IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No. 5240 of 1993

(From the Judgment and Order dated 18-3-1991 of the Madras High Court in A.S. No. 598 of 1982)

[1993] Supp 3 SCR 322 | (1994) 1 SCC 1 | 1993 INSC 344

S.P. Chengalvaraya Naidu (Dead) by L.Rs. ... Appellants;

Versus

Jagannath (Dead) by L.Rs. and Others ... Respondents.

Bench: Hon'ble Mr. Justice Kuldip Singh and Hon'ble Mr. Justice P.B. Sawant

Date of Decision: October 27, 1993

Subject: Civil Procedure Code, 1908 — Section 11, Order 20 Rule 18 — Fraud on Court — Suppression of Vital Document — Effect of Decree Obtained by Fraud.

REPORTABLE SUMMARY & RATIO DECIDENDI

Held: Fraud avoids all judicial acts, ecclesiastical or temporal. A judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a decree can be challenged in any court even in collateral proceedings.

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. A person whose case is based on falsehood has no right to approach the court and can be summarily thrown out at any stage of the litigation.

J U D G M E N T

KULDIP SINGH, J. —

The Judgment of the Court was delivered by Kuldip Singh, J.:

"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.

2. Predecessor-in-interest of the respondents-plaintiffs filed an application for final decree for partition and separate possession of the plaint properties. The trial court dismissed the application on the finding that the preliminary decree was obtained by fraud and as such was a nullity. The High Court reversed the finding

of the trial court and allowed the application for final decree. This appeal by the defendants-appellants is against the judgment of the High Court.

3. One Jagannath was the predecessor-in-interest of the respondents. He was working as a clerk with one Chunilal Sowcar. Jagannath purchased at a court auction the suit properties on behalf of his master Chunilal Sowcar in execution of a decree against the appellants. The properties purchased were in village Chengalvarayapuram, Tiruttani Taluk. By a registered release deed dated 25-11-1945, Jagannath released his rights in the said properties in favour of Chunilal Sowcar. Chunilal Sowcar died leaving behind his son Premraj and brother Babulal. Jagannath thereafter filed a suit for partition against the appellants claiming 1/6th share in the suit properties. He did not implead Chunilal Sowcar or his heirs as parties to the suit. He also did not disclose in the plaint that he had executed a registered release deed dated 25-11-1945 in respect of the suit properties in favour of Chunilal Sowcar. The suit was contested by the appellants on the ground that Jagannath was not the real owner and he was only a benamidar of Chunilal Sowcar. The trial court accepted the contention of the appellants and dismissed the suit. The High Court, however, on appeal reversed the judgment of the trial court and passed a preliminary decree for partition in favour of Jagannath. In the preliminary decree proceedings, the appellants did not produce the release deed dated 25-11-1945. It appears that the appellants came to know about the release deed only when the application for final decree was filed by Jagannath. In the final decree proceedings, the appellants filed an application under Section 151 of the Code of Civil Procedure stating that the preliminary decree was obtained by playing fraud upon the court and as such was a nullity. The trial court accepted the contention of the appellants and dismissed the application for final decree. On appeal by the respondents, the High Court reversed the trial court order and allowed the application for final decree.

4. The High Court reversed the findings of the trial court on the following reasonings:

> *"The trial court has held that the plaintiff has deliberately withheld the release deed executed by him in favour of Chunilal Sowcar and that it amounts to fraud. The trial court was of the view that the plaintiff was under a legal obligation to disclose the fact of the release deed in the plaint itself and his non-disclosure amounts to fraud on the court. In our view, the trial court was in error in holding that the plaintiff has committed fraud on the court. There was no duty on the plaintiff to disclose in the plaint that he had executed a release deed in favour of Chunilal Sowcar. It was for the defendants to plead and prove that the plaintiff had no title to the property and that he had executed a release deed in favour of Chunilal Sowcar."*

The High Court further held as under:

> *"The question of benami was raised in the suit and was decided against the defendants. It was for the defendants to have produced the release deed in the suit itself. They having failed to do so, it is not open to them to raise the question in the final decree proceedings. The judgment and decree passed in the suit has become final between the parties and it cannot be reopened in the final decree proceedings."*

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 went into the question of benami and came to the conclusion that there was no duty on the plaintiff to disclose the release deed in the plaint. The High Court overlooked the fact that Jagannath had executed a registered release deed in favour of Chunilal Sowcar. By the release deed, he completely divested himself of all rights, title and interest in the suit properties. At the time when he filed the suit for partition, he was not the owner of the property. He had no right, title or interest in the suit properties. He filed the suit claiming to be the owner of the property when to his knowledge he had already relinquished all his rights in the property. 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.

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. 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. We do not agree with the High Court that there was no legal duty on the plaintiff to disclose the release deed. The plaintiff was asserting a non-existent title in himself. He knew that he had no title to the property having executed the registered release deed. He deliberately concealed the document from the court. In the circumstances, we have no hesitation in holding that the preliminary decree was obtained by playing fraud on the court. 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. 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, 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.

7. We, therefore, allow the appeal, set aside the impugned judgment of the High Court and restore that of the trial court. The appellants shall be entitled to their costs which we quantify at Rs. 10,000.

.....J.

New Delhi; (Kuldip Singh)

October 27, 1993.

.....J.

(P.B. Sawant)