

(2019) 11 MP CK 0278

In the Madhya Pradesh High Court

Case No : Writ Petition No. 18032 Of 2018, 16898 Of 2019

Purnima Parekh And Ors

APPELLANT

Vs

Ashok Kumar Shrivastava And Others

RESPONDENT

Date of Decision : 08-11-2019

Acts Referred:

Code Of Civil Procedure 1908 — Section 89, 151
Transfer Of Property Act, 1882 — Section 3
Indian Registration Act, 1908 — Section 30(2)
Constitution Of India, 1950 — Article 226

Citation : (2019) 11 MP CK 0278

Hon'ble Judges : Vishal Mishra, J

Bench : Single Bench

Advocate : H.K. Shukla, N.K. Gupta, Devendra Sharma, Anmol Khedkar, D.D. Bansal

Final Decision : Allowed

Judgement

1. The present petition is being filed being aggrieved by an order dated 27.02.2016 passed in Lok Adalat by III Civil Judge, Class-II, Distt. Guna whereby, learned trial Court has passed an order on the basis of compromise between the parties and sale deed is directed to be executed in pursuance to the earlier agreement to sale dated 30.04.1985. It is alleged by learned counsel for petitioner that the impugned order has been obtained by playing fraud and misrepresentation by respondents No. 1 and 2 with the learned trial Court as well as with the petitioner.

2. It is alleged that sale deed was got executed by respondent No.2-Keshri Singh in favour of petitioner on 26.12.2012 and on the basis of aforesaid sale deed, her name is being mutated in the Revenue Records. An affidavit was executed by respondent No.2/Keshri Singh to the effect that earlier agreement dated 30.04.1985 has been cancelled by mutual consent of the parties and the amount has been paid back and the property is free for sale therefore, the sale deed was got executed by respondent No.2/Keshri Singh in favour of the petitioner.

3. It is further alleged that on 30.04.1985, an agreement was executed by respondent No.2/Keshri Singh in favour of respondent No.1/Ashok Kumar Shrivastava with respect to the disputed property. Thereafter, a civil suit has been filed by respondent No.1 for specific performance of agreement to sale which was registered as a Civil Suit No.35-A/88 which was finally decided vide judgment and decree dated 11.08.1989 and suit was decreed in favour of the plaintiff with a direction that plaintiff is entitled for an amount of Rs. 1500/- from Keshri Singh and in case, failure of deposition of the amount within two months, then respondent No. 1/Ashok Kumar Shrivastava is free to execute the sale deed with respect to disputed land bearing Survey No. 28 being area 0.156 hectare out of total area 0.470 hectare. In pursuance to the aforesaid judgment and decree passed by the trial Court, the agreement was being executed by respondent No.2/Keshri Singh in favour of respondent No.1/Ashok Kumar Shrivastava to the effect that in pursuance to the judgment and decree dated 11.08.1989 they have received entire amount along with interest and compensation from respondent No.2/Keshri Singh with a specific stipulation that respondent No.2/Keshri Singh is free to execute the sale deed in favour of any other person. Agreement dated 30.04.1989 was returned back to respondent No.2/Keshri Singh and respondent No. 1/Ashok Kumar Shrivastava was having no right to raise claim now on the disputed land. The execution proceedings which were filed before the trial Court were dismissed vide order dated 07.08.1998 and thereafter, a subsequent sale deed was executed by Keshri Singh in favour of petitioner on 26.12.2012. The respondent No. 2 has not disclosed about the previous round of litigation, which was between the parties and on the basis of the sale deed executed in the year 1985 and fresh civil suit was filed by respondent No.1/Ashok Kumar Shrivastava wherein respondent No.2/Keshri Singh was impleaded as defendant No. 1 and the petitioner was not made any 5 W.P. 18032-2018 & W.P. No. 16898/2019 party to the aforesaid civil suit. The civil suit was registered as Civil Suit No. 211/2015, during pendency of the civil suit, an application was filed under Section 89 and Sec. 151 of CPC for early hearing of the matter and for listing the case in Lok Adalat as the parties have amicably settled the issues. Considering the aforesaid application, matter was sent to the Lok Adalat proceedings. Thereafter, the matter was taken up for recording of statements in terms of compromise. On 20.02.2016, statements were recorded and in pursuance to the compromise entered into between the parties, case was finally disposed off vide impugned judgment and decree dated 27.02.2016 passed in Lok Adalat and the Court fees was directed to be refunded. Counsel for the petitioner has drawn attention of this Court to statement recorded during the proceedings of Ashok Kumar Shrivastava and Keshri Singh wherein, they have categorically stated that in pursuance to the settlement entered into between the parties, they have agreed to settle their lis in terms of the compromise. But the fact remains that despite of the fact that respondents No. 1 and 2 were fully aware of closure of the earlier proceeding and affidavit to the aforesaid facts was tendered by respondent No.2 prior to execution of sale deed in favour of the petitioner and despite of the fact having full knowledge

about the sale deed dated 26.12.2012 in favour of petitioner, a subsequent sale deed dated 11.10.2017 was executed in favour of respondent No. 1 by respondent No.2 by playing fraud and misrepresentation. The respondent No. 2 has given a specific affidavit regarding the closure of the earlier proceedings which was duly confirmed by the respondents No. 1, but despite of same, a second civil suit was filed without making the petitioner as party to the lis and by suppression of all the earlier facts which were in the knowledge of the parties in a most arbitrary manner and by mis-representation and by playing fraud with the Courts, the matter was settled through mediation proceedings in Lok Adalat. The aforesaid act on the part of respondent Nos. 1 & 2 is highly illegal, arbitrary and is outcome of connivance and fraud played with the petitioner as well as with the learned trial Court and by misusing provision of mediation proceedings, the order impugned has been obtained from the learned trial Court. Thus, the petitioner has submitted that an entire proceedings on the basis of which the impugned order has been passed is void abinitio and as per the settled position of law that fraud vitiates everything, the judgment and decree passed in Lok Adalat on the basis of compromise entered into between the parties is per se illegal, arbitrary and is void ab initio as the same is an outcome of fraud on the part of respondents No. 1&2. He has prayed for quashment of entire proceedings and for appropriate action against respondent Nos. 1 and 2 for suppression of facts and playing fraud with the Court.

4. That, similarly in writ petition No. 16898/2019, the petitioner claims to be owner of the property in dispute and said to have been purchased the property by way of registered sale deed executed by respondent No. 2-Keshri Singh in her favour vide sale deed dated 26.12.2012 (registered on 09.01.2013) with respect to Survey No. 28 area 0.078 hectare out of area 0.156 hectare (which was subject matter of agreement Ex.P/2) after receiving entire consideration of Rs. 3,00,000/-. On the basis of the aforesaid sale deed, petitioner's name was mutated in the revenue records vide order dated 31.12.2013, but the Tahsildar on initiating proceedings of suo moto revision, the mutation order dated 31.12.2013 was cancelled vide order dated 16.06.2015 which was also affirmed by the Sub-Divisional Officer vide order dated 28.03.2017. Both the orders were put to challenge before the Additional Commissioner, Gwalior Division, Gwalior. The Additional Commissioner, Gwalior Division, Gwalior vide its order dated 02.08.2019 has set aside both the orders and name of the petitioner was recorded in the revenue records. In the meanwhile, respondent No. 1-Ashok Kumar Shrivastava in connivance with respondent No.2-Keshri Singh has filed another civil Suit bearing Civil Suit No. 211-A/2015 dated 02.11.2015 before Civil Judge, Class-II, Guna for specific performance of agreement to sale dated 30.04.1985, the proceedings which have already been concluded herein above and by filing of an application for listing of the case before the Lok Adalat, on the basis of compromise in the matter, the impugned order has been obtained. 5. Per contra, counsel appearing for respondent No.1 has filed an application for dismissal of the writ petition contending therein that in pursuance to the

agreement to sale dated 30.04.1985 whereby, respondent No. 2 has alienated the disputed land 0.078 hectare out of total area of 0.470 hectare and in pursuance to judgment and decree dated 11.08.1989 passed in a civil suit, filed for specific performance of agreement to sale, the respondent No. 1 was entitled for execution of the decree dated 11.08.1988. The judgment and decree passed by the learned trial Court in the year 1988 is still in existence and Keshri Singh was having no right or authority to alienate the property to the petitioner. He has further contended that several disputed questions and facts are involved in the present writ petition which cannot be looked into the petition under Article 226 of the Constitution of India. He has further contended that petitioner is having alternative and efficacious remedy for redressal of her grievances that should be availed by the petitioner and the petition is not maintainable. It is further submitted that another civil suit filed by one Smt. Preety Jain who is also claiming rights on the basis of sale deed executed by Keshri Singh in her favour and learned trial Court vide order dated 29.11.2017 has rejected the application filed by Smt. Preety Jain in Civil Suit No.55-A/2016. He has prayed for dismissal of the writ petition.

6. Learned counsel appearing for respondent No. 2 though have not submitted any response to the petition, but has orally argued the matter stating therein that no fraud is being played by the respondent No. 2 and in pursuance to the judgment and decree passed by the trial Court in the year 1989 and on the basis of the civil suit proceedings initiated by the respondent No. 1 and in Civil Suit he was bound to compromise the matter as there was judgment and decree dated 11.08.1989 passed by the trial Court in his favour. Under such compelling circumstances, he has given his consent in the mediation proceedings for complying with the direction given by the learned trial Court passed in judgment and decree dated 11.08.1989. He has prayed for dismissal of the writ petition.

7. A return has been filed by respondent No. 3 alleging therein that he is formal party to the litigation and it has been contended that the petition is not maintainable owing to the fact that alternative remedy is available to the petitioner. He has prayed for dismissal of the petition.

8. Heard learned counsel for the parties and perused the documents appended with the petition.

9. From perusal of the record, it is seen that the present case is having chequered history. On 30.04.1985, a agreement was executed by respondent No.2/Keshri Singh who was the owner of the land bearing Survey No. 28 being area 0.0.470 hectare in favour of respondent No. 1/Ashok Kumar Shrivastava for agreement to sale of property area 0.156 hectare (P/7-A). When no sale deed was executed in pursuance to the aforesaid agreement, a civil suit was filed by respondent No. 1/Ashok Kumar Shrivastava before the learned trial Court for specific performance of agreement to sale, which was registered as Civil Suit No. 35-A/1988. The Civil Suit was filed on 24.05.1988, the same was finally heard and decided vide judgment and decree dated 11.08.1989 with the following

directions:-

''(अ) वादी प्रतिवादी से 1500/-रूपये की राशि प्राप्त करने का अधिकारी है।

(ब) यदि प्रतिवादी वादी को विधिवत रजिस्टर्ड ए.डी. से नोटिस भेजकर वादी द्वारा विधिवत तामीलो के पश्चात भी यदि प्रतिवादी रु.1500/- का भुगतान नोटिस तामील होने की तिथि से दो माह की अवधि में नहीं करें तो वादी को यह अधिकार होगा कि वह प्रतिवादी से ग्राम खिरिया जिला गुना भूमि सर्वे क्र 28 रकबा 0.470 हैक्टेयर में से 0.156 हैक्टेयर का विक्रय पत्र निष्पादित करावे। (स) यदि उक्त समयावधि में प्रतिवादी विक्रय पत्र का सम्पादन नहीं करावे तो न्यायालय के माध्यम से वादी विक्रय पत्र निष्पादित कराने का अधिकारी होगा।

(द) वादग्रस्त भूमि को प्रतिवादी अनुबंध के निष्पादित होने तक अंतरण नहीं करेगा।

(ध) यदि वादी विक्रय पत्र निष्पादित कराने के बजाय बकाया रकम का भुगतान करता है तो वादी को प्रतिवादी से मूलधन पर 6 रुपये प्रति सेकड़ा प्रतिवर्ष की दर से ब्याज प्राप्त करने का अधिकारी होगा।

(न) वादी का वाद व्यय प्रतिवादी अदा करे।''

10. After passing of the judgment and decree by the learned trial Court, execution proceedings were filed by the respondent No.1-Ashok Kumar Shrivastava for compliance of judgment and decree dated 11.08.1989. The execution application was filed by respondent No.1 on 10.09.1997, thereafter on 07.08.1998, an application was filed by respondent No. 2 for dismissal of the execution proceedings for want of prosecution, on the basis of an agreement entered into by respondent No.1-Ashok Kumar Shrivastava and respondent No.2-Keshri Singh in pursuance to judgment and decree dated 11.08.1989 to the effect that he has received an amount of Rs. 1500/- and returned the original documents to Keshri Singh with further observations that Keshri Singh is free to sell the disputed land to another persons, there will be no claim of respondent No.1/Ashok Kumar Shrivastava or his legal LR's on the aforesaid land. Thereafter, respondent No. 2 has again executed a sale deed on 26.12.2012 in favour of petitioner with respect to land bearing Survey No. 28 area being 0.078 hectare (the same land of which sale deed was executed to the respondent No. 1) and amount of Rs. 3,00,000/- were received from the petitioner (Annexure P/8 sale deed). On the basis of aforesaid sale deed, name of the petitioner was entered into the Revenue Records. The affidavit given by the respondent No. 2 to the effect that the land which was sold is free in all encumbrances and the agreement dated 30.04.1985 has already been cancelled and the proceedings in pursuance to the same has finalized and the respondent No. 2 was not having any right over the land as the amount has already been returned back by respondent No. 2/Keshri Singh and the original documents were returned to Keshri Singh. Being full aware of the aforesaid proceedings, respondent No. 1 filed a civil suit on 04.01.2015 against the Keshri Singh for specific performance of the agreement to sale (with respect to agreement to sale dated 30.04.1985) which was registered as Civil Suit No. 211-A/2015 wherein, the petitioner was not impleaded as party. The civil suit was filed by suppressing all the facts of earlier proceedings which took place between the respondents No. 1 and 2 and which have attained finality and by misrepresenting and playing fraud, the

matter was finally settled in Lok Adalat on the basis of a compromise which was entered into between respondents No. 1 and 2. The learned trial Court has finally disposed of the civil Suit on 28.07.2016 on the basis of compromise and a subsequent sale deed was executed on 11.10.2017 by respondent No. 2 in favour of respondent No. 1, despite of the fact that actual valuation of the land as per Government Guidelines is Rs. 43,54,200/- which is clearly mentioned in sale deed dated 11.10.2017. It is pertinent to mention here that respondent No. 2-Keshri Singh is ex-parte in the proceedings of execution which were pending before the trial Court. But the fact remains that the respondent No. 2 himself being fully aware of the earlier proceedings has got executed the sale deed in favour of the petitioner on 26.12.2012 and possession of the land was handed over to the petitioner. The petitioner got her name mutated in the Revenue Records on the basis of sale deed. Thus, by playing fraud and by misrepresenting before the trial Court, respondent No. 1 in connivance with the respondent No. 2 has got obtained the judgment and decree by settling the issue in the Lok Adalat which itself is per se illegal, arbitrary and amount to playing fraud which is clearly visible from the facts available on record.

There is no proper explanation being filed by either of the respondents to show their conduct and there is no explanation that after execution of sale deed dated 26.12.2012 in favour of the petitioner, how the second civil suit was filed, which itself was not maintainable. Once, the proceedings of earlier civil suit filed for specific performance of agreement to sale stood finalized and in pursuance to judgment and decree passed dated 11.08.1989, the entire proceedings have ended by cancellation of agreement to sale dated 30.04.1985, to which the parties have also submitted their affidavits. Thus, entire subsequent proceedings since from the filing of second civil suit dated 04.01.2015 being civil Suit No. 211-A/2015 is an outcome of the fraud by the respondent No. 1 in connivance with the respondent No. 2 are null and void and an outcome of misrepresentation, suppression of facts and playing of fraud. It is settled position of law that fraud vitiates everything. The Hon'ble Supreme Court in the case of Lilly Kutty vs Scrutiny Committee, S.C. And S.T reported in (2005)8 SCC 283 while dealing concept that fraud vitiates everything has considered in the case of Ram Chandra Singh Vs. Savitri Devi reported in (2003) 8 SCC 319, wherein it is held that "fraud is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter."

11. It was further held that "A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad."

12. It was further held that "An act of fraud on court is always viewed seriously.

A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous."

24. In *Arlidge & Parry on Fraud*, it is stated at page 21:

"Indeed, the word sometime appears to be virtually synonymous with "deception", as in the offence (now repealed) of obtaining credit by fraud. It is true that in this context "fraud" included certain kind of conduct which did not amount to false pretences, since the definition referred to an obtaining of credit "under false pretences, or by means of any other fraud". In *Jones*, for example, a man who ordered a meal without pointing out that he had no money was held to be guilty of obtaining credit by fraud but not of obtaining the meal by false pretences: his conduct, though fraudulent, did not amount to a false pretence. Similarly it has been suggested that a charge of conspiracy to defraud may be used where a "false front" has been presented to the public (e.g. a business appears to be reputable and creditworthy when in fact it is neither) but there has been nothing so concrete as a false pretence. However, the concept of deception (as defined in the Theft Act 1968) is broader than that of a false pretence in that (inter alia) it includes a misrepresentation as to the defendant's intentions; both *Jones* and the "false front" could now be treated as cases of obtaining property by deception."

25. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res-judicata*.

13. The Hon'ble Supreme Court has considered the judgment passed in the case of *Shrisht Dhawan Vs. Shaw Bros.* reported in (1992) 1 SCC 534 has held that "Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct."

14. The Hon'ble Supreme Court in the case of *Lazarus Estates Ltd. Vs. Beasley* reported in (1956) 1 QB 702 (CA) the Court of Appeal stated the law thus:-

"I cannot accede to this argument for a moment. No Court in this land will allow a person to keep an advantage which he has obtained by fraud. 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. The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever."

15. The Hon'ble Supreme Court in the case of *Lachhman Dass Vs. Jagat Ram and Others* reported in (2007) 10 SCC 448 has held in paras 15 and 19 as under:-

"15. The fact that Appellant had purchased the suit premises was known to her. The appellant was in possession of the land. The execution of a registered deed of sale shall also be treated as a notice in terms of Section 3 of the Transfer of Property Act, 1882, which is in the following terms :

"3....."a person is said to have notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanaiion I. Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub- district, or where the registered instrument has been registered under sub- section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:

Provided that --

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908), and the rules made thereunder,

(2) the instrument or memorandum has been duly entered or filed, as the case may be, in books kept under Section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II. Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof."

* * * * *

"19. If the Defendant Nos. 1 and 2 only could not have accepted the said amount as a valid consideration of passing of a decree of pre-emption in favour of the Respondent No.9; the purported consent decree, in our opinion, was void ab initio. Moreover, in the aforementioned facts and circumstances of this case, the appellant was a necessary party therein. No decree, therefore, could have been passed in his absence. The parties to the said suit and, in particular, Defendant-Respondent Nos. 1 and 2, therefore, by suppression of material facts committed a fraud on the Court in obtaining the said decree. It may be true that collusion between Respondent No.9 and Defendant Nos.1 and 2 was required to be specifically pleaded, but in this case collusion between them is apparent on the face of the records. The circumstances obtaining in the case lead to only one conclusion that the parties were in collusion with each other for the purpose of obtaining the said decree."

16. The Hon'ble Supreme Court has held that the consent decree obtained by

fraud or misrepresentation is void-ab-initio.

17. Thus, in view the aforesaid law laid down by the Hon'ble Supreme Court, wherein concept of fraud was considered and which is fully applicable in the present facts and circumstances of the case, as despite having being full knowledge regarding previous transaction & agreements entered into between the parties and earlier agreements were cancelled, but by suppression of earlier proceedings, a subsequent sale deed was got executed by respondent No. 2 in favour of respondent No. 1 which is a clear cut case of fraud played by respondent No. 1 in collusion with respondent No. 2.

18. In the aforesaid facts and circumstances of the case and taking into law laid down by Hon'ble Supreme Court as well as High Court in aforesaid cases, it has been held that all the subsequent proceedings which have been initiated by the respondent No. 1 in connivance with the respondent No. 2 by filing fresh Civil Suit No. 255-A/2015 on 04.01.2015 are held to be not maintainable barred by res-judicata and the subsequent sale deed dated 11.10.2017 is hereby set aside and is declared null and void ab initio. Respondent No. 1 and 2 are held to be guilty of misrepresenting and playing fraud with the learned trial Court and also playing fraud with the petitioner, therefore, are liable to be penalized by imposing appropriate costs for their conduct and suppressing material information which was very well within their knowledge.

19. Accordingly, the present writ petition is hereby allowed with the cost of Rs. 1,00,000/- (Rs. 50,000/- each on respondents No. 1 & 2) to be deposited by respondent No. 1 and 2 within a period of three months from the date of posting of the order. Out of which 25% is directed to be given to each of the petitioners and remaining is directed to be deposited in Legal Aid Services Authority of Gwalior. Compliance report be filed before the Registry of this Court further fifteen days.

20. With the aforesaid directions, the petition stands allowed.