No. 1 to 6 under application of the defendants No. 1 to 6 under order 22 Rule 10 moved in suit No. 2361/96 (changed to suit No. 215/2004) was allowed. A copy of the order dated 10.03.2004 is filed herewith as Annexure " P-2.

8. That against the said order the plaintiffs filed Revision Petition before Hon''ble High Court being C.R.P. No. 316/2004 which was heard and decided by Justice Sanjeev Khanna vide order dated 04.05.2006. By the said order the application of the plaitnffs under Order 22 Rule 3 was allowed and the defendants No. 1 to 6 were permitted to amend the plaint and to implead copy of the order dated 04.05.2006 is filed herewith as Annexure P-3.

9. That as submitted above, that as Smt. Satywati Sharma died on 21.09.2003 and after her death, the plaintiffs moved an application Under Order 22 Rule 3

for being impleaded as parties. However, the said application was dismissed by Shri S.N. Dhingra, the then Additional District Judge, Delhi vide order dated 10.03.2004 (Annexure P-2) and by the said order the Ld. Additional District Judge also found that the defendants No. 1 to 6 are owners and the plaintiffs challenged the said order before Hon"ble High Court. The order passed by the Ld. Additional District Judge, Delhi has been set aside vide order dated 04.05.2006 (Annexure P-3) and the plaintiffs were permitted to continue in the suit. The plaintiffs came to know regarding alleged sale of the property in September, 2003 when they moved application under order 22 Rule 3 for being impleaded as parties.

The revision, filed by the plaintiffs here, in 2004, records as follows:

5. That due to some misunderstanding and ill advise the deceased petitioner filed a suit against the respondent NO.1 Impleading respondents No. 2 to 11 as party. The suit was for recovery of possession, recovery of rent and mesne profits. In fact Late deceased petitioner was given to understand that the rent agreement is between her and the bank as such the bank is liable to restore the possession to deceased petitioner despite sale deed executed by deceased petitioner in favour of respondents No. 6 to 11. At present the legal heirs of the deceased petitioner concede that the said notion was absolutely incorrect and illegal in as much as after execution of the sale deed i.e. after 30.10.1995 when deceased petitioner sold the property to respondents No. 6 to 11, she has no right to claim the possession of the property and the said right virtually wasted in respondents No. 6 to 11.

16. The copy of reply to application under Order XXII Rule 10, filed by Satyawati Sharma, which led to revisional proceedings, and the order dated 4-5- 2006, is also a matter of record; its veracity has not been denied. In the reply to that application, Satyawati Sharma, the vendor, averred as follows:

It is submitted that the property was transferred on 30-6-1995 and the suit was instituted on 19-6-1996 therefore, the application is liable to be dismissed.

17. The above facts show that the plaintiffs were conscious of the status concerning the transfers, made in 1995 by Satyawati Sharma. Crucially, they were also aware about the averments made by her regarding those sales; she categorically said in the reply to the applicant's application under Order 22, Rule 10, about having executed the sale deeds in 1995. These are undisputed facts; the pleading by Ms. Satyawati Sharma, in fact amounts to admission that title had been conferred through the impugned sale deeds. All that she contested in the reply, which was also carried further, in revisional proceedings, was the validity of the subsequent instruments, which were sought to be the basis for recovery of rent, and creation of rights in others" favour. So far as the impugned sale deeds are concerned, it is apparent that in the reply to the application (by Satyawati Sharma) and the revision petition (filed by the plaintiff) there is clear concession about the title of applicants on account of the impugned sale deeds.

Having regard to the averments in the plaint, in the present suit, that the plaintiffs became aware of the fraud in the sale deeds, after the death of Satyawati Sharma (without explanation as to why the plaintiffs did not impugn it in 2004, or in any manner reserve their rights in any pleading in the revisional proceedings), the above surrounding circumstances are clear pointers to the contrarar. The in fact amount to admissions based on pleadings.

18. A litigant who approaches the court for relief should not be doing so, in derogation of a previously held and articulated position. It needs hardly be emphasized that inconsistent pleas are not permitted in the same action. Equally inconsistent pleas are not permitted in two different actions. This was held to be so in *Cooke v. Rickman* (1911) 2 KB 1125. The Court there held that the rule of estoppel could not be restricted to a matter in issue, stating:

...The rule laid down in *Hawlett v. Tarte* (1) C.B. (N.S.) 813 - was that if the defendant in a second action attempts to put on the, record a plea which is inconsistent with any traversable allegation in a former action between the same parties there is an estoppel....

19. The Supreme Court held, in *Jai Narain Parasrampuria (Dead) and Others Vs. Pushpa Devi Saraf and Others*, that:

While applying the procedural law like principle of estoppel or acquiescence, the court would be concerned with the conduct of a party for determination as to whether he can be permitted to take a different stand in a subsequent proceeding, unless there exists a statutory interdict.

The court also held:

The doctrine of estoppel by acquiescence was not restricted to cases where the representor was aware both of what his strict rights were and that the representee was acting on the belief that those rights would not be enforced against him. Instead, the court was required to ascertain whether in the particular circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly or unknowingly, he had allowed or encouraged another to assume to his detriment. Accordingly, the principle would apply if at the time the expectation was encouraged.

All these principles were reiterated and applied in *Deewan Singh and Others Vs. Rajendra Pd. Ardevi and Others*, .

20. The plaintiffs categorically stated, in the previous revisional proceeding that they were not challenging the sale deeds of 1995; they have also averred to that effect, in the revision petition, admittedly filed by them. Also, the revision itself arose out of an application filed by the applicant defendants here, under Order 22 Rule 10, CPC. The plaintiff's predecessor in interest, as a matter of pleading, categorically averred having executed the sale deeds. She contested the right to recover rents for a certain period, and having conferred residual rights. However, as far as validity of the impugned sale deeds are concerned, she did not deny

them.

21. In the totality of the above circumstances, the court is of the opinion that the plaintiffs are estopped from maintaining the suit; they are also deemed to have acquiesced to the applicant's title. The averments in the suit are not that they became aware of the so called fraud, after the order of this Court; indeed, the cause of action, according to them, arose after the death of Satyawati Sharma.

22. In the decision reported as N.V. Srinivasa Murthy and Others Vs. Mariyamma (dead) by Proposed LRs. and Others, , while adverting to the T. Arivandandam Vs. T.V. Satyapal and Another, it was held:

This is a fit case not only for rejecting the plaint but imposing exemplary costs on the appellant on the observations of this Court in the case of T. Arivandandam v. T.V. Satyapal:

The trial court must remember that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise its power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, the court must nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men (Chapter 11) and must be triggered against them.

23. The previous pleadings adverted to above, by this Court, clearly estop the plaintiffs from disputing the validity of the documents, impugned in these proceedings. Though the suit alleges fraud, the elements and basis of such fraud are tell tale and vague. The suit is a disguised attempt to attack the title to something which the vendor herself did not dispute in her lifetime; the plaintiffs elected in their pleadings, in the revision, not to challenge these documents. Therefore, the suit is not maintainable on the principle of estoppel by pleading, and acquiescence.

24. In view of the above discussion, the plaint in the suit is barred, under Order VII, Rule 11 (d), CPC. It is accordingly rejected. The suit and all pending applications are therefore rejected.