
(2013) 07 MP CK 0378
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3021 of 2009

Ramjidas Agrawal

APPELLANT

Vs

Smt. Kusum Lata and Others

RESPONDENT

Date of Decision : 30-07-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2013) 07 MP CK 0378

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Advocate : D.D. Bansal, for the Appellant; P.C. Chandil, Advocate for the Respondents No. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Gangele, J.—This petition has been filed by the petitioner against the order dated 25-04-2009 (Annexure P-1), by which the Executing Court allowed the application of the objectors. The petitioner-decree holder filed a suit for specific performance of contract against Dropadi Bai. During pendency of the suit, Dropadi Bai was died and her legal representatives were brought on record. The petitioner-plaintiff pleaded that the suit property was received by Dropadi Bai during his mother vide a "Will". On 05-10-1979 Dropadi Bai executed an agreement to sale the house in a consideration of Rs. 40,000/-.

2. After death of Dropadi Bai, the legal representatives of Dropadi Bai (defendants) filed an application under Order 23 Rule 3 read with Section 151 of CPC for compromise. The trial Court accepted the compromise and it was agreed between the parties that the suit house shall be sold in a consideration of Rs. 4,02,000/-. A judgment and decree was passed by the trial Court on 20-06-2005 to this effect.

3. The petitioner-decree holder filed execution proceedings for execution of decree and also recovery of possession. In the aforesaid proceedings, the

respondents No. 1 to 4 filed objections to the effect that the judgment and decree obtained by the petitioner-plaintiff by playing fraud. The owner of the property was Shivajirao Bhonsle S/o. Shri Umajirao Bhonsle. He executed two sale deeds on 13/12/1982 and 14/11/1982 in favour of the objectors in regard to suit property and possession of property was handed over to them. Since then, the objectors are in possession of the suit property and their names have also been recorded as owner of the house in the record of Municipal Corporation. Nobody objected about the same. They further pleaded that at the time of compromise, the legal representatives of Dropadi Bai were not in possession over the suit property. The decree-holder also filed a suit before the Third Additional District Judge against the objectors which was registered as Civil Suit No. 5-A/2002. That was also dismissed. Earlier, Umajirao Bhonsle filed a suit against Dropadi Bai which was registered as Civil Suit No. 8-A/1964 and the First Additional District Judge vide judgment and decree dated 08-07-1968 decreed the suit to the effect that Umajirao Bhonsle was owner of the suit property. It is further pleaded that in another Civil Suit No. 35-A/2001[Umajirao Vs. Ramjidas], the Court of 10th Additional District Judge vide judgment and decree dated 13-09-2004 held that Indra Bai had no right and interest of ownership in the suit property, hence, she had no right to execute the "Will". The trial Court after considering the facts of the case, allowed the application.

4. Learned counsel for the petitioner submitted that earlier the objectors filed an application under Order 1 Rule 10 of CPC before the trial Court. That was rejected by the trial Court vide order dated 22-03-2005. He further submitted that Umajirao Bhonsle, Sahajirao Bhonsle, Adinath Bhonsle and Shivajirao Bhonsle also filed an application under Order 1 Rule 10 of CPC for making them as party in the suit. That was also dismissed vide order dated 07-02-2000. Hence, the objectors have no right to submit objections before the Executing Court. Also a Civil Suit was filed by Umajirao Bhonsle, Adinath Bhonsle, Sahajirao Bhonsle and Shivaji Rao against the petitioner and other persons and the trial Court refused to withdraw the suit, however, in Civil Revision No. 02/2004, the plaintiffs were allowed to withdraw the suit, hence, the objectors have no right to file the objection in execution proceedings.

5. In the present case, the objectors have pleaded that the compromise decree obtained by the petitioner by playing fraud. It has further been submitted that in earlier suit proceedings it was held that mother of Dropadi Bai had no right in the suit property, hence, Dropadi Bai was not competent to execute the agreement to sale. Apart from this, it is submitted that the legal representatives of Dropadi Bai entered into compromise, however, the agreement was executed by Dropadi Bai. The legal representatives of Dropadi Bai had no power and authority to convince the Court about the merits of agreement whether it was proper or not?; whether it was executed by Dropadi Bai or not ? it was not suit of ownership, hence, they had no right to enter into a compromise in specific performance of contract. It is a fact that the legal representatives of Dropadi Bai entered into compromise. The suit was for specific performance of contract instituted by the

plaintiff against Dropadi Bai. A serious question is before consideration of the Court that whether in a suit for specific performance of contract, the legal representatives could enter into an agreement about the validity of contract. In the present case, the objectors claimed that they got the right of ownership on the basis of sale deed and their names have also been recorded in the record of Municipal Corporation.

6. Hon"ble the Supreme Court in the case of A.V. Papayya Sastry and Others Vs. Government of A.P. and Others, has held as under in regard to fraud:-

21, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed:

Fraud avoid all judicial acts, ecclesiastical or temporal.

22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order-by the first court or by the final court-has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.

23. In the leading case of Lazarus Estates Ltd. v. Beasley (1956) 1 All ER 341 Lord Denning observed: (All ER p. 345 C)

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

24. In *Duchess of Kingstone*, Smith's Leading Cases, 13th Edn.; p. 644 explaining the nature of fraud, d Grey, C.J. stated that though a judgment would be *res judicata* and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was "mistaken", it might be shown that it was "misled". There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside, if the court was imposed upon or tricked into giving the judgment.

25. It has been said: fraud and justice never dwell together (*fraus et jus nunquam cohabitant*); or fraud and deceit ought to benefit none (*fraus et dolus nomini patrocinari debent*).

26. Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in *rem* or in *personam*. The principle

of "finality of litigation" cannot be stretched to the extent of an absurdity that it can be utilized as engine of oppression by dishonest and fraudulent litigants.

27. In *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, , this Court had no occasion to consider the doctrine of fraud and the effect thereof on the judgment obtained by a party. In that case, one A by a registered deed, relinquished all his rights in the suit property in favour of C who sold the property to B. Without disclosing that fact, A filed a suit for possession against B and obtained preliminary decree. During the pendency of an application for final decree, B came to know about the fact of release deed by A in favour of C. He, therefore, contended that the decree was obtained by playing fraud on the court and was a nullity. The trial Court upheld the contention and dismissed the application. The High Court, however, set aside the order of the trial court, observing that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". B approached this Court.

28. Allowing the appeal, setting aside the judgment of the High Court describing the observations of the High Court as "wholly perverse", Kuldeep Singh, J. Stated: (SCC P.5, para 5)

The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out any stage of the litigation.

(emphasis supplied)

29. The Court proceeded to state: (SCC p.5, para 5)

A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

30. The Court concluded: (SCC p.5, para 5)

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

31. In *Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd.*, referring to *Lazarus Estates and Smith v. East Elloe Rural Distt. Council* (1956) 1 All ER 855 this Court stated:(SCC pp. 562-63, para 22)

22. The judiciary in India also possesses inherent power, specially u/s 151 CPC, to recall its judgment or order if it is obtained by fraud on court. In the case of fraud on a party to the suit or proceedings, the court may direct the affected

party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the court's business.

(emphasis supplied)

From the aforesaid judgment of Hon"ble the Supreme Court, now it can be held that the fraud vitiates everything and even though the Court can take cognizance during execution proceedings. As mentioned by Hon"ble the Supreme Court in paragraph 24 of the judgment citing a judgment of English Court the judgment can be set aside if the Court was imposed upon or tricked into giving the judgment and in that event the principle of res judicata would not be applicable. The earlier facts pleaded by the objectors in the objection application were not decided by the Court and simply the application under Order 1 Rule 10 of CPC was dismissed on the ground that in a suit for specific performance of contract the lis is between the parties, hence, the objectors could not be added as party. In my opinion, this Court could not preclude the objectors to raise the objections in execution proceedings. Hence, I do not find any merit in this writ petition. It is hereby dismissed. No order as to costs.