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(2009) 07 CHH CK 0010

In the Chhattisgarh High Court

Case No : Civil Revision No. 25 of 2007

Smt. Jugmati APPELLANT

Vs

Shabbir Hussain and Others RESPONDENT

Date of Decision : 28-07-2009

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 151, 47

Citation : (2009) 3 CGLJ 234

Hon'ble Judges : N.K. Agarwal, J

Bench : Division Bench

Advocate : Ravish Chandra Agrawal and Rajeev Shrivastava, for the Appellant; Ali Asgar, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Agarwal, J.—Feeling aggrieved by the order dated 22-1-2007 passed in Execution Case No. 51A/90 by the District Judge, Bilaspur on an application u/s 47 of CPC filed by the applicant whereby the application has been dismissed, the instant revision has been preferred.

2. As per record, brief facts giving rise to this revision are as under:

i. The applicant Smt. Jugmati along with her two brothers Tetkoo and Hagru inherited the suit property bearing Khasra No. 647/1 area 1.35 hectare situated at village Tifra, Tehsil and Distt. Bilaspur as tenants-in-common having 1/3rd share in the suit property.

ii. On 27-1-87, the Respondents No. 1 and 2 (hereinafter referred to as "decree holder") entered into an agreement of sale with Hagru and Tetku (applicant Jugmati was a consenting party as per agreement) with regard to suit land for a consideration of Rs. 3,30,000/- out of which Rs. 50,000/- was paid to Hagru and Tetku.

iii. Upon refusal to execute the sale deed, a suit for specific performance was

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filed, which was registered as Civil Suit No. 51A/90.

iv. Sommons on applicant was served through her brother, which was sent at village Sewati.

v. judgment debtors engaged late Bhagirathi Pradhan as counsel who filed Vakalatnama. Written statement was filed jointly, the suit was hotly contested and thereafter a decree for specific performance of contract was passed in favour of the decree holder on 13-12-95.

vi. First Appeal as indigent person was filed before the High Court of M.P. bearing M.C.C. No. 531/96.

vii. On 15-1-96, execution proceedings in the suit was initiated by the decree holder and balance amount of consideration i.e. Rs. 2,80,000/- was deposited along with necessary stamps, required for registration. On 3-10-96, Shri Bhagirathi Pradhan, counsel for the judgment debtor filed an application u/s 151 of CPC for stay of execution proceedings in view of the status quo order passed by the High Court in first appeal. The executing Court stayed further proceedings.

viii. On 1-3-2005, the judgment debtors filed an application for withdrawal of the first appeal. On 16-3-2005, the High Court dismissed the M.C.C. (First Appeal) as withdrawn.

ix. On 19-4-2005 based on withdrawal of appeal, the decree holder took back the non-judicial stamp valued at Rs. 42,500/- and proceeding in the execution case was closed by the Court.

x. The decree holder filed an application u/s 151 of CPC which was registered as M.J.C. No. 60/2005 against Hagru, Smt. Jugmati, Chandrashekhar, Santosh, Vijay and Smt. Bhuribai (who subsequently died) i.e. legal representatives of Tetku and Parash Nath, Surendra Nath, Mahendra Nath and Rahul Bajpai and sought for restoration of execution proceedings on the ground that despite the decree in their favour and despite compromise took place, the judgment debtor inspite of executing sale deed in their favour executed a sale deed in favour of Paras Nath, Surendra Nath and Mahendra Nath on 6-6-2005 for a consideration of Rs. 38,29,000/-.

xi. The non-applicants in the M.J.C. No. 60/2005 filed their separate reply in which they have said that after compromise took place before the High Court, the decree holder did not get the sale deed executed within the time prescribed by the compromise and, only thereafter they have sold the said land to Paras Nath, Surendra Nath and Mahendra Nath and also handed over its possession.

xii. The District Court vide order dated 20-2-2006 restored the execution proceedings in execution case No. 51A/90 and also directed the parties to maintain status quo with regard to the suit land.

xiii Pursuant to the order dated 11-5-2006, summons in the execution case was served upon the applicant through newspaper publication in Dainik Bhaskar daily

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newspaper dated 18-5-2006. On 24-6-2006, the applicant was proceeded ex-parte. Thereafter the execution case was mainly contested by Paras Nath, Surendra Nath and Mahendra Nath.

xiv. On 25-9-2006, Shri O.P. Agrawal, Advocate, appeared on behalf of the applicant (judgment debtor No. 2) filed an application u/s 47 of CPC along with an application u/s 151, CPC for examination of thumb impression of the applicant by handwriting expert stating that summons of suit was never served upon her; she did not sign power of attorney, Vakalatnama, written statement or any paper during the suit or execution proceedings; she did not file any appeal along with her brothers; did not withdraw the same; she was absolutely unknown about the proceedings; the said decree has been passed against her by using her forged and fake thumb impression in the papers by her brothers in collusion with the decree holders. She being the owner of 1/3rd share of the suit land, the decree passed is not binding upon her and is to the extent of her share, void ab initio. It was further stated that as no agreement to sell has been executed by her along with her brothers in favour of the decree holder and therefore, the decree itself is illegal, void and bad. As per the application, the applicant was recently made aware about all the proceedings by her purchaser.

xv. The trial Court on a close scrutiny of the material on record, dismissed the application.

3. Placing reliance upon the judgment of Supreme Court in the cases of Sabitri Dei and Others Vs. Sarat Chandra Rout and Others, , Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd., , Balwinder Kaur Vs. Hardeep Singh, , Kesar Singh and Others Vs. Sadhu, , Pratap Rao Krishnarao Phalke Vs. Krishi Upaj Mandi Samiti and Others, and S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, , Shri Ravish Chandra Agrawal, learned Sr. Counsel appearing for the applicant, would submit that when a specific plea of fraud practiced upon her has been raised which, if proved, vitiates everything and renders the proceedings as well as the decree as a nullity, therefore, learned trial Court ought to have passed the order only after conducting a detailed enquiry on the allegations of fraud. Having not done so, the learned trial Court committed serious jurisdictional illegality/error and the matter requires to be remitted back to the trial Court.

4. Per contra, Shri Ali Asgar, learned Counsel appearing for the Respondents placing reliance upon the judgments in the cases of Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and Others, and Surendra Singh and Ors. v. Lal Sheoraj Bahadursingh and Anr. 1975 MPLJ 57, would submit that the facts situation of the present case would reveal that the application has been filed by the applicant in collusion with the persons/purchasers in whose favour, the applicant along with other judgment debtor executed a sale deed. It is not a case where it can be said that the decree is passed by the Court having no jurisdiction to pass it and is patently illegal just on the face of it. The suit was hotly contested by the parties and after a long drawn litigation the decree has been passed. The

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applicant participated in all the proceedings through her counsel along with other judgment debtor and only after execution of sale deed in others favour, in order to support them, the application was filed on a fake plea of fraud. In fact, they are trying to defraud the decree holders. The conduct of the applicant is unfair. Matter involves highly disputed questions of fact. In the facts situation of the case, if at all, any remedy is available to the applicant, is only by filing a duly constituted suit and not the application u/s 47 of the CPC and, therefore, the trial Court has rightly dismissed the application.

5. The core question involved in this case is whether in the facts situation of this case, allegations of fraud/collusion/forgery can be investigated in an application u/s 47 of the CPC to arrive at a conclusion as to whether or not, the decree passed by the trial Court is a nullity ?

6. It is no doubt true that fraud vitiates everything. Fraud committed before the Court amounts to abuse of process of Court. Once fraud is proved, it will deprive the person of all advantages or benefits obtained thereby, the delay in detection of or in taking action will raise no equities.

7. "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/decree - 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," as observed by the. Supreme Court in S.P. Chengalvaraya Naidu''s (Supra) case.

8. The Supreme Court in the case of Indian Bank''s (supra) case, in para 22 has observed as under:

22. The judiciary in India also possesses inherent power, specially u/s 151 Code of Civil Procedure, 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.

9. Looking to the scheme of Section 47 of CPC and the law laid down by the Supreme Court in several cases, the objection u/s 47, CPC can be entertained by the executing Court when a decree is a nullity i.e. when a decree is obtained by fraud upon the Court.

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10. I have gone carefully through the facts situation of the present case.

11. In the case in hand, the allegations put forth by the applicant in nutshell are that the applicant''s two brothers in collusion with the decree holder put her forged and fake thumb impression upon the power of attorney, Vakalatnama, pleadings and other papers, based on it, the decree in question has been passed against her. Therefore, she has been defrauded by the decree holder as well as the judgment debtor, which is a nullity in the eye of law.

12. A bare perusal of the record would reveal that all these allegations put forth by her are highly disputed and complicated in nature. On one hand, the applicant denies the execution of power of attorney in her brothers'' favour, whereas on the other hand, she executes a sale deed in the favour of subsequent purchasers by giving power of attorney to her brother Hagru. In execution case, despite publication of notice, she did not appear and thereafter she filed an application basing her knowledge through purchaser. She never bothered about her share in the suit land for a period of 18 years. The dispute which she had raised by way of the application, is in fact, with regard to her 1/3rd share in the suit land.

Therefore, looking to the facts and circumstances of the case, and looking to the conduct of the applicant, it cannot be said that any fraud has been committed upon the Court by the decree holder. At the most, fraud if any, can be said to be committed by her brothers upon her. For which, the applicant is not remediless and is always free to file a suit seeking appropriate relief. But the same cannot be investigated u/s 47 of the CPC in the present facts situation of the case.

For this, I place my reliance upon the dictum of Supreme Court in Indian Bank (supra) wherein the Supreme Court has observed that in 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. I am also in respectful agreement with the ratio laid down by the High Court of M.P. in case of Surendra Singh (Supra) wherein it has been held that where a party files a suit to set aside a decree on the ground of fraud or to have it adjudged void or unenforceable on certain grounds and seeks a temporary injunction restraining the execution of the decree, if party succeeds by placing before the Court the strong prima facie evidence of fraud, the Court can always grant temporary injunction to restrain execution of the decree.

13. For the foregoing reasons, I am of the opinion that the order passed does not call for any interference. The revision is liable to be and is hereby dismissed.

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