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SA-137-2006

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 2nd OF DECEMBER, 2025SECOND APPEAL No. 137 of 2006*RAMADEVI (DELETED) THR. LR. SMT. UMA DEVI YADAV**Versus**RAMKALI AND OTHERS*

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Appearance:

Mr. Vinod Kumar Bhardwaj - Senior Advocate, assisted by Mr. Anand Vinod Bhardwaj and Mr. Anand Raghuwanshi - Advocates for LR. of appellant.

Mr. Naval Kumar Gupta - Senior Advocate, assisted by Mr. Santosh Agrawal and Mr. Saket Sharma - Advocates for respondents No. 1 and 2.

Mr. Sanjay Singh Kushwaha - Govt. Advocate for respondent No. 3 / State.

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JUDGMENT

This second appeal under Section 100 of the CPC has been filed against the judgment and decree dated 23/01/2006 passed by Additional District Judge, Lahar, District Bhind in Civil Appeal No. 6/2004, as well as judgment and decree dated 31/03/2004 passed by Civil Judge, Class I, Lahar, District Bhind in Civil Suit No. 6A/2000.

2. Appellant is the defendant who has lost his case before both the Courts below.

3. This second appeal was admitted on following substantial questions of law:

- "i. Whether the courts below erred in setting aside the judgment and decree dated 12-5-1982 passed in civil suit no.297-A/1982 when the plaintiff has not sought the relief to set-aside the previous decree?
- ii. Whether the courts below erred in holding that suit is not time barred?



iii. Whether the learned lower appellate court erred in rejecting the appellant's application under order 41 rule 27 CPC and allowing the application under order 41 rule 27 CPC of respondent no. 1?"

4. Counsel for appellant has raised a solitary contention to the effect that by filing the suit, since plaintiff had challenged a compromise decree, therefore, in view of Order 23 Rule 3A of CPC, civil suit was not maintainable and plaintiff should have either filed an appeal or should have filed an application before the same Court for setting aside the compromise decree.

5. So far as substantial questions of law No. (ii) and (iii) are concerned, no arguments were raised, and therefore, counsel for appellant has pressed the substantial question of law No. (i) only.

6. Since substantial questions of law Nos. (ii) and (iii) were not pressed, therefore, they are answered in negative, and this Court has confined itself to substantial question of law No. (i) only.

7. The facts necessary for disposal of present suit, in short, are that respondent Ramkali filed a suit for declaration of title and permanent injunction in respect of Survey Nos. 679, 680, 715, 716, 720, 721, 722, 723, 724, 729, 732, total area 3.91 hectares, situated in Kunwarpura No. 2, Tahsil Lahar, District Bhind. It was the case of plaintiff that name of defendant No. 1 is recorded over one half of the aforesaid disputed property and plaintiff has one half share in the share of defendant No. 1, and in total, it was claimed that plaintiff is the owner of 1/4th part of the disputed property. It was the case of plaintiff that disputed property was the ancestral property of plaintiff, as well as defendants No. 1 and 2. Marriage of defendant No. 2 was performed by father of the plaintiff, namely Maharaj Singh, during his lifetime. At the time of marriage of defendant No. 2 with Dwarka Prasad, resident of village Uchiya, District Datia, gold, jewellery as well as cash of her share was given. After the marriage, defendant No. 2 is



residing in village Uchiya along with her husband. Thus, it was claimed that defendant No. 2 has no concern with the property in dispute and she does not have any right or title over the property in dispute. Accordingly, it was claimed that after the death of Maharaj Singh, property in dispute was inherited by plaintiff and defendant No. 1. The husband of plaintiff, namely Sahab Singh, and husband of defendant No. 1, namely Jodha Singh, were the real brothers being sons of Ramdayal Yadav. After the marriage of plaintiff and defendant No. 1, father of plaintiff and defendant No. 1 kept their husbands as *ghar-jamai*. Accordingly, plaintiff as well as defendant No. 1 started residing in the house of their late father Maharaj Singh along with their husbands and still they are residing there. Maharaj Singh, during his lifetime, had given separate houses to plaintiff and defendant No. 1, but the agricultural land remained unpartitioned and plaintiff and defendant No. 1 were in joint cultivating possession of the same. Father of the plaintiff expired about 14 years back. After his death, defendant No. 1 was cultivating the land and was giving half share in the crop. Since the plaintiff is an illiterate lady and had faith in her elder sister i.e. defendant No. 1, and under the *bona fide* belief that defendant No. 1 would never ditch the plaintiff, did not try to obtain the revenue records. After the death of her father, defendant No. 1 also assured that she would get the names of plaintiff as well as defendant No. 1 mutated in the revenue records. Accordingly, the plaintiff did not take any steps for mutation of her name. Maharaj Singh had performed two marriages. The name of first wife of Maharaj Singh was Buan from whom defendant No. 1 was born, whereas the name of second wife of Maharaj Singh was Rampyari from whom plaintiff and defendant No. 2 were born. Thus, Maharaj Singh had only three daughters. The stepmother of plaintiff, namely Buan, had expired long back and date of her death



is also not known to plaintiff. The biological mother of plaintiff, namely Rampyari, has expired about five years back. Husband of plaintiff, namely Sahab Singh, has expired about three years back, whereas husband of defendant No. 1, namely Jodha Singh, has expired about 18 years back. It was claimed that the disputed property mentioned in para 1 of the plaint was owned by Maharaj Singh. Prior to settlement, area of Survey No. 734 was 0.85, of Survey No. 736 was 0.1199, of Survey No. 737 was 0.251, of Survey No. 738 was 0.031, of Survey No. 740 was 0.293, of Survey No. 741 was 0.136, of Survey No. 742 was 0.042, of Survey No. 743 was 0.272, of Survey No. 746 was 0.342, of Survey No. 762 was 0.52, of Survey No. 763 was 0.021, of Survey No. 764 was 0.094, of Survey No. 765 was 0.188, of Survey No. 767 was 0.157 and of Survey No. 768 was 0.240. However, after the settlement, not only the Survey numbers were changed, but the area was also changed. Plaintiff had four sons, namely Vijay Singh, Jai Singh, Uday Singh and Veer Singh, and had two daughters, namely Ramkumari and Chameli. Ramkumari has already got married and she is residing in her matrimonial house whereas her four sons and second daughter, namely Chameli, are residing with plaintiff, and their upbringing is being done from the crop which is yielded from the land in dispute. Defendant No. 1 had only one daughter who has also got married in the year 1981 with Dataram and is residing in Mau, district Bhind. After the death of Jodha Singh, defendant No. 1 brought her son-in-law Dataram to her house and kept him as *ghar jamai*. Thus, the daughter of defendant No. 1 and her husband are residing along with the defendant No. 1. Dataram is working on the post of Nakerdar in Nagar Panchayat and daily visits Mau. Dataram is a very clever person and by misleading the defendant No. 1 is trying to grab the entire property and is trying to get the property mutated in his name. Accordingly, with ill intention, defendant No. 1 had filed a Civil Suit No.



138/1997 on incorrect facts which is still pending. The father of plaintiff, namely Maharaj Singh, was an illiterate villager and was a drunkard and his mental condition prior to few years of his death was not good and he did not execute any document in favor of defendant No. 1. He also never gave any consent for execution of any document in favor of defendant No. 1. However, it was claimed that it is not known that how and in what manner defendant No. 1 has got her name mutated in the revenue records. When defendant No. 1 filed a suit for possession as well as title, then she got suspicious about the intentions of defendant No. 1 and obtained the certified copies of the revenue record, then she came to know that by keeping the plaintiff in dark, defendant No. 1 has got her name mutated in the revenue records, and thus, it was claimed that in view of cloud created on her ownership, filing of the suit has become necessary. Accordingly, the suit was filed for a declaration that plaintiff is the owner and in possession of the land in dispute, and is entitled to get her name mutated in the revenue records. Permanent injunction was also claimed.

8. The suit was amended and claimed that defendant No. 1 was never in sole and exclusive possession of the property in dispute. It was denied that defendant No. 1 had taken possession of the property in dispute in *Samvat* 2021 after dispossessing Maharaj Singh. It was claimed that Maharaj Singh was in cultivating possession of the property during his lifetime. Defendant No. 1 had not filed any suit during the lifetime of her father Maharaj Singh. No notice was served on Maharaj Singh and Maharaj Singh never appeared before the Court and did not file any application for compromise. The compromise filed in Civil Suit No. 297/1982 is a forged one and it does not bear the thumb impression of Maharaj Singh. The entire proceedings are forged and camouflaged. Defendant No. 1, by playing fraud on the Court, has obtained a judgment and decree in Civil



Suit No. 297/1982. It was also pleaded by plaintiff that she is the widow of Sahab Singh. Plaintiff was never married to Bhure son of Manju Yadav. Plaintiff had never resided with Anup Singh and Janved Singh. Plaintiff had four sons and two daughters from her wedlock with Sahab Singh. Plaintiff and her children are the legal representatives of Sahab Singh. Accordingly, the relief clause was also amended, and it was prayed that compromise decree passed in Civil Suit No. 297/1982 be declared as null and void and is not binding on the plaintiff.

9. Defendant No. 1 filed her written statement and denied the plaintiff's averments. It was claimed that in Civil Suit No. 297/1982, a compromise decree dated 12/05/1982 was passed, according to which defendant No. 1 has become the owner of property in dispute. Even otherwise, defendant No. 1 is in hostile and open possession from the year 1970 and she has never been dispossessed by plaintiff or by any other person. Defendant No. 1 is the only daughter of Maharaj Singh. It was claimed that plaintiff was married to Bhure about 42 years and after his death, she started residing with her younger brother-in-law Anup Singh in the capacity of his wife. After she was deserted by Anup Singh, plaintiff resided with her elder brother-in-law, namely Janved Singh, in the capacity of his wife, and after Janved Singh, plaintiff started residing with Sahab Singh, and accordingly, it was claimed that it is not known that who are the biological fathers of the children born from the plaintiff. It was denied that Maharaj Singh had performed two marriages. It was claimed that only one marriage was performed and the name of wife of Maharaj Singh was Bhuan. Maharaj Singh had no second wife. Therefore, there is no question of birth of plaintiff from Maharaj Singh. It was admitted that defendant No. 1 has one daughter, namely Uma Devi.

10. Defendant No. 2 filed her written statement and admitted the plaintiff's



averments.

11. The Trial Court, after framing issues and recording evidence, decreed the suit.

12. Being aggrieved by judgment and decree passed by the Trial Court, appellant preferred an appeal which too has been dismissed by the Appellate Court.

13. As already pointed out, counsel for appellant has not pressed substantial questions of law Nos. (ii) and (iii) and has confined his arguments only to substantial question of law No. (i).

14. Challenging the judgments and decrees passed by the Courts below, it is submitted by counsel for appellant that once plaintiff had amended the plaint averments and had challenged the compromise decree, then the Court below should have seen that in view of bar as contained under Order 23 Rule 3A CPC, civil suit was not maintainable, and thus, submitted that the Civil Suit filed by plaintiff which was subsequently amended is not maintainable. In fact, if the plaintiff was of the view that a compromise decree has been obtained, then she could have filed an application before the same Court.

15. *Per contra*, it is submitted by counsel for respondents No. 1 and 2 that since the compromise decree was obtained by fraud, therefore, civil suit is not covered by bar as contained under Order 23 Rule 3A CPC. It is submitted that only in case where the decree is claimed to be unlawful, the aggrieved party can move an application before the same Court for setting aside the compromise decree. However, in the present case, the decree was obtained by playing fraud on Maharaj Singh as well as on the Trial Court, therefore, the case in hand is not governed by Order 23 Rule 3A CPC.

16. Heard learned counsel for the parties.



17. The appellant never challenged the maintainability of suit before the Courts below on the ground of bar as contained in Order 23 Rule 3A CPC. However, both the Courts below have come to a conclusion that plaintiff Ramkali was married wife of Sahab Singh and being daughter of Maharaj Singh, she has 1/2 share and compromise is not binding on her and said civil suit was filed for frustrating the claim of plaintiff.

18. Before considering the legal position, as argued by counsel for the parties, this Court would like to consider the manner in which a compromise decree was obtained by defendant No. 1. From copy of plaint (Exhibit P1), it is clear that defendant No. 1 Ramadevi filed a civil suit No. 297/1982 on 10/05/1982. On the very same day, i.e., on 10/05/1982, a compromise application was filed to the effect that a compromise decree be passed in favor of defendant No. 1. This application was filed jointly by Maharaj Singh and Ramadevi (Exhibit P2-C). On 12/05/1982, a compromise decree was passed. Thus, it is clear that a suit was filed by defendant No. 1 on 10/05/1982 along with a compromise application jointly filed by defendant No. 1 Ramadevi and Maharaj Singh and on 12/05/1982 a compromise decree was passed. How Maharaj Singh came to know that a civil suit has been filed on 10/05/1982, and how he decided to file an application under Order 23 Rule 3 CPC on the very same day, have not been clarified by defendant No. 1. Defendant No. 1, in paragraph 9 and 10 of her cross examination, has admitted that she had filed a suit against her own father. She further claimed that a notice of the said suit was served on her father and a decree was passed. She did not say anything that a joint application for compromise was filed by her father and on the basis of that compromise, decree was passed. It is clear from paragraph 10 of the cross examination of Ramadevi that notice of the suit was served on her father, but as already pointed out, the suit as well as



application for compromise were filed on the very same date i.e. on 10/05/1982 and the compromise decree was passed on 12/05/1982. Therefore, contention of the plaintiff that in fact, Maharaj Singh was never served and the decree was obtained by playing fraud appears to be more plausible. Both the Courts below have also given a concurrent findings of fact that the decree was obtained by fraud. Although the bar as contained in Order 23 Rule 3A CPC was never specifically raised before Courts below, but this Court has independently considered the aspect of fraud and is of the view that compromise decree was obtained by fraud.

19. Now the only question for consideration is as to whether the suit for declaring the judgment and decree passed on the basis of compromise is maintainable or the plaintiff had an alternative remedy of filing an application before the same Court or appeal as provided under Order 23 Rule 3A CPC. Order 23 Rule 3A CPC reads as under:

"3A. Bar to suit.- No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful."

Thus, it is clear that where an aggrieved party is of the view that an unlawful decree has been passed on the basis of compromise, then he has to move an application before the same Court. The manner in which the compromise decree (Exhibit P3) was obtained has already been reproduced in the earlier part of this judgment and this Court has come to a conclusion that in fact the compromise decree obtained by defendant No. 1 falls within the category of fraud.

20. Now the only question for consideration is as to whether "fraud" and "unlawful" are one and the same thing or not, and whether a compromise decree obtained by fraud cannot be challenged in suit by the aggrieved party?

21. Counsel for appellant has relied upon judgment passed by this Court in



the case of **Triloki Nath Singh v. Anirudh Singh (D) Thr. L.Rs. and others** , reported in (2021) 1 MPLJ 59, in which it has been held as under:

"19. Thus, after the amendment which has been introduced, neither any appeal against the order recording the compromise nor remedy by way of filing a suit is available in cases covered by Rule 3-A of Order 23, Civil Procedure Code. As such, a right has been given under Rule 1-A(2) of Order 43 to a party, who denies the compromise and invites order of the Court in that regard in terms of proviso to Rule 3 of Order 23, Civil Procedure Code while preferring an appeal against the decree. Section 96(3), Civil Procedure Code shall not be a bar to such an appeal, because it is applicable where the factum of compromise or agreement is not in dispute.

* * *

21. Indeed, the appellant was not a party to the stated compromise decree. He was, however, claiming right, title and interest over the land referred to in the stated sale deed dated 6th January, 1984, which was purchased by him from Sampatiya judgment debtor and party to the suit. It is well settled that the compromise decree passed by the High Court in the second appeal would relate back to the date of institution of the suit between the parties thereto. In the suit now instituted by the appellant, at the best, he could seek relief against Sampatiya, but cannot be allowed to question the compromise decree passed by the High Court in the partition suit. In other words, the appellant could file a suit for protection of his right, title or interest devolved on the basis of the stated sale deed dated 6th January, 1984, allegedly executed by one of the party(Sampatiya) to the proceedings in the partition suit, which could be examined independently by the Court on its own merits in accordance with law. The trial Court in any case would not be competent to adjudicate the grievance of the appellant herein in respect of the validity of compromise decree dated 15th September, 1994 passed by the High Court in the partition suit.

22. In other words, the appellant can only claim through his predecessor-Sampatiya, to the extent of rights and remedies available to Sampatiya in reference to the compromise decree. Merely because the appellant was not party to the compromise decree in the facts of the present case, will be of no avail to the appellant, much less give him a cause of action to question the validity of the compromise decree passed by the High Court by way of a substantive suit before the civil Court to declare it as fraudulent, illegal and not binding on him. Assuming, he could agitate about the validity of the compromise entered into by the parties to the partition suit, it is only the High Court, who had accepted the compromise and passed decree on that basis, could examine the same and no other Court under proviso to Rule 3 of Order 23, Civil Procedure Code. It must, therefore, follow that the suit instituted before the civil Court by the appellant was not maintainable in view of specific bar under Rule 3A of Order 23, Civil Procedure Code as held in the impugned judgment."

Thus, it is submitted by counsel for appellant that although



plaintiff/respondent No. 1 was not a party to the suit filed by appellant/defendant No. 1 against her father Maharaj Singh, but since plaintiff is claiming her title through Maharaj Singh, therefore, the bar as contained under Order 23 Rule 3A CPC would apply.

22. "Fraud" has been defined under Section 17 of Indian Contract Act, which reads as under:

"17. "Fraud" defined.—'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto of his agent, or to induce him to enter into the contract:—

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;*
- (2) the active concealment of a fact by one having knowledge or belief of the fact;*
- (3) a promise made without any intention of performing it;*
- (4) any other act fitted to deceive;*
- (5) any such act or omission as the law specially declares to be fraudulent."*

23. "Unlawful" means any act which is not lawful. Thus, it is clear that "unlawful" means any act which is forbidden by law, whereas "fraud" is a type of unlawful act which involves intentional deception for personal gain. Thus, it can be said that all "fraud" is "unlawful", but all "unlawful acts" are not "fraud". Therefore, "fraud" has a wider meaning in comparison to the word "unlawful". In Order 23 Rule 3A CPC, the word "unlawful" has been used. Therefore, it is clear that intention of the legislature is to give a restrictive meaning and not a wider meaning. Thus, it is clear that only in a case where the compromise decree can be said to be "unlawful", i.e. forbidden by law, only then the bar as contained under Order 23 Rule 3A CPC would apply and not in the case of fraud.

24. The Supreme Court in the case of **Vishnu Vardhan @ Vishnu Pradhan v. State of U.P. and others**, reported in 2025 SCC OnLine SC 1501, has held as under:

"1. In *Nidhi Kaim v. State of Madhya Pradesh*, a three-Judge Bench of this



Court emphatically asserted “... *stated simply, nothing ... nothing ... and nothing, obtained by fraud, can be sustained, as fraud unravels everything.*”
 2. At the end of the last century, this Court in *S.P. Chengalvaraya Naidu v. Jagannath* noticed the growing trend of abuse of the process of law by dishonest litigants playing fraud on courts. Fraud was held to be an act of deliberate deception with the design of securing something by taking unfair advantage of another: a deception in order to gain by another's loss. The opening paragraph of such decision reads as follows:

“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.

This Court then warned that:

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. 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. Propertygrabbers, 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, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

3. “Fraud unravels everything” was famously said by Lord Denning in *Lazarus Estates Ltd. v. Beasley*, emphasising that fraud can invalidate judgments, contracts and all transactions. The principle highlights the importance of honesty and transparency in legal proceedings and transactions. However, it is a cardinal principle of law that fraud has to be pleaded and proved. Order VI Rule 4, of the Civil Procedure Code, 1908⁴ may be referred to ordaining that particulars, *inter alia*, of fraud have to be stated in the pleadings.

4. From the multiple decisions of this Court on ‘fraud’, what follows is that fraud and justice cannot dwell together, the legislature never intends to guard fraud, the question of limitation to exercise power does not arise, if fraud is proved, and even finality of litigation cannot be pressed into service to absurd limits when a fraud is unravelled.”

The Supreme Court in the case of *A.V. Papayya Sastry v. Govt. of A.P.* , reported in (2007) 4 SCC 221 , has held as under:

"21. Now, 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 avoids 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* Lord Denning observed: (All ER p. 345 C)

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

24. In *Duchess of Kingstone, Smith's Leading Cases*, 13th Edn., p. 644, explaining the nature of fraud, de 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 nemini 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 utilised as an engine of oppression by dishonest and fraudulent litigants.

27. In *S.P. Chengalvaraya Naidu v. Jagannath* this Court had an 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 and 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 at any stage of the litigation.*"

(emphasis supplied)

29. The Court proceeded to state: (SCC p. 5, para 6)

"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 v. Satyam Fibres (India) (P) Ltd.* referring to *Lazarus Estates* and *Smith v. East Elloe Rural Distt. Council* this Court stated: (SCC pp. 562-63, para 22)

"22. The judiciary in India also possesses inherent power, specially under Section 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)

32. In *United India Insurance Co. Ltd. v. Rajendra Singh* by practising fraud upon the Insurance Company, the claimant obtained an award of compensation from the Motor Accident Claims Tribunal. On coming to know of fraud, the Insurance Company applied for recalling of the award. The Tribunal, however, dismissed the petition on the ground that it had no power to review its own award. The High Court confirmed the order. The Company approached this Court.

33. Allowing the appeal and setting aside the orders, this Court stated: (SCC pp. 587-88, paras 15-17)

"15. It is unrealistic to expect the appellant Company to resist a claim at the first instance on the basis of the fraud because the appellant Company had at that stage no knowledge about the fraud allegedly played by the claimants. If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it would not be possible for the Company to file a statutory appeal against the award. Not only



because of the bar of limitation to file the appeal but the consideration of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.

16. Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly-discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.

17. The allegation made by the appellant Insurance Company, that the claimants were not involved in the accident which they described in the claim petitions, cannot be brushed aside without further probe into the matter, for the said allegation has not been specifically denied by the claimants when they were called upon to file objections to the applications for recalling of the awards. The claimants then confined their resistance to the plea that the application for recall is not legally maintainable. Therefore, we *strongly feel that the claim must be allowed to be resisted, on the ground of fraud now alleged by the Insurance Company. If we fail to afford to the Insurance Company an opportunity to substantiate their contentions it might certainly lead to a serious miscarriage of justice.*"

(emphasis supplied)"

The Supreme Court in the case of **Satluj Jal Vidyut Nigam v. Raj Kumar**

Rajinder Singh, reported in (2019) 14 SCC 449, has held as under:

"68. Fraud vitiates every solemn proceeding and no right can be claimed by a fraudster on the ground of technicalities. On behalf of the appellants, reliance has been placed on the definition of "fraud" as defined in *Black's Law Dictionary*, which is as under:

"Fraud : (1) A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Fraud is usually a tort, but in some cases (esp. when the conduct is wilful) it may be a crime. ... (2) A misrepresentation made recklessly without belief in its truth to induce another person to act. (3) A tort arising from a knowing misrepresentation, concealment of material fact, or reckless misrepresentation made to induce another to act to his or her detriment. (4) Unconscionable dealing; esp., in contract law, the unconscientious use of the power arising out of the parties' relative positions and resulting in an unconscionable bargain."

69. *Halsbury's Laws of England* has defined "fraud" as follows:

"Whenever a person makes a false statement which he does not actually and honestly believe to be true, for purpose of civil liability, the statement is as fraudulent as if he had stated that which



he did know to be true, or know or believed to be false. Proof of absence of actual and honest belief is all that is necessary to satisfy the requirement of the law, whether the representation has been made recklessly or deliberately, indifference or recklessness on the part of the representor as to the truth or falsity of the representation affords merely an instance of absence of such a belief.”

70. In *Kerr on the Law of Fraud and Mistake*, “fraud” has been defined thus:

“It is not easy to give a definition of what constitutes fraud in the extensive significance in which that term is understood by Civil Courts of Justice. The courts have always avoided hampering themselves by defining or laying down as a general proposition what shall be held to constitute fraud. Fraud is infinite in variety... Courts have always declined to define it, ... reserving to themselves the liberty to deal with it under whatever form it may present itself. Fraud ... may be said to include property (*sic* properly) all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue or unconscientious advantage is taken of another. All surprise, trick, cunning, dissembling and other unfair way that is used to cheat anyone is considered as fraud. Fraud in all cases implies a wilful act on the part of anyone, whereby another is sought to be deprived, by illegal or inequitable means, of what he is entitled to.”

71. In *Ram Chandra Singh v. Savitri Devi*, it was observed that fraud vitiates every solemn act. Fraud and justice never dwell together and it cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*. This Court observed as under : (SCC pp. 327-29, paras 15-18, 23 & 25)

“15. Commission of fraud on court and suppression of material facts are the core issues involved in these matters. *Fraud, as is well known, vitiates every solemn act. Fraud and justice never dwell together.*

16. *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.*

17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.

18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully 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.

* * *

23. 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.

* * *

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.”

(emphasis supplied)

72. In *Madhukar Sadbha Shivarkar v. State of Maharashtra*, this Court observed that fraud had been played by showing the records and the orders obtained unlawfully by the declarant, would be a nullity in the eye of the law though such orders have attained finality. Following observations were made : (SCC pp. 569-70, para 27)

“27. The said order is passed by the State Government only to enquire into the landholding records with a view to find out as to whether original land revenue records have been destroyed and fabricated to substantiate their unjustifiable claim by playing fraud upon the Tahsildar and appellate authorities to obtain the orders unlawfully in their favour by showing that there is no surplus land with the Company and its shareholders as the valid sub-leases are made and they are accepted by them in the proceedings under Section 21 of the Act, on the basis of the alleged false declarations filed by the shareholders and sub-lessees under Section 6 of the Act. The plea urged on behalf of the State Government and the de facto complainant owners, at whose instance the orders are passed by the State Government on the alleged ground of fraud played by the declarants upon the Tahsildar and appellate authorities to get the illegal orders obtained by them to come out from the clutches of the land ceiling provisions of the Act by creating the revenue records, which is the fraudulent act on their part which unravels everything and therefore, the question of limitation under the provisions to exercise power by the State Government does not arise at all. For this purpose, the Deputy Commissioner of Pune Division was appointed as the enquiry officer to hold such an enquiry to enquire into the matter and submit his report for consideration of the Government to take further action in the matter. The legal contentions urged by Mr Naphade, in justification of the impugned judgment and order prima facie at this stage, we are satisfied that the allegation of fraud in relation to getting the landholdings of the villages referred to supra by the declarants on the alleged ground of destroying original revenue records and fabricating revenue records to show that there are 384 sub-leases of the land involved in the proceedings to retain the surplus land illegally as alleged, to the extent of more than 3000 acres of land and the orders are obtained unlawfully by the declarants in the land ceiling limits will be nullity in the eye of the law though such orders have attained finality; if it is found in the enquiry by the enquiry officer that they are tainted with fraud, the same can be



interfered with by the State Government and its officers to pass appropriate orders. The landowners are also aggrieved parties to agitate their rights to get the orders which are obtained by the declarants as they are vitiated in law on account of nullity is the tenable submission and the same is well founded and therefore, we accept the submission to justify the impugned judgment and order *Babu Maruti Dukare v. State of Maharashtra* of the Division Bench of the High Court.”

(emphasis supplied)

73. In *Jai Narain Parasrampuriah v. Pushpa Devi Saraf*, this Court observed that fraud vitiates every solemn act. Any order or decree obtained by practising fraud is a nullity. This Court held as under:

“55. It is now well settled that fraud vitiates all solemn act. Any order or decree obtained by practising fraud is a nullity. [See (1) *Ram Chandra Singh v. Savitri Devi* followed in (2) *Kendriya Vidyalaya Sangathan v. Girdharilal Yadav*; (3) *State of A.P. v. T. Suryachandra Rao*; (4) *Ishwar Dutt v. LAO*; (5) *Lillykutty v. Scrutiny Committee, SC & ST*; (6) *Maharashtra SEB v. Suresh Raghunath Bhokare*; (7) *Satya v. Teja Singh*; (8) *Mahboob Sahab v. Syed Ismail*; and (9) *Asharfi Lal v. Koil*”

(emphasis supplied)

74. In *State of A.P. v. T. Suryachandra Rao*, it was observed that where the land which was offered for surrender had already been acquired by the State and the same had vested in it. It was held that merely because an enquiry was made, the Tribunal was not divested of the power to correct the error when the respondent had clearly committed a fraud. Following observations were made : (SCC pp. 152-53 & 155, paras 7-10 & 13-16)

“7. The order of the High Court is clearly erroneous. *There is no dispute that the land which was offered for surrender by the respondent had already been acquired by the State and the same had vested in it. This was clearly a case of fraud. Merely because an enquiry was made, the Tribunal was not divested of the power to correct the error when the respondent had clearly committed a fraud.*

8. By “fraud” is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from ill-will towards the other is immaterial. The expression “fraud” involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. [See *Vimla v. Delhi Admn. and Indian Bank v. Satyam Fibres (India) (P) Ltd.*]



9. A “fraud” is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See *S.P. Chengalvaraya Naidu v. Jagannath.*)

10. “Fraud” as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully 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 enures therefrom although the motive from which the representations proceeded may not have been bad. 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. Although in a given case a deception may not amount to fraud, fraud is an 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. (See *Ram Chandra Singh v. Savitri Devi.*)

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13. This aspect of the matter has been considered recently by this Court in *Roshan Deen v. Preeti Lal, Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education, Ram Chandra Singh v. Savitri Devi* and *Ashok Leyland Ltd. v. State of T.N.*

14. Suppression of a material document would also amount to a fraud on the court. (See *Gowrishankar v. Joshi Amba Shankar Family Trust* and *S.P. Chengalvaraya Naidu v. Jagannath.*)

15. “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 words or letter. Although negligence is not fraud but it can be evidence of fraud; as observed in *Ram Preeti Yadav.*

16. In *Lazarus Estates Ltd. v. Beasley*, Lord Denning observed at QB pp. 712 and 713 : (All ER p. 345 C)

‘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.’

In the same judgment, Lord Parker, L.J. observed that fraud ‘vitiates all transactions known to the law of however high a degree of solemnity’ (All ER p. 351 E-F).”

(emphasis supplied)

75. In *A. V. Papayya Sastry v. State of A.P.*, this Court as to the effect of fraud on the judgment or order observed thus : (SCC pp. 231 & 236-37, paras 21-22 & 38-39)



“21. Now, 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 avoids 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.

* * *

38. The matter can be looked at from a different angle as well. Suppose, a case is decided by a competent court of law after hearing the parties and an order is passed in favour of the plaintiff applicant which is upheld by all the courts including the final court. Let us also think of a case where this Court does not dismiss special leave petition but after granting leave decides the appeal finally by recording reasons. Such order can truly be said to be a judgment to which Article 141 of the Constitution applies. Likewise, the doctrine of merger also gets attracted. All orders passed by the courts/authorities below, therefore, merge in the judgment of this Court and after such judgment, it is not open to any party to the judgment to approach any court or authority to review, recall or reconsider the order.

39. The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as a nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every court, superior or inferior.”

Supervisory jurisdiction of the court can be exercised in case of error apparent on the face of the record, abuse of process and if the issue goes to the root of the matter.

76. In *S.P. Chengalvaraya Naidu v. Jagannath*, this Court noted that the issue of fraud goes to the root of the matter and it exercised powers under Article 136 to cure the defect. The Court observed : (SCC p. 5, paras 5-6)

“5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that ‘there is no legal duty



cast upon the plaintiff to come to court with a true case and prove it by true evidence'. 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. 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, the 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 at any stage of the litigation.

6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ext. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellant-defendants could have easily produced the certified registered copy of Ext. B-15 and non-suited the plaintiff. 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."

77. In *K.K. Modi v. K.N. Modi*, it was observed that one of the examples cited as an abuse of the process of the court is re-litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him."

Thus, it is held that the bar as contained under Order 23 Rule 3A CPC would apply only if the party claims that the compromise decree is "unlawful", but where a party who was not a party to the compromise decree challenges the decree on the ground that it has been obtained by fraud, then the bar as contained under Order 23 Rule 3A CPC would not apply and a civil suit would be



maintainable.

25. In the present case, admittedly, plaintiff was not a party to the suit filed by defendant No. 1 against her father. This Court has already come to a conclusion that the compromise decree was obtained by fraud, and therefore, it is held that the suit filed by plaintiff for declaration of compromise decree as null and void and not binding on the plaintiff was maintainable.

26. Therefore, substantial question of law No. (i) is answered in negative.

27. No other argument is advanced by counsel for appellant.

28. *Ex-consequenti*, judgment and decree dated 23/01/2006 passed by Additional District Judge, Lahar, District Bhind in Civil Appeal No. 6/2004, as well as judgment and decree dated 31/03/2004 passed by Civil Judge, Class I, Lahar, District Bhind in Civil Suit No. 6A/2000 are hereby affirmed.

29. The appeal fails and is hereby **dismissed**.

(G. S. AHLUWALIA)
JUDGE

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