
(1990) 10 AHC CK 0036

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 23608 of 1989

Smt. Suraj Kumari

APPELLANT

Vs

District Judge, Mirzapur and others

RESPONDENT

Date of Decision : 17-10-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 100, Order 21 Rule 9, Order 23 Rule 3, Order 23 Rule 3A, Order 9 Rule 11
Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 30, 30(1)

Citation : AIR 1991 All 75 : (1990) 1 AWC 18

Hon'ble Judges : R.B. Mehrotra, J

Bench : Single Bench

Advocate : S.D.N. Singh, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

1. By means of the present writ petition under Art. 226 of the Constitution of India, the petitioner has challenged the orders passed by the Munsif Magistrate, Mirzapur, dated 1st September, 1989, rejecting the petitioner's application under O.9. R. 13 read with Section 151 of the CPC for setting aside ex parte decree passed in Original Suit No. 3 of 1985 and also the order of the District Judge, Mirzapur, dismissing the petitioner's Appeal No. 104 of 1989, Smt. Suraj Kumari v. Para Devi,, vide its order dated 28th November, 1989. The said appeal was directed against the order of Munsif Magistrate, Mirzapur, dated 1st September, 1989, referred to above. The main contention of the petitioner's counsel, in the present petition is that both the courts below have committed manifest error of law in taking a view that the application for setting aside the compromise decree dated 22nd May 1985 at the instance of the petitioner who was not a party in Original suit No. 3 of 1985, was not maintainable under O.9 R. 11 read with S. 151 of the Code of Civil Procedure.

2. At the very outset it may be stated that the Courts below have held that in the circumstances of the case the appropriate remedy for the petitioner is by way of filing a regular suit in Civil Court, which the petitioner has already filed and is pending in the court of Munsif Magistrate, Mirzapur.

3. The controversy in the writ petition is very short as to whether in the circumstances of the present case the petitioner could have sought relief, for setting aside the compromise decree entered into between Nagarmal (petitioner's husband) and Smt, Para Devi, in respect of the shop in dispute, of which the petitioner claimed the ownership on the ground that the compromise decree has been obtained by practising fraud on the court, in an application under O.9, R. 13 read with S. 151 of the CPC or the Courts below committed no error in holding that on the facts of the present case the proper remedy for the petitioner is by way of filing a regular suit and which remedy the petitioner has already availed.

4. It is necessary to state some facts for appreciating the controversy raised by the petitioner in the present matter.

5. The relevant pedigree is given below:

Ram Govind Ram (died in 1953) Smt. Muneshwara

Smt. Parvati Devi

Banshidhar (Died in 1977) ? Smt. ParaDevi(respondent No. 3)

Smt. Saras-wati Devi Shyam Sunder Smt. Phool Kumari

Smt. Suraj Kumari (Petitioner)

Gopal Dass

Smt. Devi

Kailash

Daya Ram

Nagarmal (Husband)

Kunwar

Nath

6. Petitioner's case as stated in the writ petition is that one Ram Govind Ram was the owner of the house and the shop situate in Mohalla Dhundi Katra, in the town of Mirzapur. The aforesaid Ram Govind Ram died in the year 1953. Wherein shop in dispute devolved to his wife Smt. Muneshwara and son Banshidhar. Smt. Muneshwara, wife of Ram Govind Ram, who had earlier inherited half share in the property in dispute, became absolute owner of it, on promulgation of Hindu Succession Act, 1956. A family settlement between Smt. Muneshwara and her

son Sri Banshidhar was arrived at and in accordance with which, the western half portion of the house in dispute including the shop situate at the southern end of it had fallen to the share of Smt. Muneshwara, who by a will dated 17th October 1971 bequeathed her half share to the petitioner in the house together with the shop, which on partition with Banashidhar had taken to her share. The said will was attested by Banshidhar, son of Smt. Muneshwara, Smt. Muneshwara, died in the year 1973, where upon the petitioner became the owner of the aforesaid half portion of the house including the shop in dispute. Banshi-dhar died in the year 1977 and on his "death it is alleged that his half portion devolved on his widow Smt. Paradevi, who has been arrayed as respondent No. 3. The petitioner has further stated that in the year 1985 Smt. Para Devi wife of Banshidhar along with Rajendra Prasad, brother of Smt. Paradevi filed original suit No. 3 of 1985 in the Court of Munsif Magistrate, Mirzapur for possession over the shop forming part of the house, of which the petitioner became owner by virtue of a will executed by Smt. Muneshwara. In the aforesaid suit Nagarmal, the husband of the petitioner, was arrayed as respondent and the petitioner herself was not arrayed as a respondent. It is further alleged that by practising fraud upon the court the respondents Nos. 3 and 4 obtained fraudulent decree in their favour on the basis of alleged compromise, in which signatures of Nagarmal were forged and Nagarmal, infact, was not a party to the said compromise. On coming to know of the said compromise decree the petitioner moved an application for setting aside ex parte decree under O.9, R. 13 read with S. 151 of the Code of Civil Procedure. The said application has been rejected by the trial court as well as the appellate Court, as stated earlier.

7. In the counter-affidavit filed on behalf of Smt. Paradevi, respondent No. 3, some alarming facts have been disclosed, which were apparently not stated in the writ petition. In para "6" of the counter-affidavit it is stated that in the year 1981 Nagarmal, husband of the petitioner, moved an application dated 9th July 1981 under S. 30(1) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act") in the court of Munsif Magistrate, being Misc. case No. 145 of 1981 seeking permission to deposit rent, claiming and alleging himself as a tenant of the shop in dispute. Nagarmal was husband of the present petitioner who was sister's daughter of Bansidhar (husband of respondent No. 3). Nagarmal, as such was a close relative of respondent No. 3. In view of this relationship she agreed to a request made by Nagarmal to permit the use of shop in dispute as a licensee for a period of three years and a Licence Deed was executed on 16th December 1981, by which Nagarmal agreed to continue as a licensee of the shop for three years and gave an undertaking to vacate the shop after three years from the date of execution of the said deed. On the basis of the said Licence Deed a joint compromise application was filed in the aforesaid Misc. Application No. 145 of 1981 (under S.30(I) of the Act). The Munsif Magistrate, rejected the application of Nagarmal under S. 30(1) of the Act vide its order dated 17th October 1981, in view of the said compromise. Even after expiry of three years of execution of the aforesaid

Licence Deed and the undertaking dated 16th October 1981, Sri Nagar Mal did not vacate the shop in dispute then the respondent No. 3 sent a notice dated 17th September 1984 through her Counsel, which was served on Nagarmal on 22nd September 1984, whereby Nagarmal was asked to remove the assets from the shop in dispute and to handover the possession of the shop in dispute to the respondent No. 3. In spite of service of the notice Nagarmal did not vacate the shop in dispute. Then the respondent No. 3 filed original suit being original suit No. 3 of 1985 for eviction of the aforesaid, Nagarmal and also for damages of Rs. 500/- per month for use and occupation of the shop in dispute. In the aforesaid suit again a joint compromise application was filed on behalf of respondent No. 3 and Nagarmal through their respective counsel, by which Nagarmal agreed to vacate the shop in dispute within three years i.e. up to 12th May 1988 and agreed to handover the possession of the shop in dispute to respondent No. 3 after lapse of three years i.e. up to 12th May 1988. It was agreed in the said compromise decree that if Nagarmal did not hand over possession of the shop in dispute in accordance with the said compromise it will be open to the respondent No. 3, who was plaintiff in the said suit to execute the said decree. Even after lapse of further three years Nagarmal did not vacate the shop. Consequent thereto on 13th May 1988 the respondent No. 3 filed execution application for executing the decree passed in Original Suit No. 3 of 1985. The said Execution - Application was numbered as Case No. 16 of 1988. On the said application notice was again issued to Nagarmal fixing 22nd October 1988 for filing objection. On 22nd October 1988 the said Nagarmal appeared before the execution court and filed an application along with his affidavit and sought two months' further time to vacate the shop in dispute with the allegation that he is ready to vacate the shop in dispute as he is in search of other shop and, as and when, he gets some shop he will vacate the same, subsequent thereto Nagarmal by his application dated 22nd Dec, 1988 again sought time to file objection against the execution proceedings with the allegation that the earlier application dated 22nd October 1988 was filed by him without going through its contents. Hence he may be given time to file objection against the execution application. However, subsequent thereto Nagarmal did not file any objection to the said execution application but an application/objection under O.21, R.9 read with R. 100 of the CPC was filed by Smt. Suraj Kumari the petitioner in the present case, who is Wife of the judgment debtor Nagarmal, which was registered as Misc. Case No. 54 of 1989. It further alleged in the said Application that Paradevi, respondent No. 3, was not the sole owner of the entire property belonging to Ram Govind Ram and that after the death of Ram Govind Ram his entire property devolved on the widow Smt. Muneshwara and the shop in dispute fell in the share of Smt. Muneshwara in the family settlement and who in turn has executed a Will in respect of the said shop in favour of the present petitioner. The said application was contested by the respondent No. 3. The executing court namely the Munsif Magistrate, Mirzapur, vide its order dated 1st September 1989, rejected the aforesaid application under O. 21 R. 9 read with R. 100 of the Code of Civil Procedure, on the ground that the application was not maintainable.

8. Aggrieved, by the said order of the Munsif Magistrate, Mirzapur, dated 1st September 1989 the present petitioner filed Civil Revision No. 43 of 1989 before the District Judge, Mirzapur. The said revision was dismissed by the learned District Judge, Mirzapur, vide its order dated 28th November 1989. The said orders have become final between the parties. The petitioner has, however, simultaneously filed the application under O.9, R. 13 read with S. 151 of the CPC which was also rejected and the appeal against which was also dismissed. The petitioner aggrieved by the said orders have filed the present writ petition.

9. In the counter-affidavit the alleged theory of family settlement between Smt. Muneshwara and Bansidhar was denied and it is specifically stated that the alleged Will dated 17th October 1981,. on the basis of which the petitioner is claiming ownership in the shop in dispute is forged one.

10. In reply to these statements made in the counter-affidavit the petitioner filed a rejoinder affidavit, wherein the allegations made in respect of Nagarmal, filing of compromise application and filing of application seeking time to vacate the premise has been denied. This rejoinder affidavit has been filed by Om Prakash who is the son of the petitioner and Sri Nagarmal. In para "5" of the rejoinder affidavit it has been specifically stated that Nagarmal, husband of the petitioner, never made any application for depositing of rent under S. 30 of the Act and he also did not make any request to Smt. Paradevi to permit him to use the said shop as a licensee for a period for three years. Likewise, in para "9" of the rejoinder affidavit it has also been specifically stated that Nagarmal did not enter into compromise with Smt. Paradevi, as referred to in the counter-affidavit. However, paragraphs 12 and 13 of the rejoinder affidavit makes a interesting reading. In para 12 of the rejoinder affidavit it has been stated that to the best of the deponent's knowledge Nagarmal, never made any application seeking two months" time to vacate the shop in dispute. Likewise, in para "13" of the rejoinder affidavit it has been stated that the petitioner does not know whether or not Nagarmal made any objection to the execution application. All these paragraphs of the rejoinder affidavit have been sworn on personal knowledge by the deponent, namely Om Prakash, who is the son of both the petitioner and her husband Nagarmal.

11. Firstly the statement made by Sri Om Prakash in paragraphs 5 and 9 of the rejoinder affidavit that he has personal knowledge of the fact that Sri Nagarmal never made any application for depositing rent under S. 30 of the Act and did not make any request to Smt. Paradevi to permit him to use the said shop as a licensee for a period of three years likewise the statement that Sri Nagarmal did not enter into the compromise with Smt. Paradevi, could not have sworn by him on personal knowledge only Sri Nagarmal could have sworn the statement on personal knowledge. Sri Om Prakash himself could have sworn the aforesaid paragraphs on the basis of information received from Sri Nagarmal. As such the statements made by Sri Om Prakash in paragraphs 5 and 9 of the rejoinder affidavit are not admissible as they have been wrongly sworn in-the affidavit on

personal knowledge. Moreover, it is also not understood that if Sri Om Prakash can swear on personal knowledge that Sri Nagarmal did not move any application under S. 30 of the Act and did not make any request with Smt. Paradevi only to permit him to use the said shop as a licensee and further that Sri Nagarmal did not enter into compromise then why the deponent of the rejoinder affidavit Sri Om Prakash did not choose to reply the statements made in paragraphs 12 and 13 of the counter-affidavit and only stated in his rejoinder affidavit that he does not know as to whether Sri Nagarmal, thereafter has made any application for two months' time to vacate the shop in dispute and that he also does not know as to whether Sri Nagarmal has made any objection to the execution application. All these contradictions in the rejoinder affidavit of Sri Om Prakash clearly show that the rejoinder affidavit filed by Sri Om Prakash to the statement made in the counter-affidavit can not be accepted for want of proper verification and also due to the fact that there are inherent contradictions in the statement made in the said rejoinder affidavit. In the application filed by the petitioner under O.9, R. 13 of the CPC Sri Nagarmal was arrayed as the opposite party but in the present writ petition the petitioner has chosen not to implead Sri Nagarmal as opposite party.

12. In this litigation at no point of time Sri Nagarmal has himself come to file any affidavit contending that a fraud has been played on the court and all the compromise decree and orders have been obtained by forging his signatures. Sri Nagarmal even did not come to file the affidavit in support of the petitioner's application under O.9, R. 13 read with S. 151 of the CPC nor filed any affidavit before this court, supporting the petitioner's allegation. It should not be forgotten that the relationship of Smt. Suraj Kumari, the petitioner and Sri Nagarmal is that of wife and husband and there is no allegation that their relations are strained.

13. The court's proceedings atleast show that two compromise decrees were passed in favour of the respondent No. 3, to which Sri Nagarmal was a party. The respondent No. 3 has all the times waited for six years before taking any action for evicting aforesaid Nagarmal. The petitioner has chosen to come up before this Court to challenge the aforesaid proceedings on the ground of fraud and on the ground that she is the owner for the first time when compromise decree was put to execution.

14. At the very outset it is clear that the allegation of the petitioner is that the signatures of Sri Nagarmal has throughout been forged in the proceeding either in the court of Munsif Magistrate in Misc. Case NO. 145 of 1981, in proceedings under S. 30(1) of the Act or in Suit No. 3 of 1985, the best person to challenge these proceedings should have been Nagarmal himself, Nagarmal having not done so it is unbelievable, that the present petitioner who is wife of Sri Nagarmal was not in the know of these earlier proceedings. As stated earlier, Sri Nagarmal, at no point of time, by means of affidavit challenged his signatures. In the circumstances the plea that even at the instance of stranger the compromise

decree can be re-opened in an application under O. 9, R. 13 read with S. 151 of the Code of Civil Procedure, not be allowed to be raised, at the instance of wife alone, husband himself keeping silent on such a vital issue. Looking into the entire circumstances of the case I am definitely of the opinion that the petitioner has put up the present claim to fight a second innings after fully knowing that Nagarmal has fought out the first innings and lost.

15. It was strangely contended by the learned counsel for the petitioner that I should not go into the facts of the case as the courts below have refused to decide the petitioner's application on merit, I do not agree with this submission. The remedy under Art. 226 of the Constitution is not, as a matter of right. This extraordinary jurisdiction has been conferred on the High Court to set right the injustice done to a person in addition to the illegality in the proceedings which are challenged in this extraordinary jurisdiction. In the facts and circumstances of this case the petitioner is not entitled to invoke this "extraordinary jurisdiction under Art. 226 of the Constitution and the writ petition is liable to be rejected irrespective of the legal submissions made on behalf of the petitioner, as I am of the opinion that the petitioner has concealed material facts and has not approached this Court with clean hands.

16. Under Art. 226 of the Constitution of India, the Constitution has conferred extraordinary powers, to the High Court for issuing not only prerogative writs but all such directions, which the High Court, may deem fit in appropriate cases. There is no doubt that the jurisdiction conferred on the High Court, is wide but the same has been restricted by imposing a self discipline by the court itself. This extraordinary jurisdiction should be exercised only in exceptional cases, where the High Court is satisfied that either a fundamental right of a citizen is infringed, or any illegal or arbitrary order has been passed which has resulted in any injustice to the petitioner. This court has also laid down that this extraordinary jurisdiction should be exercised, not as a matter of right but it is a discretionary jurisdiction which should be not invoked merely by showing that the order is wrong, it must further be shown that it has resulted in miscarriage of justice (Banwari v.. State of U.P. 1974 ALJ 958. The High Court should also take care of the situation that this extraordinary jurisdiction should not be allowed to be misused and in cases where the High Court comes to the conclusion that the petitioner has approached the court with unclean hands, or has filed a writ petition stating facts, which are false, the petitioner must visit with penal consequences. This is necessary to check the misuse of this extraordinary jurisdiction so that every citizen should take a caution that extraordinary jurisdiction of the High Court, cannot be allowed to be misused. It is necessary that a person should approach the court under Art. 226 of the Constitution, stating all the facts in his knowledge, which are necessary for invoking the extraordinary jurisdiction of the court and should not try to mislead the court by making any false statement, or circumventing or concealing the necessary facts, if the High Court finds that either a false statement has been made by the petitioner or he has come with unclean hands i.e. by suppressing the material

facts, the High Court should suitably penal such a person.

17. Now I will deal with the legal submissions made on behalf of the petitioner.

18. The petitioner has mainly made three submissions, firstly that the application under O.9, R. 13 read with S. 151 of the Code of Civil Procedure is maintainable even at the instance of stranger to set aside a compromise decree or ex parte decree if the said compromise decree or ex parte decree has been obtained by practising fraud on the court to the prejudice of the said stranger even though he may not be a party to the suit in which the said ex parte or compromise decree was passed.

19. Secondly, the petitioner submitted that O. 13, R.3-A of the CPC bars the suit to set aside decree on the ground that the compromise on which a decree was based, was not lawful. The Courts below erred in holding that the petitioner has a remedy of filing a regular suit.

20. Thirdly, since the courts below have not decided the application on merits and have not disbelieved the petitioner's case but has chosen to reject the petitioner's application as not maintainable. This Court should not examine the facts of the case and should only consider the legal question as to whether the Court below were justified in dismissing the petitioner's application as not maintainable, taking a view that petitioner has a remedy of filing the suit, which the petitioner has already availed and has already filed a suit.

21. So far as the third submission is concerned, I have already dealt with the point in the earlier part of this judgment and I have taken a view that every petitioner invoking jurisdiction under Art. 226 of the Constitution should satisfy this Court that injustice has been done to him besides the illegality pointed out by him only then he is entitled to invoke the jurisdiction of this Court under Art. 226 of the Constitution. The necessary facts have to be examined by this Court to ascertain as to whether the impugned order has caused any injustice to the petitioner. In the circumstances of the case I have held that the petitioner has not been able to demonstrate to this Court that any injustice has been done to him, on the other hand I have held the petitioner has invoked the jurisdiction of this Court with unclean hands.

22. The petitioner's second submission regarding the applicability of O.23, R. 3-A of the CPC is misconceived the provision is confined only to the parties to the suit. The said provision is not applicable to a stranger to the said compromise decree. A suit by stranger to set aside the compromise decree, which affects his rights is not barred by the said provision. Order 23, Rule 3-A of the CPC cannot be read debtors its earlier provision of the same chapter. The said provision is only a part of the entire Chapter of Order 23 of the CPC which prescribes provisions for withdrawal and adjustment of the suit. Order 23, Rule 3 of the CPC provides for a situation where the parties have arrived at a compromise. Order 23, Rule 3 and Rule 3-A of the CPC as added by Amending Act No. 104 of 1976 read together, makes it clear that a party to the suit is debarred from filing suit

for setting aside compromise decree on the ground of being unlawful. Such a party has remedy by moving appropriate application before the Court concerned which has passed the compromise decree.

23. The said provision does not bar the present petitioner who was not a party to the said compromise decree to file a suit. As such there is no force in the petitioner's contention that a suit for setting aside the compromise decree entered into between Sri Nagarmal and Smt. Paradevi was barred by O.23, R. 3-A of the Code of Civil Procedure. The suit at the instance of present petitioner for setting aside compromise decree entered into between Smt. Paradevi and Sri Nagarmal is maintainable in law. In support of this contention the petitioner has placed reliance on AIR 1985 Kan 270 Smt. Tarabai v. Krishnaswamy Rao. Since the said provision does not bar the petitioner from filing the suit the decision is of no help to the petitioner.

24. The first submission made by the petitioner is that even at the instance of a stranger an application for setting aside ex parte decree or compromise decree is maintainable and the Courts below committed patent illegality in dismissing the petitioner's application as not maintainable on the ground that proper remedy for the petitioner is by way of filing a regular suit.

25. Sri S.D. N. Singh, learned counsel for the petitioner has cited following decisions in support of his contentions:

Surajdeo Vs. Board of Revenue, U.P., Allahabad and Others, , Gangabai and Others Vs. Ratan Kumar and Others, 1989 ALR 268 , Ramanand Pandey v. Sureshmani Pandey 1989 ALR 264, Ramanand Pandey v. Sureshmani Pandey.

26. Sri S. K. Mehrotra, learned counsel for the respondents have contested the aforesaid submission and have contended that in the circumstances of the case the Courts below were justified in taking a view that the compromise decree cannot be set aside at the instance of the petitioner in a Misc. application under O.9, R. Bread with S. 151 of the CPC and the proper remedy for the petitioner was by way of filing a regular suit. In support of his submission he has relied upon the following decisions:

Santosh Chopra Vs. Teja Singh Sardul Singh, Bhojai Vs. Salim Ullah and Others, Simplex Concrete Piles (India) Pvt. Ltd. Vs. S. Ahmad, 1979 ALJ 24 , Jagrup Giri v. Deputy Director of Consolidation 1982 ALR 115, Bharat Chemicals Industries v. Indian Herbs Research and Supply Company.

27. Before dealing with the cases cited by both the sides it is necessary to examine as to what reasoning has been given by the Courts below for refusing to entertain the petitioner's application under O.9, R. 13 read with S. 151 of the CPC only then it will be fruitful to examine cases cited by the petitioner's counsel. The appellate Court in its judgment dated 28th November, 1989 impugned in the present writ petition has distinguished the case of this Court in the case of Suraj Deo v. Board of Revenue (supra) and have held that in the facts and

circumstances of the present case the petitioner has filed a suit and the same is pending in the Court of Munsif Magistrate, Mirzapur. In these circumstances the trial Court was justified in directing the petitioner to pursue the remedy by means of a regular suit. The relevant portion of the impugned judgment is being quoted for convenience:

"In the case before the Allahabad High Court the decree was collusive in nature. The ex parte decree was obtained to effect the right of Gaon Sabha and cause inconvenience to the villagers in general as they were irrigating their fields. The established legal position was that no sirdari rights could be granted in a pokhari. The applicant by moving the application for setting aside the decree had merely brought the aforesaid facts to the notice of the Court which was itself competent to take action in such case. The situation before us is entirely different. The defendants had not only appeared in the Court but had filed a compromise. If the compromise decree was collusive or fraudulent, it could be set aside at the instance of the defendant Nagarnal. The rights of the appellant if any remain unaffected, she can file a regular suit and get her rights adjudicated. The existence of the compromise decree would not create any hinderance. She will be entitled to decree if she is able to prove her case. In fact she has filed a regular suit and the same is pending in the Court of Munsif, Mirzapur. The compromise decree was rightly not treated as ex parte decree. The learned Munsif rightly held that the application was not maintainable at her instance."

So the position boils down to this that the Court below has held that since in the facts of the present case the petitioner has already filed a suit for revoking the compromise decree, it is appropriate that the petitioner should pursue the said remedy and in the aforesaid circumstances the Court below also held that an application under 0.9, R. 13 read with S. 151 of the CPC is not maintainable at the instance of the petitioner.

28. In view of the aforesaid finding, the legal controversy as to whether at the instance of a stranger ex parte compromise decree can be set aside in exercise of jurisdiction conferred by S. 151 of the CPC in appropriate cases become only academic and it is not necessary to decide the said legal controversy in the present case. In the decisions, cited by the learned counsel for the petitioner broadly it has been held that in appropriate cases it is open to the Court to invoke its inherent jurisdiction under S. 151 of the CPC and set aside the compromise or ex parte decree even at the instance of stranger, who is affected by such decree, if the Court is satisfied that some fraud has been played on the Court itself. Without going into this legal submission, I am satisfied that this was a fit and proper case where the Court below were justified in refusing to entertain the application at the instance of the petitioner under 0.9, R. 13 read with S. 151 of the CPC for setting aside a decree which was arrived at on the basis of compromise entered into between Smt. Paradevi and Sri Nagar-mal, petitioner's husband. The petitioner herself has chosen to seek her remedy by way of filing a suit even if it was permissible for the petitioner to invoke the

inherent jurisdiction to set aside the said decree under S. 151 of the CPC the Courts below committed no error in rejecting the said application. Ultimately it is the Court's discretion to exercise its inherent power under" S. 151 of the CPC in appropriate cases, if in particular case the Court is satisfied that the petitioner has already resorted to his remedy of filing the suit for setting aside the decree alleged to have been obtained by some fraud the Court below has committed no mistake in refusing to entertain the application under O.9, R, 13 read with S. 151 of the Code of Civil Procedure, made at the instance of the present petitioner.

29. Even otherwise the nature of the allegation in the present case is such that it cannot be decided in Miscellaneous application under O; 9, R. 13 read with S. 151 of the CPC as in these Miscellaneous proceeding it is not possible to determine as to whether the signature of Sri Nagarmal were forged in the earlier proceedings as has been alleged by the petitioner. In this view of the matter the Courts below were wholly correct in taking a view that appropriate remedy for the petitioner is by filing suit, in the facts of the present case, the application under O.9, R. 13 read with S. 151 of the CPC is not maintainable.

30. In view of what has been stated above it is not necessary to discuss in detail the decisions cited in the present case on behalf of both the parties.

31. For the reasons stated above I dismiss the writ petition with costs. Since I am satisfied that the present petitioner has not come with clean hands in invoking extraordinary jurisdiction under Art. 226 of the Constitution, I quantify the cost to Rs.2000/-in this case.

32. Petition dismissed.