

IN THE HIGH COURT OF ANDHRA PRADESH : AT AMARAVATI

*** * * ***

Writ Petition No.19021 of 2015

Between

Captain Paida Janardhana Reddy (died) per LRs
Smt. P. Malathi and another

.... Petitioners

And

The State of Andhra Pradesh, rep. by its
Commissioner & Inspector General,
Registration & Stamps Department,
M.J. Road, Hyderabad.

.... Respondents

JUDGMENT PRONOUNCED ON : 04.03.2020

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI :

1. Whether Reporters of Local newspapers : NO
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : YES
Marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to : YES
see the fair copy of the Judgment?

*** THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

+ Writ Petition No. 19021 of 2015

% 04.03.2020

Captain Paida Janardhana Reddy (died) per LRs
Smt. P. Malathi and another

...Petitioners

Vs.

\$ The State of Andhra Pradesh, rep. by its
Commissioner & Inspector General,
Registration & Stamps Department,
M.J. Road, Hyderabad.

... Respondents

! Counsel for Petitioners : Sri J. Ugra Narasimha

^ Counsel for Respondents 1 & 2 : GP for Stamps and Registration

Counsel for Respondent No.4 : Sri D. Kodanda Rami Reddy

Counsel for Respondent No.5 : Sri S. Srinivas Reddy

<Gist :

>Head Note :

? Cases referred:

1. (2007) 4 SCC 221
2. (2010) 8 SCC 383
3. (1994) 2 SCC 647
4. 2017 (3) ALT 420
5. (2016) 10 SCC 767
6. (1998) 8 SCC 1
7. (2007) 9 SCC 593
8. 2017 (5) ALT 614
9. (2004) 4 SCC 714
10. 2017(5) ALT 614
11. (2008) 12 SCC 306
12. 2015(1) ALT 579
13. (2010) 15 SCC 207
14. 2019(2) ALT 290

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.19021 of 2015

Order:

This writ petition is filed "to declare the action of the 2nd respondent in registering Document No.322/2011, dated 14.02.2011, as illegal, without jurisdiction, vitiated by fraud, contrary to the provisions of Section 6B and 6D of the A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for short 'the Act') and Section 32-A of the Registration Act, 1908 and consequently set aside the same".

Case of the petitioner is that, petitioner's late father Paidal Chengalvaraya Reddy, was the original owner of the land admeasuring an extent of Ac.7.94 cents in Sy.No.263 of Pannur Village and after his demise, petitioner's name was recorded as pattadar in the record of rights (Patta No.42) and Pattadar Passbook/title deed was also issued in his favour under the provisions of the Act; the 4th respondent taking advantage of the absence of the petitioner from the village, executed fraudulent sale deed dated 14.02.2011, which was registered as document No.322/2011 in favour of the 5th respondent, including the land of the petitioner admeasuring an extent of Ac.7.94 cents, by appending the petitioner's pattadar pass book and making it part of the said sale deed; in the said sale deed, the 4th respondent also made a false statement that Patta No.42 and Pattadar Pass Book No.K200943, i.e., subject land was in the name of her father P. Suresh Reddy, though the same stands in the name of the petitioner; the 2nd respondent registered the said document, which relates to the total extent of Ac.14.95 cents, which includes the petitioner's land without his knowledge and consent; the Sub Registrar is a party to the said fraud and he also affixed his

signature and seal on the pattadar passbook standing in the name of the petitioner; the said action of the Sub Registrar is contrary to Section 6-B of the Act and Section 52 of the Registration Act; hence the Writ Petition.

After filing the Writ Petition, the petitioner died, hence petitioners 2 and 3 were brought on record as legal heirs of the deceased 1st petitioner as per the orders of this Court passed in WPMP No.53623 of 2017, dated 28.12.2017.

Counter-affidavit is filed by the 2nd respondent stating *inter-alia* that as on the date of registration of the said sale deed, production of Pattadar Passbook and Title Deed was not necessary, as exemption has been granted by the government; only from 08.05.2012, it was made mandatory by Circular Memo dated 08.05.2012 and the provisions of Section 58 of the Registration Act do not authorize the Registering Officer to enquire into the validity of the instrument; instructions were issued vide Memo dated 03.04.2010 directing the Registering Officers to accept the documents presented for registration without insisting pattadar pass books and title deeds until further orders; subject document was registered on 14.02.2011 and as on that date, the instructions of the Commissioner and Inspector General were in force; this Court in WA No.972 of 2004 held that the Registering Officer is not under statutory obligation to make any enquiry into the document.

Counter-affidavit is also filed by the 4th respondent stating, *inter-alia*, that the subject sale deed was executed by her with the consent of the petitioner and that the petitioner has knowledge about the agreement of sale in favour of the 5th respondent; at the time of registration of the document, it is not compulsory to obtain finger prints and that petitioner

could have approached the civil court seeking cancellation of the document.

Counter-affidavit is also filed by the 5th respondent stating *inter-alia* that it has paid substantial consideration for purchase of the subject property; after verification of the revenue records, it was revealed that the said pattadar passbook bearing No.K 200943 which relates to the subject land of Ac.7.95 cents does not stand in the name of the 4th respondent's father as alleged by her and that the owner of the said land is P. Janardhan Reddy, father of the present writ petitioner; when the 5th respondent questioned the 4th respondent, the 4th respondent agreed to return the sale consideration and also addressed a letter dated 20.12.2017 requesting the 5th respondent to grant some time for returning the sale consideration and in fact, she returned a part of the sale consideration and sought time for payment of balance amount and the copy of the said letter is also filed along with the counter-affidavit of the 5th respondent.

Reply-affidavit has been filed by the petitioner to the counter-affidavit of the 4th respondent stating, *inter-alia*, that the 4th respondent did not deny in her counter-affidavit with regard to appending of the pattadar passbook and title deed of the petitioner's father to the subject sale deed; contention of the 4th respondent that the sale deed was executed with the consent of the petitioner and that the petitioner is aware of the registered sale deed is false in view of the statement made by the 4th respondent in the sale deed stating that the property belongs to her late father; pattadar pass book clearly shows the khata number of the petitioner; yet it was stamped and signed by the registering authority (2nd respondent) permitting the said land to be included in the schedule of the

said sale deed; Respondent No.4 also admitted in her letter addressed to the 5th respondent about the illegality committed by her.

Heard Sri J. Ugra Narasimha, learned counsel for the petitioner, learned Government Pleader for respondents 1 and 2, Sri D. Kodanda Rami Reddy, learned counsel for the 4th respondent and Sri S.Srinivas Reddy, learned counsel for the 5th respondent. Perused the record.

Learned counsel for the petitioner submits that the 4th respondent has appended the pattadar passbook and title deed belonging to the petitioner to the said sale deed; in the registered sale deed dated 14.02.2011, it is stated by the 4th respondent that the subject land was inherited by her father and pattadar pass book bearing No.K 200943 was obtained in her name after the demise of her father P Suresh Reddy and that the 4th respondent has inherited the said land as a legal heir. He further submits that the 4th respondent also addressed a letter to the 5th respondent admitting that she has illegally sold the subject land and in fact reimbursed a part of sale consideration to the 5th respondent and in view of her conduct of repaying the sale consideration and recital in the sale deed, the question of consent does not arise at all. He further submits that when the public authority commits fraud, the same has to be rectified and hence, the writ petition is maintainable.

Learned counsel for the petitioner relies upon the decision of the Hon'ble Supreme Court in '**A.V.Papayya Sastry vs. Government of Andhra Pradesh**¹' and submits that acts of fraud can be challenged in any court at any time and even in a writ petition. He also relies upon the decision of the Hon'ble Supreme Court in '**Meghmala vs. G.Narasimha**

¹ (2007) 4 SCC 221

Reddy² and submits that the High Court while exercising equitable jurisdiction should not perpetuate the fraud. He also relies on the decision of the Apex Court in '**A.P. State Financial Corporation vs. Gar Re-Rolling Mills**³' and submits that the High Court under Article 226 must prevent perpetration of legal fraud and promote good faith and honesty. He also relies upon the decision in '**State of Andhra Pradesh vs. Ediga Chandrasekhar Gowd**⁴', wherein this Court set aside the registration of the documents in the writ petition. He also submits that the decision of the Hon'ble Supreme Court in '**Satya Pal Anand vs. State of M.P.**',⁵ is not applicable to the facts of the present case and that the ratio laid down therein does not say that the writ petition cannot be entertained even in a case of fraud. He also further submits that the availability of alternative remedy is not a bar for filing of the writ petition, and relies on the judgment of the Hon'ble Supreme Court in '**Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai**⁶' and '**Popcorn Entertainment vs. City Industrial Development Corporation**⁷'. He further submits that the memo relied upon by the Sub Registrar cannot supersede the provisions of Section 6B and 6D of the Act.

On the other hand, learned counsel for the 4th respondent relied upon the decision of this Court in WP No.4174 of 2008 & batch, dated 18.08.2017, wherein this Court while relying on **Satya Pal Anand's** case (supra), dismissed the writ petitions as not maintainable. He contends that as the petitioner herein has got an alternative remedy of filing a suit

² (2010) 8 SCC 383

³ (1994) 2 SCC 647

⁴ 2017(3) ALT 420

⁵ (2016) 10 SCC 767

⁶ (1998) 8 SCC 1

⁷ (2007) 9 SCC 593

and as disputed questions of fact are involved, the Writ Petition is not maintainable. He further contends that the subject sale deed has been executed by the 4th respondent with the consent and knowledge of the writ petitioner and prays to dismiss the Writ Petition.

The undisputed facts, so far as the present writ petition is concerned, are that the 4th respondent executed the sale deed in favour of the 5th respondent by appending the pattadar passbook of the petitioner bearing Khata No.K 200943 and was signed by the Sub Registrar; according to the letter addressed by the 4th respondent to the 5th respondent on 20.12.2017, which is filed along with the counter-affidavit of the 5th respondent, the 4th respondent admitted that she sold the subject property wrongfully and requested the 5th respondent-management to consider her plea and grant time for reimbursement of the amount collected towards sale consideration for the subject land, as she has included the land of the petitioner wrongfully in the subject sale deed. The said letter dated 20.12.2017, which is filed along with the counter-affidavit of the 5th respondent, is not denied by the 4th respondent. The 4th respondent returned a part of consideration and requested time to pay the balance amount. In the sale deed it is stated thus by the 4th respondent "WHEREAS VENDOR (Respondent No.4) represent that the agricultural land situated at No.109 Pannur village accounts, Vijayapuram Mandal, Nagari Sub-District, Sri Balaji Registration District, Chittoor District, comprised in Survey No.263 measuring to an extent of Ac.7.95 cents was inherited by P.Suresh Reddy as ancestral property and got Patta No.42 (Patta Pass Book Code No:K200943) in his name and after the demise of said P.Suresh Reddy, the VENDOR herein inherited the said land as legal heir". Admittedly, the said Patta No.42 and

Pass book belong to the petitioner. In view of the admitted facts it can safely be concluded that fraud has been played on the petitioner.

Learned counsel for the respondent relied upon the judgment of this Court in '**P Veda Kumari vs Sub Registrar**⁸' for the proposition that power of judicial review is not available when there is an effective alternative remedy to the aggrieved person. The learned Single Judge in the said case relied on **Satyapal Anand's** case and also '**The State of U.P. vs. Johri Mal**⁹', wherein the scope of judicial review is discussed. In **Johri Mal's** case Hon'ble Supreme Court at para 28 held that 'an order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.' In the present case the act of registering the document on the basis of title deed of petitioner and by affixing the same to the document is not in conformity with Section 6D (2) of the Act. This Hon'ble Court in **Veda Kumari's** case in the last para, held as follows:

"Even it is assumed that the action of the registering authority was accentuated by fraud, it has to be proved by specific averments and no such averment is made in these writ petitions and fraud cannot be assumed from a mere registration of a document by the registering authority as observed by the Supreme Court. In these circumstances, holding as mentioned above, writ petitions were dismissed."

In **Satyapal Anand's** case (supra), relied upon by the learned counsel for the 4th respondent, consequent to difference of opinion between two learned Judges of the Division Bench, the appeal bearing Civil Appeal No.6673 of 2014 has been placed before the three Judges Bench of the Hon'ble Supreme Court. In the said case, a plot was allotted

⁸ 2017(5) ALT 614

⁹ (2004) 4 SCC 714

to the appellants mother by a Housing Cooperative Society Limited vide a registered deed. The appellants mother expired thereafter and after her death the Society executed a deed of extinguishment unilaterally cancelling the said allotment of plot. On the basis of the said extinguishment deed, the Society executed a registered deed in favour of the 5th respondent therein. The appellant objected to the said transaction. However, a compromise deed was executed between the Society, the subsequent purchaser and the appellant, where under the appellant received consideration and notwithstanding the compromise deed the appellant filed a dispute under Section 64 of the Madhya Pradesh Cooperative Societies Act, 1960 before the Deputy Registrar, Cooperative Societies challenging the action of the Society in unilaterally registering the extinguishment deed and allotting the subject plot to the 5th respondent therein and sought declaration that he continues to be the owner of the subject plot allotted by the Society to his mother. Since the appellant filed a dispute, the respondents issued a notice asking the appellant to refund the consideration amount accepted by him in furtherance of the compromise deed, but the appellant did not heed to that demand, but continued with the proceedings. He also filed an application before the Sub-Registrar calling upon him to cancel the registration of extinguishment deed and subsequent two deeds. The Sub-Registrar, by a speaking order, rejected the said application on the ground that the dispute was pending between the parties with regard to the same subject matter and secondly on the ground that he has no jurisdiction to cancel the registration of a registered document in question. The appellant then approached the Inspector General (Registration) by way of an application under Section 69 of the Registration Act, 1908 and the said

application was rejected on the ground that powers conferred on him were limited to the general superintendence of the Registration Offices and making Rules. The appellant, thereafter, approached the High Court of Madhya Pradesh by way of a Writ Petition challenging the order of the Inspector General (Registration) and the Sub-Registrar and prayed for a declaration that the extinguishment deed as well as the subsequent two deeds are void ab initio with a further direction to the Inspector General Registration and the Sub-Registrar (Registration) to record the cancellation of those documents. The said Writ Petition was dismissed by the Division Bench of the High Court on the ground that the appellant had already resorted to a remedy before appropriate Forum under the Act of 1960. The High Court held that since an alternative remedy before a competent Forum was available and was pending between the parties, it was not feasible to invoke the writ jurisdiction under Article 226 of the Constitution of India. The Division Bench of the High Court also observed that the allegations of the alleged fraud could not be adjudicated by this Court under the writ jurisdiction. The said decision of the High Court was the subject matter of challenge in the appeal before the Hon'ble Supreme Court. When the appeal came up for hearing before the Division Bench, His Lordship Justice Dipak Misra found that the High Court did not commit any error in dismissing the Writ Petition and His Lordship Justice V. Gopala Gowda observed that the Registrar could not have permitted registration of extinguishment deed, unilaterally cancelling the allotment of the subject plot and His Lordship held that the extinguishment deed was a nullity in law. His Lordship further held that registration of the extinguishment deed by the Sub-Registrar amounts to playing fraud on the power vested in the Authority under law and opined that the relief claimed by the

appellant in the Writ Petition deserves to be granted. The contention of the appellant before the Full Bench was that the society could not have unilaterally executed the extinguishment deed and the respondents, on the other hand, contended that the Writ Petition has been justly rejected by the High Court on the ground that the appellant was pursuing remedy for the same reliefs in substantive proceedings by way of a dispute filed under Section 64 of the Act of 1960 before the competent Forum. Having considered the rival submissions, the Full Bench formulated the questions to be answered in the fact situation and one of the questions framed is "Whether the High Court in exercise of writ jurisdiction under Article 226 of the Constitution of India is duty bound to declare the registered deeds as void ab initio and to cancel the same, especially when the aggrieved party has already resorted to an alternative efficacious remedy under Section 64 of the Act of 1960 before the competent Forum whilst questioning the action of the society in cancelling the allotment of the subject plot in favour of the original allottee and unilateral execution of an extinguishment deed for that purpose". In those circumstances, the Full Bench of the Hon'ble Supreme Court observed as follows.

".....In exercise of writ jurisdiction the High Court cannot be oblivious to the conduct of the party invoking that remedy. The fact that the party may have several remedies for the same cause of action, he must elect his remedy and cannot be permitted to indulge in multiplicity of actions. The exercise of discretion to issue a writ is a matter of granting equitable relief. It is a remedy in equity. In the present case, the High Court declined to interfere at the instance of the appellant having noticed the above clinching facts. No fault can be found with the approach of the High Court in refusing to exercise its writ jurisdiction because of the conduct of the appellant in pursuing multiple

proceedings for the same relief and also because the appellant had an alternative and efficacious statutory remedy to which he has already resorted to. This view of the High Court has found favour with Justice Dipak Misra. We respectfully agree with that view.”

The Full Bench further categorically held as follows.

“.....Ordinarily, if the party had not resorted to any other remedy provided by law and had straightway approached the High Court to question the action of the statutory authority of registering a document improperly and in particular in disregard of the prescribed procedure, that would stand on a different footing. In the present case, however, the appellant not only entered into a compromise deed with the society and the subsequent purchaser but also resorted to statutory remedy. Having entered into a compromise deed, it is doubtful whether the appellant can be heard to complain about the irregularity in the registration of the extinguishment deed, if any. It is noticed that the appellant has not disputed the execution of the compromise deed, nor has he paid any heed to the notice given by the other party to refund the amount accepted by him in furtherance of the compromise deed. No Court can be party to a speculative litigation much less the High Court in exercise of writ jurisdiction. Having said this it must necessarily follow that the Writ Petition filed by the appellant deserved to be dismissed, as was rightly dismissed by the High Court.”

In view of the peculiar facts of that case, as the appellant has entered into a compromise deed and again complained that there is irregularity in the registration of extinguishment deed, and also availed remedy of statutory appeal, the Writ Petition was dismissed.

In the present case, the petitioner has not resorted to any other alternative remedy and fraud has been pleaded specifically and proved by the petitioner, through documents like, pattadar passbook, title deed of petitioner, letter of the 4th respondent addressed to the 3rd respondent, which are not denied by the 4th respondent and the recital in the sale deed is that the 4th respondent is the owner of the property.

The judgment relied upon by the learned counsel for the 4th respondent in **P. Veda Kumari v. The Sub-Registrar, Banjara Hills, Hyderabad¹⁰**, does not apply to the facts of the present case. In the said case, Writ Petitions were filed seeking setting aside the deeds of cancellation of sale deeds and the gift settlement deeds unilaterally by the executants. In the said case it was specifically observed as follows: "The facts in these cases are not adverted to as the writ petitions are considered and disposed on the point of law only. Even it is assumed that the action of the registering authority was accentuated by fraud, it has to be proved by specific averments and no such averment is made in these writ petitions and fraud cannot be assumed from a mere registration of a document by the registering authority as observed by the Supreme Court." And in those circumstances, it was held that "It is well established rule of administrative law that an authority, which is vested with power, may exercise it rightly or wrongly, but this Court while exercising the power of judicial review, subject to its limitations, would interfere with such actions and one of such limitations for exercising judicial review is availability of alternative remedy and the discharge of public law duty" and held that the Writ Petitions are not maintainable. According to the

¹⁰ 2017(5) ALT 614

facts of the said case, as fraud is not alleged and as there is an alternative remedy of appeal, the Writ Petitions were dismissed.

As the facts of the present case are entirely different, the said judgment does not apply to the facts of the present case.

In **Behari Kunj Sahkari Avas Samiti v. State of Uttar Pradesh**¹¹, relied upon by the learned counsel for the petitioner, the Hon'ble Supreme Court held that when a public authority commits fraud with an intention to evade the provisions of the statute, the same can be corrected in writ proceedings.

Learned counsel for the petitioner also relied upon the decision in **A.V.Papayya Sastry's** case (supra), wherein the Hon'ble Supreme Court held that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or authority is a nullity and that the same can be challenged in any court, at any time, and even in a Writ Petition. In the said judgment, the Hon'ble Supreme Court held as follows.

"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 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.

¹¹ (2008) 12 SCC 306

23. In the leading case of *Lazarus Estates Ltd. v. Beasley*, (1956) 1 All ER 341 : (1956) 1 QB 702 : (1956) 2 WLR 502 (CA), 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.....

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 utilized as an engine of oppression by dishonest and fraudulent litigants."

In **Meghmala's** case (supra), it was held that "once a fraud is proved, all advantages gained by playing fraud can be taken away. In such an eventuality the questions of non-executing of the statutory remedies or statutory bars like doctrine of *res judicata* are not attracted".

Availability of alternative remedy is also not a bar for entertaining the Writ Petition as has been held in **Whirlpool Corporation's** case (supra) and in **Popcorn Entertainment's** case (supra). In Whirlpool Corporation's case, it was held as follows:

"Therefore, the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation".

In **A.P. State Financial Corporation's** case (supra), it was held that "A court of equity, when exercising its equitable jurisdiction under Article 226 of the Constitution should not so act as to prevent perpetration of a legal fraud as the courts are obliged to do justice by promotion of good faith. Equity is always known to depend the law from crafty evasions and new subtleties invented to evade law".

In **G Krishna Reddy vs. Government of A.P.**¹², the procedure prescribed was admittedly not been followed and the petitioners were not put on notice before registering the deed cancelling the agreement of sale. In those circumstances, this Court held that if the registration is not in conformity to the requirements of law, the registration of document was to be declared as null and void and of no effect and accordingly the Writ Petition was allowed.

In **Ediga Chandrasekhar Gowd's** case (supra), this Court allowed the writ petition, wherein cancellation of a document was done unilaterally, without relegating them to the civil Court.

In **Meghmala's** case, the Hon'ble Supreme Court held as follows:

"It is settled proposition of law that where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent Authority, such order cannot be sustained in the eyes of law. "Fraud avoids all judicial acts ecclesiastical or temporal." (Vide S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and Ors. (AIR 1994 SC 853). In Lazarus Estate Ltd. v. Besalay 1956 All. E.R. 349, the Court observed without equivocation that "no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything."

¹² 2015(1) ALT 579

In Smt. Shrisht Dhawan v. Shaw Brothers (AIR 1992 SC 1555), it has been held as under:

Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct.

In United India Insurance Co. Ltd. v. Rajendra Singh and Ors. (AIR 2000 SC 1165), this Court observed that "Fraud and justice never dwell together" (*fraus et jus nunquam cohabitant*) and it is a pristine maxim which has never lost its temper over all these centuries.

The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud. (See District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Anr. v. M. Tripura Sundari Devi (1990) 3 SCC 655; Union of India and Ors. v. M. Bhaskaran (1995) Supp. 4 SCC 100; Vice Chairman, Kendriya Vidyalaya Sangathan and Anr. v. Girdharilal Yadav (2004) 6 SCC 325; State of Maharashtra v. Ravi Prakash Babulalsing Parmar (2007) 1 SCC 80; Himadri Chemicals Industries Ltd. v. Coal Tar Refining Company (AIR 2007 SC 2798) and Mohammed Ibrahim and Ors. v. State of Bihar and Anr. (2009) 8 SCC 751.

Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression "fraud" involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage. (Vide Dr. Vimla v. Delhi Administration (AIR 1963 SC 1572) Indian Bank v. Satyam Fibres (India) Pvt. Ltd. (1996) 5 SCC 550; State of Andhra Pradesh v. T. Suryachandra Rao (AIR 2005 SC 3110); K.D. Sharma v. Steel Authority of India Ltd. and Ors. (2008) 12 SCC 481; and Regional Manager, Central Bank of India v. Madhulika Guruprasad Dahir and Ors. (2008) 13 SCC 170)."

The contention of the learned counsel for the 4th respondent is that the 1st respondent – Commissioner and Inspector General, Registration and Stamps Department has issued a draft memo directing the registering authorities to accept the documents without insisting for production of pattadar passbooks and title deeds, whereas the contention of the learned counsel for the petitioner is that the said memo is contrary to the provisions of Section 6-B and 6-D of the Act. The purport of the memo is that it directs the Registering Officers to accept the documents without insisting pattadar passbooks and title deeds, but the allegation against the Sub-Registrar in the present case is not that he registered the sale deed without insisting for production of pattadar passbooks and title deeds of the vendors. The allegation is that the pattadar passbooks and title deeds of the petitioner herein have been appended to the sale deed that is executed by the 4th respondent and the property of the petitioner is sold by the 4th respondent, who is not the owner of the subject land.

Learned counsel also contends that the act of Sub-Registrar is contrary to Section 6D (2) of the Act as it was then, reads as follows:

“Notwithstanding anything contained in the Registration Act, the registering authority shall not register any document relating to a transaction of the nature referred to in sub-section (1) without the production of the title deed and pass book by both the parties to the transaction”.

In the present case, title deed and pass books were produced by the vendor of the property, relating to the property of the petitioner. However, the Sub-Registrar did not even verify the names of the parties in the impugned document and the names which are there in the passbook and title deed. As the pass book and title deed do not belong to the

vendor i.e., the 4th respondent the Sub Registrar under Section 6-D(2) ought not to have registered the document as the word used there is 'shall not'. Hence the sale deed executed is not valid.

Another contention of the learned counsel for the petitioner is that the action of the Sub-Registrar is contrary to Section 32-A of the Registration Act, 1908. According to Section 32-A, where the document relates to the transfer of ownership of immovable property, the passport size photograph and finger prints of each buyer and seller of such property mentioned in the document shall also be affixed to the document. The said Section only says buyer and seller of such property mentioned in the document and the document refers to the 4th respondent as seller for the entire land. Hence, there is no infraction of Section 32-A technically, though patta is in favour of the petitioner.

In '**Thota Ganga Laxmi vs Government of A.P.**',¹³ the Hon'ble Supreme Court set aside the judgment of the High Court directing the petitioners therein to approach the civil Court, in a case where a declaration is sought to declare the cancellation deed as illegal. The Hon'ble Supreme Court held that unilateral cancellation deed as well as registration thereof were wholly void and *non-est* and meaningless transactions.

Similarly in '**Kolli Rajesh Chowdary vs. State of A.P.**'¹⁴, this Court in a case, challenging registration of revocation deed, declared the same as null and void. Even in the said case, a contention has been raised that the

¹³ (2010) 15 SCC 207

¹⁴ 2019(2) ALT 290

aggrieved party has to approach the civil court, but the same was negated by the court observing thus:

“Before parting, it is to be noted that the learned Government Pleader, while not disputing the settled legal position, had contended that if the petitioner is aggrieved of the cancellation or revocation deed he has to approach a civil Court and seek the common law remedy for setting aside the same but he cannot approach the writ court. In the considered view of this Court such a contention needs a mention only to be rejected for the reason that when the cancellation deed or revocation deed unilaterally executed is null and void and that when such transaction is meaningless, it is just land fair to allow the writ petition.”

It is also relevant to note here that in view of the settled legal position that no one can convey a better title than what he has, the 4th respondent cannot transfer title to the 5th respondent through the sale deed.

Unilateral cancellation of sale deed is also challenged in WP No.20852 of 2018 and vide order dated 19.03.2019, the High Court of Telangana, allowed the writ petition and set aside the sale deed as invalid in eye of law and illegal, following **Thota Ganga Lakshmi's** case (supra).

In the present case, petitioner, who is the owner of the part of the property mentioned in the sale deed, did not execute the sale deed. As a single document is registered for both the properties belonging to the petitioner and the 4th respondent, this Court is unable to apply the principle of, doctrine of severability and save the registration in so far as the 4th respondent's land is concerned.

In the facts and circumstances of the case, as it is demonstrated by the petitioner, that fraud has been played by the 4th respondent, availability of an alternative remedy is not a bar to the entertainment of the Writ Petition. In view of the admitted facts as narrated supra, the Writ Petition is allowed and the registration of sale deed bearing document No.322 of 2011, dated 14.02.2011, is set aside and declared as null and void. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

Kongara Vijaya Lakshmi, J

Date: 04th March, 2020

Note:

LR copy to be marked

(B/O)

Nsr/Bss

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.19021 of 2015

Date: 04th March, 2020

Nsr/Bss