SUPREME COURT OF INDIA

Badami (Deceased) By her L.R.

Vs.

Bhali

C.A.No.1723 of 2008

(Dr. B.S.Chauhan and Dipak Misra JJ.)

22.05.2012

JUDGMENT

DIPAK MISRA, J.

1. The singular question that arises for consideration in this appeal by way of special leave under Article 136 of the Constitution of India is whether the judgment and decree dated 27.11.1973 passed by the learned sub- Judge, Kaithal in Civil Suit No. 1422 of 1973 is to be declared as a nullity being vitiated by fraud and manifest illegality being writ large and thereby the claim of right, title and interest and possession based on the said judgment and decree by the respondent-plaintiff in the subsequent suits, namely, Civil Suit No. 401 of 1984 and Civil Suit No. 784 of 1984 which have been decreed and got affirmance by a composite order passed by the Additional District Judge, Kurukshetra in Civil Appeal No. 19/13 of 1987 and Civil Appeal No. 18/13 of 1986 and further gained concurrence by the learned single Judge of the High Court of Punjab and Haryana at Chandigarh in R.S.A. Nos. 2001 of 1988 and 2002 of 1988, is bound to collapse and founder.

2. To appreciate the controversy, it is incumbent to travel to the year 1973 as to how the original suit was instituted, proceeded and eventually decreed. For the said purpose it is necessary to note that one Dai Ram was the common ancestor. He had two sons, namely, Dinda and Rachna. Dinda had one son, namely, Roora and Rachna had one son, namely, Ram Chand. Badami was the widow of Roora and Bhali is the son of Ram Chand. Risali is the daughter of Roora and Badami. Bhali, respondent herein, instituted Civil Suit No. 1422 of 1973 on 24.11.1973 alleging that Badami was the owner of 1894/9549 share of the ancestral land and had received it at a prior arrangement. When she was in possession, there was a family

settlement on 1.6.1972 and in that family settlement the defendant gave her whole share to the plaintiff-Bhali and the possession of the same was also handed over in pursuance of that settlement. As pleaded, the defendant-Badami agreed that he would get the revenue entries of the suit land corrected in favour of the plaintiff but the name of the defendant continued as owner in the revenue records and despite the request of the plaintiff therein not to interfere with the possession there was interference. Hence, he had been compelled to file a suit for declaration and for permanent injunction.

3. On the date of presentation of the plaint, the defendant in the suit, Badami, filed the written statement admitting the assertions in the plaint to be correct and, in fact, prayed for decree of the suit. The learned sub- Judge, Kaithal on 27.11.1973 decreed the suit.

4. As the facts would reveal, in spite of the said consent decree the record of entries stood in the name of Badami and she remained in possession and enjoyed the same. The respondent- Bhali, thereafter, initially instituted Civil Suit No. 401 of 1984 seeking permanent injunction against her restraining from alienating the land in any manner. The learned trial Judge relied on the earlier judgment and decree dated 27.11.1973, did not accept the stand put forth by the defendant that the said decree was obtained by fraud and passed a decree for permanent injunction restraining the defendant from alienating the suit land to anyone in any manner.

5. In the second suit for possession, the learned trial Judge framed two vital issues, namely, whether the plaintiff was owner of the suit land and whether the impugned decree dated 27.11.1973 is null, void and not binding on the rights of the defendants and, thereafter, came to hold that factual matrix would show that the decree was passed three days after and Badami had appeared in the court, and hence, the decree was validly passed. On appeals being preferred, the learned Additional District Judge affirmed the said findings further elaborating the reasoning that Badami had appeared in court, made a statement and given the thumb mark and further she had not been able to discharge the onus that the decree was obtained by fraud. The appellate court gave credence to the family settlement and also took note of the fact that the parties were related and hence, there was no reason to discard the family settlement; and that it was a common phenomenon that a member of a family is given property out of love and affection. The learned appellate Judge opined that though after the decree dated 27.11.1973 the possession was with the appellant and the revenue entry had not been corrected, that was possibly due to an implied understanding between the parties that the arrangement under the decree would be worked out only after the death of the

appellant, i.e., Badami. Being of this view, the learned appellate Judge dismissed both the appeals.

6. Being aggrieved, Badami, the original defendant, preferred two Regular Second Appeals, namely, R.S.A. Nos. 2001 of 1988 and 2002 of 1988. During the pendency of the appeals, she expired and Risali, her daughter, was substituted by order dated 21.2.1992 in both the appeals. The learned single Judge who dealt with the appeals by the impugned judgment dated 1st September, 2006 referred to the issues framed by the learned trial Judge, the analysis made by the courts below and came to hold that original defendant No. 1 had failed to discharge the onus that the initial decree dated 27.11.1973 was obtained by fraud inasmuch as she had given a statement in court and put the thumb impression and that the conclusion drawn by the courts below were justified being based on facts and did not warrant any interference as no substantial question of law was involved.

7. We have heard learned counsel for the parties and perused the records.

8. To appreciate the controversy, it is appropriate to refer to para 3 of the plaint presented on 24.11.1973. It reads as follows:-

> "3. That the parties entered into a family settlement on 1/6/72 and in that family settlement the defendant gave her whole share to the plaintiff and the possession of the same was also handed over to the plaintiff in pursuance of that family settlement, the defendant also agreed that he would get the revenue entries of the suit land corrected in favour of the plaintiff, but the name of the defendant is still continuing as owner in the revenue records."

9. From the perusal of the averments made in the plaint, it is obvious that emphasis was laid on the family settlement and handing over of possession. It is interesting to note that the first appellate court had opined that the possession remained with Badami and the revenue entries were not corrected and continued possibly due to implied understanding but the plaintiff was compelled to file the second suit when there was interference. It has come out on the testimony of evidence of Badami that she was absolutely illiterate. The only ground on which the courts have proceeded that there was a consent decree and allegation of fraud had not been established.

10. In this context, we may usefully refer to the decision in Santosh v. Jagat Ram and another [1] wherein this Court was dealing with a situation almost similar to the present nature. In the said case the day the plaint was presented, on the same

day written statement was also filed, evidence of the plaintiff and the defendant was recorded and the judgment was also made ready along with a decree on the same day. In that context, this Court observed as follows: -

> "This, by itself, was sufficient to raise serious doubts in the mind of the courts. Instead, the appellate court went on to believe the evidence of Dharam Singh (DW 1), record keeper, who produced the files of the summons. One wonders as to when was the suit filed and when did the Court issue a summons and how is it that on the same day, the written statement was also ready, duly drafted by the other side lawyer S.K. Joshi (DW 3)."
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> The Bench further proceeded to observe as follows: -
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> "We are anguished to see the attitude of the Court, who passed the decree on the basis of a plaint and a written statement, which were filed on the same day. We are also surprised at the observations made by the appellate court that such circumstance could not, by itself, prove the fraudulent nature of the decree.
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> A fraud puts an end to everything. It is a settled position in law that such a decree is nothing, but a nullity."

11. From the aforesaid decision it becomes quite clear that this Court expressed a sense of surprise the way the suit in that case proceeded with and also expressed its anguish how the court passed a decree on the foundation of a plaint and a written statement that were filed on the same day.

12. It is seemly to note that the Code of Civil Procedure provides how the court trying the suit is required to deal with the matter. Order IV Rule 1 provides for suit to be commenced by plaint. Order V Rule 1(1) provides when the suit has been duly instituted, a summon may be issued to defendant to appear and answer the claim on a day to be therein specified. As per the proviso to Order V Rule 1 no summon need be issued if the defendant appears and admits the claim of the plaintiff. Order X deals with the examination of parties by the court. Rule 1 of Order X provides for ascertainment whether allegations in pleadings are admitted or denied. It stipulates that "at the first hearing" of the suit the court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The court is required to record such admissions and

denials. Use of the term 'first hearing of the suit' in Rule 1 has its own signification. Order XV Rule 1 lays a postulate that where "at the first hearing" of the suit it appears that the parties are not at issue on any question of law or of fact, the court may at once pronounce the judgment. Recently, this Court in Kanwar Singh Saini v. High Court of Delhi[2], while dealing with the concept of first hearing, speaking through one of us (Dr. B.S. Chauhan, J) has opined thus: -

> "12. The suit was filed on 26-4-2003 and notice was issued returnable just after three days i.e. on 29-4-2003 and on that date the written statement was filed and the appellant appeared in person and the statement was recorded. Order 10 Rule 1 CPC provides for recording the statement of the parties to the suit at the "first hearing of the suit" which comes after the framing of the issues and then the suit is posted for trial i.e. for production of evidence. Such an interpretation emerges from the conjoint reading of the provisions of Order 10 Rule 1, Order 14 Rule 1(5) and Order 15 Rule 1 CPC. The cumulative effect of the aboverffered provisions of CPC comes to that the "first hearing of the suit" can never be earlier than the date fixed for the preliminary examination of the parties and the settlement of issues. On the date of appearance of the defendant, the court does not take up the case for hearing or apply its mind to the facts of the case, and it is only after filing of the written statement and framing of issues, the hearing of the case commences. The hearing presupposes the existence of an occasion which enables the parties to be heard by the court in respect of the cause. Hearing, therefore, should be first in point of time after the issues have been framed.
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> 13. The date of "first hearing of a suit" under CPC is ordinarily understood to be the date on which the court proposes to apply its mind to the contentions raised by the parties in their respective pleadings and also to the documents filed by them for the purpose of framing the issues which are to be decided in the suit. Thus, the question of having the "first hearing of the suit" prior to determining the points in controversy between the parties i.e. framing of issues does not arise. The words "first day of hearing" do not mean the day for the return of the summons or the returnable date, but the day on which the court applies its mind to the case which ordinarily would be at the time when either the issues are determined or evidence is taken. (Vide Ved Prakash Wadhwa v. Vishwa Mohan[3], Sham Lal v. Atme Nand Jain Sabha[4], Siraj Ahmad Siddiqui v. Prem Nath Kapoor[5] and Mangat Singh Trilochan Singh v. Satpal[6]."

After so stating, it has been further observed as follows: -

> "From the above fact situation, it is evident that the suit was filed on 26-4-2003 and in response to the notice issued in that case, the appellant-defendant appeared on 29.4.2003 in person and filed his written statement. It was on the same day that his statement had been recorded by the court. We failed to understand as to what statutory provision enabled the civil court to record the statement of the appellant-defendant on the date of filing the written statement. The suit itself has been disposed of on the basis of his statement within three weeks of the institution of the suit."

13. Keeping in view the aforesaid pronouncement of law relating to the procedure and the lapses committed by the trial court in the case at hand, the stand of the original defendant, the predecessor-in-interest of the present appeal gets fructified. From the evidence brought on record, it is perceptible that Badami was a rustic and an illiterate woman; that she had one daughter who was married and there was no animus between them to exclude her from the whole property; and that the concept of family arrangement is too farfetched to give any kind of credence. That apart, the filing of written statement, the recording of statement and taking the thumb impression in a hurried manner further nurtures the stance that the defendant was totally unaware as to what had happened. The averments in the plaint show that the plaintiff was put in possession but as she was going to alienate the property because of record of rights reflected name of Badami, the suit was filed for permanent injunction restraining her from alienating in any manner and the defendant conceded to the same. The averments in the plaint show that the defendant had refused the request of the plaintiff on 11.11.1973 not to interfere with the possession yet she accompanied him to suffer a consent decree. It is worth noting that there is evidence on record that she was brought to the court premises to execute the lease deed for a period of two years and she had faith in Bhali. It is a matter of grave anguish that in the first suit the court had not applied its mind to the real nature of the family arrangement. The learned counsel for the appellant has submitted that there was no need for a family settlement because Badami had got a part of the property in an earlier family arrangement. She had a daughter and a son-in-law and she had no cavil with plaintiff. She had also to support herself. He fairly submitted that the family arrangement need not be construed narrowly and it need not be registered but it must prima facie appear to be genuine which is not so in the case at hand.

14. In this regard we may refer with profit to certain authorities of this Court. In Krishna Beharilal (dead) by his legal representatives v. Gulabchand and others[7] a compromise decree had come into existence, on the basis of a compromise deed

which specifically stated that the properties given to one Pattobai were to be enjoyed by her as "Malik Mustakil". This Court referred to certain decisions in the field and opined that the circumstances under which the compromise was entered into as well as the language used in the deed did not in any manner go to indicate that the estate given to Pattobai was anything other than an absolute estate. The High Court had treated the compromise decree to be illegal on the basis that a Hindu widow could not have enlarged her own rights by entering into a compromise in a suit. This Court observed that this was not a compromise entered into with third parties. It was a compromise entered into with the presumptive reversioners and in that case the issue would be totally different. Further, the question arose whether there could have been any family settlement. In that context, this Court held as follows:-

> "8……It may be noted that Lakshmichand and Ganeshilal who along with Pattobai were the principal parties to the compromise were the grand-children of Parvati who was the aunt of Bulakichand. The parties to the earlier suit were near relations. The dispute between the parties was in respect of a certain property which was originally owned by their common ancestor namely Chhedilal. To consider a settlement as a family arrangement, it is not necessary that the parties to the compromise should all belong to one family. As observed by this Court in Ram Charan Das v. Girija Nandini Devi[8], the word "family" in the context of the family arrangement is not to be understood in a narrow sense of being a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute. If the dispute which is settled is one between near relations then the settlement of such a dispute can be considered as a family arrangement- see Ramcharan Das's case, 1965-3 SCR 841=(AIR 1966 SC 323) (supra).
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> 9. The Courts lean strongly in favour of the family arrangements to bring about harmony in a family and do justice to its various members and avoid in anticipation future disputes which might ruin them all."

15. In Kale and others v. Deputy Director of Consolidation and others[9], it has been held that the object of the arrangement is to protect family from filing long drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Their Lordships opined that the family is to be understood in the wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of claim or

even if they have a spes successionis so that future disputes are sealed forever and litigation are avoided. What could be the binding effect and essentials for a family settlement were expressed thus:-

> "10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:
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> > (1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;
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> > (2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;
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> > (3) The family arrangements may be even oral in which case no registration is necessary;
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> > (4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) (sic) (Sec. 17 (1) (b)?) of the Registration Act and is, therefore, not compulsorily registrable;
> >
> > (5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement."

16. We may note that the principles stated in Maturi Pullaiah and another v. Maturi Narasimham and others[10] were reiterated in S. Shanmugam Pillai others v. K. Shanmugam Pillai others.[11] in the following terms:-

"In Maturi Pullaiah v. Maturi Narasimham, AIR 1966 SC 1836 this Court held that although conflict of legal claims in praesenti or in futuro is generally a condition for the validity of family arrangements, it is not necessarily so. Even bona fide disputes present or possible, which may not involve legal claims would be sufficient. Members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an agreement is entered into bona fide and the terms thereto are fair in the circumstances of a particular case, the Courts would more readily give assent to such an agreement than to avoid it."

17. If the present factual matrix tested on the anvil of the aforesaid decisions, the family arrangement does not remotely appear to be a bona fide. Bhali had not semblance of right in the property. All rights had already been settled and she was the exclusive owner in possession. It is difficult to visualise such a family settlement. More so, it is absolutely irrational that Badami would give everything to Bhali in lieu of nothing and suffer a consent decree. That apart, there was no reason to exclude the daughter and the son-in-law. Had there been any likely possibility of any future legal cavil between the daughter and Bhali the same is understandable. It is well nigh impossible to perceive any dispute over any property or the possibility of it in future. On the contrary in this so called family settlement the whole property of Badami is given to Bhali. We are unable to accept it to be a bona fide settlement.

18. From the aforesaid analysis it is clear as crystal that the judgment and decree passed in civil suit No. 1422 of 1973 on 27.11.1973 are fundamentally fraudulent. It is a case which depicts a picture that the delineation by the learned Judge was totally ephemeral. The judgement is vitiated by fraud.

19. Presently, we shall refer as to how this Court has dealt with concept of fraud. In S. B. Noronah v. Prem Kumari Khanna[12] while dealing with the concept of

estoppel and fraud a two-Judge Bench has stated that it is an old maxim that estoppels are odious, although considerable inroad into this maxim has been made by modern law. Even so, "a judgment obtained by fraud or collusion, even, it seems a judgment of the House of Lords, may be treated as a nullity". (See Halsbury's Laws of England, Vol. 16 Fourth Edition para 1553). The point is that the sanction granted under Section 21, if it has been procured by fraud or collusion, cannot withstand invalidity because, otherwise, high public policy will be given as hostage to successful collusion.

20. In S. P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others[13] this court commenced the verdict with the following words:-

> ""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."

21. In the said case it was clearly stated that the courts of law are meant for imparting justice between the parties and one who comes to the court, must come with clean hands. A person whose case is based on falsehood has no right to approach the Court. A litigant who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If a vital document is withheld in order to gain advantage on the other side he would be guilty of playing fraud on court as well as on the opposite party.

22. In Smt. Shrist Dhawan v. M/s. Shaw Brothers[14] it has been opined that fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It has been defined as an act of trickery or deceit. The aforesaid principle has been reiterated in Roshan Deen v. Preeti Lal[15], Ram Preeti Yadav v. U. P. Board of High School and Intermediate Education andother[16] and Ram Chandra Singh v. Savitri Devi and others[17].

23. In State of Andhra Pradesh and another v. T. Suryachandra Rao[18] after referring to the earlier decision this court observed as follows:-

> "In Lazaurs Estate Ltd. v. Beasley[19] Lord Denning observed at pages 712 713, "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 LJ observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. "

24. Yet in another decision Hamza Haji v. State of Kerala Anr.[20] it has been held that no court will allow itself to be used as an instrument of fraud and no court, by way of rule of evidence and procedure, can allow its eyes to be closed to the fact it is being used as an instrument of fraud. The basic principle is that a party who secures the judgment by taking recourse to fraud should not be enabled to enjoy the fruits thereof.

25. It would not be an exaggeration but on the contrary an understatement if it is said that all facets of fraud get attracted to the case at hand. A rustic and illiterate woman is taken to court by a relation on the plea of creation of a lease deed and magically in a hurried manner the plaint is presented, written statement is drafted and filed, statement is recorded and a decree is passed within three days. On a perusal of the decree it is manifest that there is no reference of any kind of family arrangement and there is total non-application of mind. It only mentions there is consent in the written statement and hence, suit has to be decreed. Be it noted, it was a suit for permanent injunction. There was an allegation that the respondent was interfering with the possession of the plaintiff. What could have transpired that the defendant would go with the plaintiff and accede to all the reliefs. It not only gives rise to a doubt but on a first look one can feel that there is some kind of foul play. However, the learned trial Judge who decreed the first suit on 27.11.1973 did not look at these aspects. When the second suit was filed in 1984 for title and the third suit was filed for possession thereafter, the courts below had routinely followed the principles relating to consent decree and did not dwell deep to find out how the fraud was manifestly writ large. It was too obvious to ignore. The courts below have gone by the concept that there was no adequate material to establish that there was fraud, though it was telltale. That apart, the foundation was the family arrangement. We have already held that it was not bona fide, but, unfortunately the courts below as well as the High Court have held that it is a common phenomenon that the people in certain areas give their property to their close relations. We have already indicated that by giving the entire property and putting him in possession she would have been absolutely landless and would have been in penury. It is unimaginable that a person would divest herself of one's own property in entirety in lieu of nothing. No iota of evidence has been brought on record that Bhali, the respondent herein, had given anything to Badami in the arrangement. It is easily perceivable that the rustic woman was also not old. Though the decree was passed in 1973 wherein it was alleged that the defendant

was already in possession, she lived up to 1992 and expired after 19 years. It is a matter of record that the possession was not taken over and inference has been drawn that possibly there was an implied agreement that the decree would be given effect to after her death. All these reasonings are absolutely non-plausible and common sense does not even remotely give consent to them. It is fraudulent all the way. The whole thing was buttressed on the edifice of fraud and it needs no special emphasis to state that what is pyramided on fraud is bound to decay. In this regard we may profitably quote a statement by a great thinker:

"Fraud generally lights a candle for justice to get a look at it; and rogue's pen indites the warrant for his own arrest."

26. Ex consequenti, the appeal is allowed and the judgment and decree of the High Court in the Second Appeal as well as the judgments and decrees of the courts below are hereby set aside and as a natural corollary the judgment and decree dated 27.11.1973 is also set aside. There shall be no order as to costs.

[1] (2010) 3 SCC 251
[2] (2012) 4 SCC 307
[3] (1981) 3 SCC 667 : AIR 1982 SC 816
[4] (1987) 1 SCC 222 : AIR 1987 SC 197
[5] (1993) 4 SCC 406 : AIR 1993 SC 2525
[6] (2003) 8 SCC 357 : AIR 2003 SC 4300
[7] AIR 1971 SC 1041
[8] (1965) 3 SCR 841 = AIR 1966 SC 323
[9] AIR 1976 SC 807
[10] AIR 1966 SC 1836
[11] AIR 1972 SC 2069
[12] AIR 1980 SC 193
[13] AIR 1994 SC 853
[14] AIR 1992 SC 1555
[15] AIR 2002 SC 33
[16] (2003) 8 SC 311
[17] (2003) 8 SCC 319
[18] AIR 2005 SC 3110
[19] (1956) 1 QB 702
[20] AIR 2006 Sc 3028