



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3397]

TUESDAY, THE TWENTY FOURTH DAY OF MARCH
TWO THOUSAND AND TWENTY SIX

PRESENT

**THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA
KRISHNA RAO**

SECOND APPEAL NO: 660/2023

Between:

Ravinuthala Venkata Srinivasa Rao

...APPELLANT

AND

Smt Ravinuthala Krishna Kumari and Others

...RESPONDENT(S)

Counsel for the Appellant:

1. PARTY IN PERSON

Counsel for the Respondent(S):

1. M BALASUBRAHMANYAM

2. SUNKARA RAJENDRA PRASAD

The Court made the following:

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

SECOND APPEAL No.660 of 2023

JUDGMENT:

This second appeal is filed aggrieved against the Judgment and decree dated 18.08.2023, in A.S.No.180 of 2019, on the file of the I Additional District Judge, Guntur, confirming the Judgment and decree dated 23.07.2019, in O.S.No.326 of 2017, on the file of the I Additional Senior Civil Judge, Guntur.

2. The appellant herein is the plaintiff and the respondent Nos.1 to 11 are the defendants in O.S.No.326 of 2017, on the file of the I Additional Senior Civil Judge, Guntur. During the pendency of appeal suit, the respondent No.8 herein i.e. the defendant No.8 in O.S.No.326 of 2017, died and the respondent Nos.12 to 14 herein were brought on record as the legal representatives of the deceased respondent No.8 herein.

3. The plaintiff initiated action in O.S.No.326 of 2017 on the file of the I Additional Senior Civil Judge, Guntur, with a prayer for declaration of the sale of schedule property held on 16.12.1999 in Final Decree proceedings in I.A.No.103 of 2000, in O.S.No.198 of 1983 on the file of the Additional Senior Civil Judge, Guntur and confirmed on 31.10.2001 in favour of the defendant No.8 as null and void and for consequential order to set the sale certificate dated 31.12.2001 issued in I.A.No.103 of 2000, by the learned Additional Senior Civil Judge, Guntur, to the defendant No.8 concerning the suit schedule property and for costs.

4. The learned I Additional Senior Civil Judge, Guntur, after conclusion of trial, dismissed the suit with costs. Felt aggrieved of the same, the unsuccessful plaintiff in the above said suit filed the appeal in A.S.No.180 of 2019, before the learned I Additional District Judge, Guntur. The learned I Additional District Judge, Guntur, dismissed the first appeal by confirming the judgment and decree passed by the trial Court. Aggrieved thereby, the unsuccessful plaintiff approached this Court by way of second appeal.

5. For the sake of convenience, both parties in the second appeal will be referred to as they are arrayed in the original suit.

6. The case of the plaintiff, in brief, as set out in the plaint averments in O.S.No.326 of 2017, is as follows:

The suit schedule property originally belonged to one Ravinuthala Rama Koteswara Rao, the father of the plaintiff, who had acquired the same during his lifetime under a gift executed by his father-in-law. The said Ravinuthala Rama Koteswara Rao died intestate in or about the year 1960. Upon his death, his legal heirs, namely his wife, four sons (including the plaintiff), and two daughters, succeeded to the suit schedule property in equal shares. The plaintiff pleaded that the elder brother of the plaintiff, late R.Venkata Suryanarayana, during his lifetime, instituted a suit in O.S.No.198 of 1983 on the file of the Court of the Additional Senior Civil Judge, Guntur, against his mother, the plaintiff herein, his two other brothers, and two sisters, seeking partition of the suit schedule property, including the

residential house existing thereon, into seven equal shares and for allotment of one such share to him. The said suit was decreed preliminarily on 20.12.1984. The plaintiff further pleaded that an application in I.A.No.1374 of 1985 was filed for passing of a final decree for division of the property by metes and bounds in accordance with the preliminary decree and prior to the filing of the said application, the mother of the plaintiff executed a registered Will bequeathing her 1/7th share in the suit schedule property in favour of the plaintiff and the 8th defendant herein and subsequently, during the pendency of the final decree proceedings in January, 1986, she died.

The plaintiff further pleaded that during the course of the final decree proceedings, an Advocate Commissioner was appointed for effecting division of the property and the Commissioner reported that the property was not capable of convenient partition and the Court ordered sale of the property by way of auction among the co-sharers. The plaintiff further pleaded that in the auction conducted by the Court-appointed Receiver on 16.12.1999, the property was knocked down in favour of the 8th defendant herein, who was the second respondent in I.A.No.1374 of 1985, for a sum of Rs.3,03,000/-. The plaintiff further pleaded that challenging the said auction sale, one Ravinuthala Suryanarayana filed I.A.No.103 of 2000 in I.A.No.1374 of 1985, contending that the property was sold for a lesser price and that the sale was vitiated by fraud and irregularities. The plaintiff pleaded that the said application was contested by the plaintiff and the 8th defendant herein through their common

counsel Sri K. Krishna Kishore and after full contest, the said application was dismissed on merits.

The plaintiff pleaded that a final decree was passed in I.A.No.1374 of 1985 on 31.10.2001, specifying the respective shares of the parties in the sale proceeds deposited by the auction purchaser and the Court also confirmed the sale in favour of the 8th defendant on the same date, and a sale certificate was issued in his favour on 01.12.2001. The plaintiff further pleaded that the 8th defendant, taking undue advantage of the confirmation of sale and issuance of the sale certificate in his favour, acted in a manner detrimental to the interests of the plaintiff, which is a complete violation of the terms of an understanding and agreement which is reduced into writing under a document dated 09.07.2000. The plaintiff further pleaded that as such, the plaintiff instituted a suit in O.S.No.46 of 2003 on the file of the Senior Civil Judge, Guntur, against the defendant Nos.8 and 9, seeking partition of the suit schedule property into two equal shares in terms of the said agreement dated 09.07.2000. The defendant No.8, who was the defendant No.1 therein, filed a written statement admitting the existence of the said agreement dated 09.07.2000 between himself and the plaintiff.

The plaintiff pleaded that the said suit in O.S. No.46 of 2003 was dismissed by judgment and decree dated 09.06.2006. Aggrieved thereby, the plaintiff preferred an appeal in A.S.No.145 of 2006 on the file of the V Additional District Judge, Guntur, which was also dismissed, confirming the judgment and decree of the trial Court and the plaintiff thereafter preferred a

second appeal before the Composite High Court of Andhra Pradesh, at Hyderabad, which was also dismissed on 28.11.2011, confirming the judgments of both the Courts below. The plaintiff further pleaded that he filed Special Leave Petition before the Hon'ble Supreme Court and the same was dismissed. The plaintiff further pleaded that the defendant No.8 cannot be permitted to unjustly enrich himself and enjoy the fruits of the auction sale obtained by fraud and deception, as fraud and justice cannot co-exist. He further pleaded that any advantage gained by such fraudulent means cannot be allowed to be retained and as such the plaintiff filed the present suit.

7. The defendant No.8 filed written statement before the trial Court and the other defendants remained *set-exparte* before the trial Court. The brief averments in the written statement filed by the defendant No.8 are as follows:

The plaintiff is an advocate for defendant No.8, he is not only the counsel but also the elder brother of defendant No.8 and taking undue advantage of such relationship, the plaintiff used to obtain the signatures of defendant No.8 on blank papers and blank stamp papers, exercising dominance and undue influence over him. The defendant No.8 pleaded that without enquiring about the purpose or contents of the documents, he used to sign wherever required by the plaintiff. The defendant No.8 further pleaded that in his written statement he pleaded that the plaintiff have fabricated the alleged agreement dated 09.07.2000 and that he had never executed any such agreement. The defendant No.8 pleaded that he never executed the said

agreement dated 09.07.2000 and the same is a fabricated document brought into existence by misuse of signed blank papers by the defendant No.8.

The defendant No.8 further pleaded that the Court auction was conducted on 16.12.1999, and the sale was confirmed and a sale certificate was issued in favour of this defendant on 01.12.2001 and delivery of possession of the suit schedule property was effected on 10.06.2002 and from then the defendant No.8 has become the absolute owner of the suit schedule property, and the same is the joint family property. The defendant No.8 further pleaded that nearly fifteen (15) years have elapsed from the date of delivery of possession till the filing of the present suit, and as such, the suit is hopelessly barred by limitation. The defendant No.8 further pleaded that the present suit is devoid of bona fides and has been instituted only to harass the defendant No.8 and further, the plaintiff is a chronic litigant. The defendant No.8 further pleaded that the issue relating to alleged fraud in the conduct of auction was raised for the first time by the eldest brother of the plaintiff by name R.Venkata Suryanarayana, in I.A.No.103 of 2000 in I.A.No.1374 of 1985 and the said application was dismissed on merits, and thereafter, the final decree was passed. Aggrieved thereby, the said Suryanarayana preferred C.R.P.No.4513 of 2001 before the Composite High Court of Andhra Pradesh, at Hyderabad, which was also dismissed on merits.

The defendant No.8 further pleaded that in all the above proceedings, the plaintiff was a party, and he did not support the allegations of fraud raised by his brother and he denied that any fraud had taken place and that the

plaintiff is estopped from now raising the plea of fraud in the present suit. The defendant No.8 further pleaded that the present suit is barred by the principles of res judicata, as the allegation of fraud in the conduct of auction sale has already been considered and rejected by competent Courts in earlier proceedings, which have attained finality. He further pleaded that the plaintiff, have filed I.A.No.601 of 2002 and withdrawn his share of the sale consideration deposited into Court by this defendant on 25.04.2002, without reserving any alleged right to question the sale. The defendant No.8 further pleaded that having accepted and received his share of the sale proceeds, the plaintiff is estopped from challenging the auction sale on any ground and as such, he prayed for dismissal of the suit with costs.

8. On the basis of above pleadings, the learned I Additional Senior Civil Judge, Guntur, framed the following issues for trial:

- 1) Whether the preliminary decree and final decree in O.S.No.198 of 1983 is obtained by fraud as contended by the plaintiff?
- 2) Whether the plaintiff is entitled to declare that the sale of plaint schedule property and its confirmation on 31.10.2001 in favour of the 8th defendant is null and void?
- 3) Whether the plaintiff is entitled to set aside the sale certificate dated 31.12.2001 as prayed for? and
- 4) To what relief?

9. During the course of trial before the trial Court, on behalf of the plaintiff, P.W.1 was examined and Exs.A-1 to A-21 were marked. On behalf of the defendants D.W.1 was examined and Ex.B-1 was marked.

10. The learned I Additional Senior Civil Judge, Guntur, after conclusion of trial, on hearing the arguments of both sides and on consideration of oral and documentary evidence on record, dismissed the suit with costs. Felt aggrieved thereby, the unsuccessful plaintiff in the aforesaid suit filed the appeal suit in 2019, on the file of the I Additional District Judge, Guntur, wherein the following points came up for consideration:

- 1) Whether the impugned Decree and Judgment dated 23.07.2019 of the trial Court is sustainable either factually or legally? and
- 2) To what relief?

11. The learned I Additional District Judge, Guntur, i.e., the first appellate Judge, after hearing the arguments, answered the points, as above, against the plaintiff and dismissed the appeal suit filed by the plaintiff . Felt aggrieved of the same, the plaintiff in O.S.No.326 of 2017 filed the present second appeal before this Court.

12. Heard Sri Ravinuthala Venkata Srinivasa Rao, party-in-person/appellant and Sri Sunkara Rajendra Prasad, learned counsel for the respondents.

13. It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. It is regulated in accordance with law. A second appeal preferred under Section 100 of C.P.C., could be

admitted only when the appellant satisfies the Court that substantial question of law between the parties arise in the case. A proper test for determining whether a question of law raised in the case is substantial would be or whether it directly and substantially affects the rights of the parties and if so, whether it is either an open question in the sense that it is not finally settled by the superior Courts or is not free from difficulty or cause for discussion of alternative views. To be “substantial” a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law “involving in the case” there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. Mere appreciation of facts, documentary evidence and contents of documents cannot be held to be raising a substantial question of law.

14. The plaintiff having chosen to invoke the jurisdiction of this Court under Section 100 of Civil Procedure Code, it is for him to meet the above principles and satisfy the Court whether there exists any substantial question of law.

15. This second appeal is filed against the concurrent findings arrived by both the Courts below, therefore, the grounds urged in the second appeal are to be scrutinized to find out whether the appellant has shown any substantial question of law. The contention of appellant is that the judgment and decree of

the trial Court as well as the first appellate Court are contrary to law and that the second appeal may be allowed by setting aside the judgment and decree passed by both the Courts below i.e. the trial Court as well as the first appellate Court.

16. The undisputed facts are that a suit in O.S.No.198 of 1983, on the file of the Subordinate Judge's Court, Guntur, has been filed for partition of the plaint schedule property by the elder brother of the plaintiff against all the co-sharers including the plaintiff, and a preliminary decree was passed in the said suit, and the appellant herein is also one of the defendants in the said suit. After passing the preliminary decree in the aforesaid suit, a final decree petition was filed and an Advocate Commissioner was appointed. Since the property is indivisible, it is ordered to conduct an auction between the co-sharers. Accordingly, the auction was conducted and the bid amount was deposited, and the said amount was also withdrawn by the respective co-sharers.

17. The appellant herein also filed a petition I.A.No.____ of 2015, in O.S.No.198 of 1983, under Sections 144 and 151 of the Code of Civil Procedure, 1908, against his brothers and sisters in the suit in O.S.No.198 of 1983, with a prayer to set aside the auction proceedings dated 16.12.1999 in I.A.No.103 of 2000 and also to set aside the sale certificate said to have been issued by the Court in favour of the auction purchaser/the defendant No.8. The said application was rejected by the I Additional Senior Civil Judge, Guntur, against which the appellant herein filed a Civil Revision Petition before the Composite High Court of Andhra Pradesh, and the same was also

dismissed by the Composite High Court of Andhra Pradesh, against which the appellant herein has preferred Special Leave Petition No.27646 of 2015, and the same was also dismissed by the Hon'ble Apex Court on 01.10.2015.

18. The present second appeal is filed against the concurrent findings arrived at by both the Courts below viz., in O.S.No.326 of 2017, on the file of the I Additional Senior Civil Judge, Guntur, and in A.S.No.180 of 2018, on the file of the I Additional District Judge, Guntur. The appellant herein is the plaintiff in the said suit, and the respondents herein are the defendants in the said suit in O.S.No.326 of 2017.

19. The appellant contended that both the Courts below failed to appreciate Ex.A-8, Ex.A-13 to Ex.A-16, and Ex.B-1 in a proper manner and dismissed the suit filed by the plaintiff in O.S.No.46 of 2003 before the trial Court. As could be seen from Ex.A-7, Ex.A-8, and Ex.A-13 to Ex.A-16, Ex.A-7 is the plaint in O.S.No.46 of 2003, filed by the appellant herein, Ex.A-8 is the written statement of the auction purchaser filed in the said suit, Ex.A-13 is the certified copy of the judgment passed by the trial Court in O.S.No.46 of 2003, Ex.B-1 is the certified copy of the judgment of the First Appellate Court, which relates to the suit in O.S.No.46 of 2003, Ex.A-14 is the certified copy of the judgment of the second appeal in S.A.No.1538 of 2007, which relates to the suit in O.S.No.46 of 2003, Ex.A-15 is the certified copy of the judgment in S.L.P.No.10181 of 2012, which relates to the suit in O.S.No.46 of 2003, and Ex.A-16 is the certified copy of the order passed in the Curative Application (Civil) No.221 of 2012, by the Hon'ble Apex Court. All the aforesaid

documents relate to O.S.No.46 of 2003, on the file of the I Additional Senior Civil Judge, Guntur.

20. As seen from the plaint averments in O.S.No.46 of 2003, the appellant herein filed O.S.No.46 of 2003, against his own brother and the wife of his another brother for seeking relief of partition based on Ex.A-1 alleged agreement said to have been executed by the appellant herein and the defendant No.1 in the said suit. The said suit was filed for seeking relief of partition of the suit schedule property into two equal shares by metes and bounds as prescribed in the alleged agreement dated 09.07.2000. In the plaint in O.S.No.46 of 2003, it was reiterated by the appellant herein about the earlier proceedings of suit for partition vide O.S.No.198 of 1983, filed by his elder brother, and also passing of preliminary decree and final decree in the said suit, and also conducting of auction among the co-owners by the trial Court in O.S.No.198 of 1983 among the co-sharers, since the property is indivisible, and the schedule property was auctioned by the Court among the co-owners, and the bid amount was deposited, and the sale certificate was also issued by the Court in favour of the auction purchaser a long back, and all the co-sharers including the plaintiff herein withdrew their respective share amounts..

21. As per the plaint averments in O.S.No.46 of 2003, on 15.12.1999, in pursuance of the advice of some of the family friends, an agreement was arrived at between the plaintiff and the defendant No.1, to retain the house property jointly for themselves with equal rights by participating in the auction

and subscribing the amounts equally towards the bid amount, and the plaintiff/appellant herein and the defendant No.1 therein agreed that both of them should pay a total sum of Rs.2,50,000/- to the defendant No.2 as a benevolent gesture with a view to keep her and her children financially sound and self-sustained. The appellant herein i.e., the plaintiff in the said suit further pleaded that immediately after the bid was knocked down for a total sale price of Rs.3,03,000/-, the plaintiff herein contributed Rs.40,000/- in cash to the defendant No.1, towards his share, and the plaintiff further pleaded that in pursuance of the understanding between the plaintiff and the defendant Nos. 1 and 2, and the same was reduced into writing on 09.07.2000, on a stamped paper duly signed by them before the elders who attested the same. The defendant No.1/auction purchaser specifically denied the alleged Ex.A-1 agreement in the said suit, and he specifically contended that the said Ex.A-1 alleged agreement is not true and it is not valid and also not enforceable under law. After full-fledged trial, the trial Court dismissed the said suit in O.S.No.46 of 2003, against which the appellant herein filed the first appeal before the District Court vide A.S.No.145 of 2006, and the same was dismissed on contest by both sides, against which the appellant herein filed S.A.No.1538 of 2007 before the Composite High Court of Andhra Pradesh, at Hyderabad, and the same was dismissed on merits.

22. The Second Appellate Court/the Composite High Court of Andhra Pradesh, at Hyderabad, in connection with the suit in O.S.No.46 of 2003, as stated *supra*, in its judgment held that “*the property was sold in the Court for*

below the actual price of the subject matter of the suit, obviously and has rightly been held by the Courts below, it is the result of an agreement between the appellant and the respondent No.1, which the appellant intended to knock away the property to the detriment of other co-sharers”, against which the appellant herein filed a Special Leave Petition before the Hon’ble Apex Court, and the same was dismissed. After dismissal of the said Special Leave Petition by the Hon’ble Apex Court, the appellant herein filed a Curative Petition before the Hon’ble Apex Court, and the same was also dismissed by the Hon’ble Apex Court. Therefore, the appellant herein was defeated in all the Courts i.e., from the trial Court to the Apex Court, in O.S.No.46 of 2003, which was instituted by the plaintiff before the trial Court based on the alleged agreement said to have been executed between the appellant and the auction purchaser/the defendant No.1 in the said suit.

23. The appellant would contend that the trial Court to the Apex Court gave a finding in O.S.No.46 of 2003 that due to the fraud played by the defendant No.8 (Prakash Rao), the valuable property was sold for a lesser value, causing loss to the other co-sharers, who are the defendants in O.S.No.198 of 1983. As could be seen from the judgment of the trial Court in O.S.No.46 of 2003, the trial Court held in its judgment that the alleged Ex.A-1 agreement between the appellant herein and his brother Prakash Rao/the defendant No.1 therein is an unlawful and void agreement within the meaning of Section 23 of the Indian Contract Act and that consequently, the same is inoperative, and the learned trial Judge further held in its judgment that the suit claim for

partition made on the basis of Ex.A-1 is unsustainable, and as such, the plaintiff therein/the appellant herein is not entitled to partition as sought by the plaintiff in O.S.No.46 of 2003. The Second Appellate Court/the Composite High Court of Andhra Pradesh, at Hyderabad, also held that "*Ex.A-1 agreement in O.S.No.46 of 2003 is a result of an agreement between the appellant herein and the respondent No.1 therein, which the appellant herein intends to knock away the property which is to the detriment of the other co-sharers*". As noticed supra, against which a Special Leave Petition was filed before the Hon'ble Apex Court by the appellant herein, and the Hon'ble Apex Court also held that the trial Court and First Appellate Court have held that Ex.A-1 agreement entered into between the appellant herein and the respondent No.1 therein to manipulate the price for purchase of the property, which was auctioned in furtherance of the decree passed in O.S.No.198 of 1983, was ultra vires under Section 23 of the Indian Contract Act, and the Apex Court confirmed all the judgments viz., the trial Court, the First Appellate Court, and the Second Appellate Court, and dismissed the Special Leave Petition. As stated supra, the appellant herein had also filed a curative application vide Curative Petition (Civil) No.221 of 2012, and the same was also dismissed by the Hon'ble Apex Court. For the reasons best known to the appellant herein, the appellant herein purposefully omitted his role to bring into existence of the alleged Ex.A-1 agreement in the said suit and threw the entire responsibility on the auction purchaser to show that he is unconnected with the bid knocked down for the lowest price, and it leads to the conclusion that

the sale was confirmed to the auction purchaser by the trial Court. Even if it is assume, in pursuance of the alleged agreement between the appellant herein and the auction purchaser i.e., Ex.A-1 in the suit in O.S.No.46 of 2003, if any fraud is committed, the appellant herein is not entitled to seek declaratory relief as sought in the present suit, since he is a party to the alleged unlawful agreement. The law is well settled that **“Wrong doer ought not to be permitted to make profit out of his own wrong”**. It is also a settled principle of law that *“no one is entitled to take advantage of his own wrongs”*.

24. As stated supra, the appellant/plaintiff herein came to the Court in the present suit before the trial Court with unclean hands as if he is in no way connected with the auction conducted subsequent to the final decree proceedings in the suit in O.S.No.198 of 1983. The appellant herein is not a third party to the alleged agreement, he is the co-owner, and he is none other than the own brother of the auction purchaser, and he himself participated in the auction, and after confirmation of the sale, he had withdrawn his share amount from the trial Court, and all the Courts from the Senior Civil Judge Court to the Hon'ble Apex Court have concurrently held that the alleged Ex.A-1 agreement between the appellant herein and the defendant No.8/auction purchaser is a void agreement for getting unlawful gain by the appellant herein and his brother/auction purchaser in the said suit. The appellant herein for the reasons best known to him has purposefully omitted his role in Ex.A-1 alleged agreement and got filed the present suit as if he is in no way connected with alleged Ex.A-1 agreement in the suit proceedings in

O.S.No.46 of 2003. *“A person who entered into the unlawful agreement with another person for unlawful gain is not entitled to come to the Court”* for seeking declaratory relief that the sale of the schedule property held on 16.12.1999 in the final decree proceedings in favour of the defendant No.8 in the present suit is null and void. Admittedly, the auction was conducted among all the co-sharers, since the property is indivisible, except the elder brother of the plaintiff and the plaintiff, the other co-sharers did not challenge the sale. Even the elder brother of the plaintiff filed a petition to challenge the same on the ground of irregularity and fraud, the said petition was dismissed by the trial Court, which was confirmed by the Composite High Court of Andhra Pradesh, at Hyderabad. The plaintiff herein also filed petitions to set aside the sale on the ground of alleged fraud before the Civil Court, and his application was dismissed by the trial Court, which was confirmed by the composite High Court of Andhra Pradesh and the Apex Court.

25. As could be seen from the entire material on record, the elder brother of the plaintiff herein i.e., the plaintiff in O.S.No.198 of 1983, filed a petition vide I.A.No.103 of 2000, questioning the validity of the auction on the ground of the alleged fraud. The appellant herein is the respondent who contested in the said application and contended that the auction was perfectly conducted therein, and the petition filed by the elder brother of the plaintiff was dismissed. The sale price deposited by auction purchaser was withdrawn by all the co-sharers including the plaintiff herein without any protest and the sale certificate was issued on 01.12.2001 in favour of the auction purchaser.

Moreover, the appellant herein being a practicing advocate filed a Vakalat along with one K.Krishna Kishore, advocate, on behalf of the auction purchaser Prakash Rao in I.A.No.1374 of 1985, and the said Vakalat got exhibited as Ex.A-1. As noticed supra, the appellant herein, who is responsible for the alleged Ex.A-1 agreement in O.S.No.46 of 2003 and who was defeated from the trial Court to the Hon'ble Apex Court in the suit proceedings in O.S.No.46 of 2003 is not entitled to seek any declaratory relief as sought in the present suit, since he is a party to the alleged unlawful agreement.

26. The appellant herein as P.W.1 admitted in his evidence in cross-examination itself that he appeared as an advocate in the final decree petition on behalf of the auction purchaser along with one K.Krishna Kishore, advocate, and he is also one of the parties and also appeared as an advocate on behalf of the defendant No.8 herein. He further admits that ***“there are no material irregularities and there is no fraud in conducting the auction sale proceedings and they succeeded that the auction was properly conducted”***. Even as per the own version of the appellant herein, there are no material irregularities in conducting the auction.

27. The appellant herein as a plaintiff in the suit admits that the defendant No.8 is the highest bidder in the auction conducted on 16.12.1999 and he was the highest bidder as per the family i.e., all the co-sharers understanding includes parties to the suit, and as per the final decree, the auction proceeds were disbursed among all the co-sharers, and the defendant No.8 herein

deposited the said amount. He further admits that he himself along with the other sharers withdrew the deposited amount by filing a cheque petition and *“he has not re-deposited the cheque even after the said fraud was noticed by him, and the property was delivered to the auction purchaser in the year 2003”, and he further admits that the defendant No.8 herein constructed a two-storied RCC building by spending huge amounts”.*

28. It is well settled that, as provided in Sub-rule (2) of Rule 90 of Order XXI, C.P.C., merely on the ground of irregularity or fraud, the sale shall not be set aside unless substantial injury has been caused to the objector by reason of such irregularity or fraud. Moreover, the plaintiff herein and his elder brother questioned the sale before the trial Court by filing petitions, the same are dismissed by the trial Court. It is necessary to prove that a substantial injury where fraud or material irregularity has taken place, whereby injustice has been suffered. It was held by the Hon'ble Apex Court in ***Rajender Singh Vs. Ramdhar Singh and Others***¹, that ***“mere inadequacy of the price is not a ground for setting aside the Court sale”***. The alleged fraud and irregularity in conducting the sale, as raised by the appellant was disbelieved by all the Courts, having been defeated in all the Courts i.e., from the trial Court to the Hon'ble Apex Court, after a lapse of twelve (12) years, the appellant herein approached the Civil Court and filed O.S.No.326 of 2017, for seeking declaratory relief that the sale held on 16.12.1999, is liable to be set aside on the ground of alleged fraud. As stated supra, the alleged fraud has to be

¹ AIR 2001 Supreme Court 2220

properly pleaded and proved by the plaintiff herein, who approached the Court for seeking declaratory relief. But, except his self-testimony as P.W.1, no other evidence was produced by the plaintiff herein.

29. The appellant placed reliance on ***Maria Margarida Sequeria Fernander and Others Vs. Erasmo Jack De Sequeria (Dead) through L.Rs.***²

The appellant also placed reliance on ***Cauvery Coffee Traders, Mangalore Vs Hornor Resources (International) Company Limited***³, wherein the Hon'ble Apex Court held as follows:

“34. A party cannot be permitted to “blow hot and cold”, “fast and loose” or “approbate and reprobate”. Where one knowingly accepts the benefits of a contract or conveyance or an order, is stopped to deny the validity or binding effect on him of such contract or conveyance or order.”

The appellant filed a suit in O.S.No.46 of 2003 based on Ex.A-1, and the trial Court to the Hon'ble Apex Court gave a concurrent finding that Ex.A-1 in O.S.No.46 of 2003 is a result of an unlawful and invalid agreement in between the plaintiff herein and the auction purchaser. Therefore, the facts and circumstances in the aforesaid case laws are different from the instant case.

30. The appellant placed reliance on ***Agarwal Industries Ltd. Vs. Union of India and another.***⁴ The facts in the present case does not relate to the Customs Act.

² 2012 (3) SCJ 518

³ (2011) 10 Supreme Court Cases 420

31. The appellant also relied on a Full Bench Judgment of the Hon'ble Apex Court in ***Kunhayammed and Others Vs. State of Kerala and Another***⁵, wherein the Hon'ble Apex Court held as follows:

“43. ...

(i)...

(ii)...

(iii)...

(iv)...

(v) *If the order refusing leave to appeal is a speaking order, i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the apex court of the country.”*

In the case at hand, the appellant was defeated in O.S.No.46 of 2003, who is the plaintiff in the said suit, and he himself approached the Civil Court, and after defeated in all the Courts from the trial Court to the Composite High Court of Andhra Pradesh, the appellant herein approached the Apex Court, and the Hon'ble Apex Court also dismissed the Special Leave Petition and the Curative Application filed by the appellant herein in connection with O.S.No.46 of 2003, and the Hon'ble Apex Court confirmed the findings of all the Courts below in O.S.No.46 of 2003. As noticed supra, all the Courts, including the Hon'ble Apex Court, held that the alleged Ex.A-1 agreement between the appellant and the auction purchaser is unlawful and it is unenforceable, and it is against law.

⁴ 2016 (5) ALT 795 (D.B.)

⁵ (2000) AIR (SC) 2587

32. The Second Appellate Court/the Composite High Court of Andhra Pradesh, at Hyderabad, held that *“the property was sold in a Court auction far below the actual price of the subject matter of the suit, obviously, and as rightly held by the Courts below, it is the result of an agreement between the appellant and the first respondent, which the appellant intended to knock away the property to the detriment of other co-sharers”*. The auction purchaser specifically denied the Ex.A-1 agreement in O.S.No.46 of 2003, and he contested in the said suit, and the said suit was dismissed by the trial Court, which was confirmed by the First Appellate Court, Second Appellate Court, and also the Hon’ble Apex Court. The appellant herein purposefully omitted his role in the said alleged agreement in the present suit and he is giving a clean chit to himself and filed the present suit in O.S.No.326 of 2017. As stated supra, the person who approached the Court with unclean hands is not entitled to seek any relief. As noticed supra, *“Wrong doer ought not to be permitted to make profit out of his own wrong”*.

33. The appellant placed another reliance on ***Narinder Singh Vs Surjit Singh***⁶. The facts and circumstances in the aforesaid case law relates to the Election disputes in the State Legislature at Punjab and Haryana.

34. Ex.A-17 to Ex.A-20 filed by the appellant goes to show that after dismissal of the SLP No.10181 of 2012 and Curative Petition (Civil) No.221 of 2012, which relates to O.S.No.46 of 2003, having been defeated in all the Courts from the Senior Civil Judge Court, Guntur, to the Hon’ble Apex Court,

⁶ AIR 1984 SC 1359

the appellant herein filed an interlocutory application in the year 2014 in I.A.No.1374 of 1985 in O.S.No.198 of 1983, under Sections 144 and 151 of the Code of Civil Procedure, 1908, with a prayer to set aside the auction proceedings and sale certificate dated 31.12.2001, on the ground of alleged fraud, and the said application was rejected by the Executing Court/ Additional Senior Civil Judge Court, Guntur, vide its order dated 21.04.2015, by giving detailed reasons. Ex.A-19 goes to show that, aggrieved by the said order, the appellant herein filed C.R.P.No.2091 of 2015, and the same was dismissed by the Composite High Court of Andhra Pradesh, at Hyderabad, and Ex.A-20 goes to show that after dismissal of C.R.P.No.2091 of 2015, the appellant herein filed S.L.P.No.27646 of 2015, and the same was also dismissed by the Hon'ble Apex Court on 01.10.2015. Therefore, it is evident that the appellant availed all the remedies to challenge the sale on the ground of alleged fraud as raised in the present suit, having been defeated from the Executing Court to the Hon'ble Apex Court, the appellant herein again filed the present suit in O.S.No.326 of 2017 after seventeen (17) years of confirming the sale in favour of the auction purchaser. The trial Court, after completion of the trial and on hearing both sides, dismissed the suit, and the First Appellate Court also confirmed the said finding given by the trial Court, and the plaintiff in the said suit filed the present second appeal before this Court to challenge the decrees and judgments passed by both the Courts below.

35. As noticed supra, except examining the plaintiff himself as P.W.1, no other evidence is produced by the plaintiff to prove the alleged fraud played by

the auction purchaser. The plaintiff admitted in his evidence in cross-examination that "*there are no material irregularities and there is no fraud in conducting the auction sale proceedings and they succeeded that the auction was properly conducted*". He further admits that the defendant No.8 is the highest bidder in the auction conducted on 16.12.1999, and no party raised any objection for the said auction. He further admits that as per the final decree, the auction proceeds were distributed among all the co-sharers, and the defendant No.8 herein deposited the said amount. He further admits that he himself, along with other co-sharers, withdrew the deposited amount by filing the cheque petitions. Another admission made by him in his evidence is that he has not raised any objection, along with the other sharers, for the delivery of the property to the auction purchaser.

36. The material on record indicates that the auction was conducted among all the co-sharers on 16.12.1999. None of the co-sharers raised any objection at the time of the auction, and the bid was knocked down in favour of the auction purchaser, and the auction purchaser deposited the bid amount, and all the co-sharers withdrew their respective share amounts, and the appellant herein also withdrew his share amount without any protest. As noticed supra, since the schedule property is indivisible, the auction was conducted as per the orders of the Court among the co-sharers. The material on record further goes to show that the elder brother of the plaintiff by name Ravinuthala Venkata Suryanarayana filed I.A.No.103 of 2000 in I.A.No.1374 of 1985, questioning the sale on various grounds including the fraud and on the ground

that the property was sold fraudulently for a lesser price, and the auction purchaser, who is the defendant No.8, contested the petition filed by the said Suryanarayana, and on merits, the said petition was dismissed by the Executing Court by holding that there was no fraud in conducting the auction, and the same fact was known to all the sharers, including the plaintiff herein away back in the year 2001. The documentary evidence produced by the appellant itself goes to show that the fraud pleaded by the appellant was raised by the appellant himself in Ex.A-17 proceedings, and he was defeated in the Executing Court and the Composite High Court of Andhra Pradesh, at Hyderabad, and also in the Hon'ble Apex Court. Therefore, on the same ground of alleged fraud, the present suit itself is not at all maintainable.

37. The appellant placed a reliance on ***D.R.Rathna Murthy Vs. Ramappa***⁷, wherein the Apex Court held as follows:

“9. Undoubtedly, the High Court can interfere with the findings of fact even in the second appeal, provided the findings recorded by the courts below are found to be perverse i.e. not being based on the evidence or contrary to the evidence on record or reasoning is based on surmises and misreading of the evidence on record or where the core issue is not decided.”

In the present case at hand, both the Courts below after careful consideration of the entire evidence on record came to a conclusion that the appellant/plaintiff is not entitled to the declaratory relief as sought for. The general rule is that the High Court will not interfere with the concurrent findings of the Courts below. But, it is not an absolute rule. Some of the well recognized exceptions are where:

⁷ (2011) 1 Supreme Court Cases 158

1. The Courts below have ignored the material evidence or acted on no evidence, or
2. The Courts have drawn wrong inferences from a proved fact by applying the law erroneously, or
3. The Courts have wrongly cast burden of proof.

The present case does not fall within the aforesaid exceptions as stated *supra*.

38. The appellant placed a case law in ***Shrisht Dhawan Vs. Shaw Bros***⁸.

In the aforesaid case law it was held follows:

“20. Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence.”

The appellant also placed a case law in ***United India Insurance Co. Ltd. Vs. Rajendra Singh***⁹, wherein the Apex Court observed that *“Fraud and justice never dwell together and it is a pristine maxim which has never lost its temper over all these centuries”*. The ratio laid down in the aforesaid case is that *“dishonesty should not be permitted to bear the fruit and benefit to the persons who played the fraud or made misrepresentation and in such circumstances, the Court should not perpetuate the fraud”*.

In the case at hand, a suit in O.S.No.46 of 2003 is filed by the appellant herein based on the alleged agreement said to have been executed between the appellant herein and the auction purchaser, and all the Courts, i.e., from the trial Court to the Hon’ble Apex Court, have concurrently held that the said

⁸ AIR 1992 SCC 1555

⁹ AIR 2000 SCC 1165

alleged Ex.A-1 agreement between the appellant herein and the auction purchaser is unlawful and it cannot be enforced, and it is a result of an agreement between the appellant and the auction purchaser, which the appellant herein intends to knock away the property to the detriment of other co-sharers. Therefore, the appellant, being a party to the alleged unlawful agreement, is not entitled to get benefit. It is also a settled principle of law that *“no one is entitled to take advantage of his own wrongs”*.

39. Having regard to the reasons assigned, this Court is satisfied that the concurrent findings of fact recorded by both the Courts below on all the issues/points in favour of the defendants and against the plaintiff do not brook interference and that both the Courts below are justified in dismissing the suit of the plaintiff. The findings of fact recorded by both the Courts below were based on proper appreciation of evidence and the material on record and there was neither illegality nor irregularity in those findings and therefore, the findings do not require to be upset. Further, the existence of a substantial question of law is a sine qua non for the exercise of jurisdiction by this Court as per Section 100 of Code of Civil Procedure. The questions raised, strictly speaking, are not even pure questions of law, let alone substantial questions of law.

40. Viewed thus, this Court finds that none of the questions raised are substantial questions and there is no subsistence in the questions raised and that therefore, the second appeal is devoid of merits and is liable for dismissal at the stage of admission.

41. In the result, the second appeal is dismissed at the stage of admission, confirming the judgment and decree of both the Courts below. Pending applications, if any, shall stand closed. No costs.

V. GOPALA KRISHNA RAO, J.

Date: 24.03.2026

SRT