REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8247 OF 2009

YASHODA (ALIAS SODHAN) ...APPELLANT(S)

VERSUS

SUKHWINDER SINGH AND OTHERS ...RESPONDENT(S)

J U D G M E N T

B.R. GAVAI, J.

1. The appeal challenges the judgment dated 28th January 2009 passed by the learned Single Judge of the High Court of Punjab and Haryana at Chandigarh in Regular Second Appeal No. 3205 of 2007 (O&M), thereby dismissing the appeal filed by the present appellant.

2. Brief facts giving rise to the present appeal are as under:

As per Kartar Singh, the original plaintiff (since deceased), the grandfather of respondent Nos.1 and 2, he had entered into an agreement to sell the agricultural lands on 10th January 1993. As per the said agreement, the sale deed was to be executed before 15th March 1994. According to the plaintiff, a family settlement also took place between him and the appellant-defendant in the month of November 1993. It is to be noted that the plaintiff initially filed a suit for declaration against the appellant-defendant being Civil Suit No. 141 of 1994 on 10th February 1994. The said suit was filed on the basis of the said family settlement that took place in the month of November 1993. On the basis of the application filed by the plaintiff, the said suit was dismissed as withdrawn on 7th May 1994.

3. The plaintiff filed the present suit on 2nd June 1994 being Suit No. 536 of 1994 seeking specific performance on the basis of alleged agreement to sell dated 10th January 1993. The appellant-defendant resisted the suit by filing written statement on 29th October 1994. In the written statement, the appellant-defendant categorically denied the

existence and/or the execution of any agreement to sell. It was specifically contended by the appellant-defendant that the second suit was not maintainable in view of withdrawal of the first suit. The plaintiff filed his Replication on 14th November 1994 contending that the first suit for declaration was filed only to avoid payment of stamp duty and registration charges.

4. The learned Additional Civil Judge (Senior Division), Sunam (hereinafter referred to as the "trial court") vide judgment and decree dated 6th August 1997 dismissed the suit for specific performance. Being aggrieved thereby, the respondents, i.e., the legal representatives of the plaintiff filed an appeal before the learned Additional District Judge, Sangrur (hereinafter referred to as the "Appellate Court"). The Appellate Court vide its judgment and decree dated 26th July 2007 allowed the appeal and decreed the suit of the plaintiff for specific performance of agreement to sell dated 10th January 1993. Being aggrieved thereby, the appellant-defendant preferred an appeal before the High Court. The High Court vide impugned judgment dated 28th January

2009 dismissed the appeal. Hence, the appellant-defendant has approached this Court.

5. We have heard Shri Sidharth Luthra, learned Senior Counsel appearing on behalf of the appellant-defendant and Shri Narender Hooda, learned Senior Counsel and Shri Gagan Gupta, learned counsel appearing on behalf of the respondents-plaintiffs.

6. Shri Luthra, learned Senior Counsel submitted that the trial court, finding that the plaintiff had suppressed the fact with regard to filing of the earlier suit and further that the plaintiff had resiled from the stand taken by him in the earlier litigation and taken a contrary stand, had dismissed the suit. He submitted that however, the learned Appellate Court erroneously accepted the stand of the plaintiff in Replication that the earlier suit was filed only in order to save the stamp duty and registration charges and allowed the appeal.

7. Shri Luthra submitted that the perusal of the evidence of the plaintiff would show that he had not stated anything regarding the earlier suit in his evidence. He

submitted that, the learned Appellate Court has failed to take into consideration that all the witnesses were closely associated with the plaintiff and therefore, their evidence was not trustworthy. He further submitted that the appellant-defendant had specifically put up a case that she was a parda-nasheen lady and that the plaintiff was her cousin and she had blind faith on him. He submitted that, taking disadvantage of such a blind faith, the plaintiff had taken her thumb impression on some paper and used it to create an agreement to sell. He further submitted that, as a matter of fact, an application for partition was also filed by the appellant-defendant on 4th July 1994. He therefore submitted that the appeal deserves to be allowed and the suit deserves to be dismissed.

8. Shri Luthra relied on various judgments of this Court in support of the submission that, since the act of the respondents-plaintiffs of suppression of material facts amounted to fraud, he was not entitled to a discretionary relief.

9. Shri Gupta, learned counsel appearing on behalf of the respondents-plaintiffs submitted that all the three courts have concurrently found that the execution of the agreement to sell dated 10th January 1993 was duly established. He submitted that the trial court as well as the Appellate Court and the High Court have also found that the appellant-defendant has failed to establish the fact that the agreement to sell is a result of fraud or misrepresentation. Having decided these issues in favour of the respondents-plaintiffs, the trial court had erred in non-suiting the respondents-plaintiffs on a technical ground. Shri Gupta, relying on the judgment of this Court in the case of ***Arunima Baruah v. Union of India and Others***[1], submitted that, unless the suppression of filing of an earlier suit is a material fact, such non-disclosure would not be fatal to the case of the plaintiff. Relying on the judgment of this Court in the case of ***Harjas Rai Makhija (Dead) Through Legal Representatives v. Pushparani Jain and Another***[2], he submitted that a mere concealment or non-disclosure of relevant facts without

1 **(2007) 6 SCC 120**
2 **(2017) 2 SCC 797**

intent to deceive or a bald allegation of fraud without proof and intent to deceive, would not render a decree obtained by a party as fraudulent. Shri Gupta submitted that in the present case, the trial court itself has found that the plaintiff had failed to establish fraud and as such, the Appellate Court has rightly allowed the appeal. He also relies on the judgment of this Court in the case of ***Svenska Handelsbanken v. M/s Indian Charge Chrome and Others***[3]. Shri Gupta further relies on the judgment of this Court in the case of ***Union of India v. M/s Chaturbhai M. Patel and Co.***[4] in support of his submission that fraud has to be proved beyond reasonable doubt.

10. Shri Gupta further submitted that the earlier suit for declaration was filed on the claim that the respondents-plaintiffs were owner in possession of the suit property on the basis of settlement deed, whereas the second suit was filed on the basis of agreement to sell dated 10th January 1993. He submitted that there is nothing on record to show

3 **(1994) 1 SCC 502**
4 **(1976) 1 SCC 747**

that the respondents-plaintiffs had any intention to defraud the appellant-defendant.

11. Shri Hooda, learned Senior Counsel submitted that after the Replication was allowed by the trial court, it became a part of the plaint. As such, the respondents-plaintiffs had sufficiently proved as to the circumstances in which the earlier suit was filed. He therefore submitted that the trial court had erred in non-suiting the plaintiff on a trivial ground. Shri Hooda further submitted that after holding that the respondents-plaintiffs had proved the agreement to sell, that the appellant-defendant had failed to prove that any fraud was played on her and that the issue under Order II Rule 2 of the Civil Procedure Code, 1908 (for short, 'CPC') was also in favour of the respondents-plaintiffs, the trial court had grossly erred in dismissing the suit. He submitted that the said error has been rightly corrected by the Appellate Court.

12. It is not in dispute that the plaintiff had filed a suit for declaration being Civil Suit No. 141 of 1994. It will be relevant to refer to some of the averments in the said plaint:

1. "That previously the defendant was owner to the extent of 1/3rd share in land measuring 205 Kanal 4 Marla mustatil & killa numbers as detailed in the heading of the plaint. Copy of Jamabandi is attached herewith.
2. That previously the defendant was also owner to the extent of 1/6 share in land measuring 139 Kanal 2 Marla and land gair mumkin plot measuring 9 Kanal 2 Marla mustatil & kiolla numbers as detailed in the heading of the plaint. Copy of Jamabandi is attached herewith.
3. .....
4. That about three months ago and a family settlement took place between the plaintiff and defendant and the land in dispute fallen into the share of the plaintiff and the defendant had delivered the possession of the suit property to the plaintiff after visiting the spot. In this now the plaintiff is continuous in possession over disputed property as owner since last three month. The defendant has remained no concern.
5. That the defendant was requested to admit the claim of the plaintiff and to get corrected the name of the plaintiff in revenue record as owner but the defendant after dilly-dallying the matter had refused yesterday to do so from which cause of action accrued to the plaintiff against the defendant."

13. The said suit for declaration was filed on 10th February 1994. It is to be noted that according to the respondents-plaintiffs, the alleged agreement to sell was executed on 10th January 1993. As such it is prior in point

of time to the date of filing of the suit for declaration i.e. 10th February 1994. There is no mention with regard to the alleged agreement to sell in the said plaint.

14. The plaintiff filed an application on 7th May 1994 for withdrawal of the said suit for declaration. Vide order of the same date, the trial court, after recording the statement of the plaintiff that he did not want to proceed with the case, dismissed the same as withdrawn.

15. Within a period of one month, the plaintiff filed the present suit for specific performance. It will be relevant to refer to some of the averments in the plaint:

> "2. That the defendant agreed to sell the above said suit land to the plaintiff for a consideration of Rs. 6,50,000/- and the defendant executed an agreement on dated 10.1.1994 at Patran in favour of the plaintiff and received a sum of Rs. 50,000/- from the plaintiff as earnest money and remaining amount was to be paid by the plaintiff to the defendant at the time of sale deed before the Sub-Registrar. The agreement was read over to the defendant who after admitting the same to be correct put her thumb impressions in the presence of Lal Singh Lamberdar, Amolak Singh s/o Jagroop Singh and Bhagwant Singh S/o Krishan Singh resident of Shadihari and witnesses also attested the said agreement in the presence of defendant. The plaintiff put his thumb impression in token of correctness of the above said agreement.

.....

15. That there is no litigation pending or decided between the parties with regard to the agreement in question."

16. It could thus clearly be seen that, the present suit bases its claim only on the agreement to sell dated 10th January 1993. Leave aside there being any reference to the earlier suit, the plaintiff baldly stated that there was no litigation pending or decided between the parties with regard to the agreement in question. No doubt that it is sought to be argued by the learned counsel for the respondents-plaintiffs that the statement in paragraph (15) of the plaint is only with regard to the litigation with respect to the agreement in question. It is stated that the said paragraph does not mention litigation with regard to the land in question and as such, there is no suppression of material fact.

17. After the suit for specific performance was filed, the written statement was filed by the appellant-defendant on 29th October 1994. In the written statement, the appellant-defendant has stated thus:

"3. That the plaintiff file the said suit no.141 dt. 10.2.1994 in the Court of P.C.S. Sub Judge First Class Sunam on 10.2.1994 which was dismiss on 7.5.1994, but the plaintiff ending between the parties, on this ground only the suit of the plaintiff is liable to be dismissed. In case any agreement executed earlier between the parties, the plaintiff must mention about this in the suit, hence on this alone ground the suit is liable to be dismissed.

4) That the plaintiff on 10.2.1994 in regard to the land filed Suit for pre-emption Right against the defendant in which the plaintiff shown himself owner in possession of the land in question, the said suit was consigned to record on 7.5.1994. In the said suit the defendant did not mention anything in regard to the agreement DT 10.1.1994.

5) That the plaintiff did not come before the Hon'ble Court in clean hand and he has concealed the matter before the Hon'ble Court, hence the suit is liable to be dismissed.

6) That the plaintiff and Defendant are having close relations with each other. The plaintiff is uncle's son of Defendant. Defendant has no brother, hence he treated plaintiff as her real brother and believe upon him. Defendant is aged lady her eye sight is very week and villager lady, she has no legal knowledge. The plaintiff getting the wrongful gain of her believe with the intention to grab her share has taken the thumb impression on the writing by committing cheating and fraudulent means."

18. After the appellant-defendant took objection with regard to the earlier suit being withdrawn, the plaintiff came with the Replication application wherein, for the first time, he

came up with a story that the earlier suit was filed only to save the stamp duty and registration fee and since the appellant-defendant became dishonest later on, the plaintiff withdrew the suit. It is thus clear that the Replication was filed as an after-thought only to cure the lacuna as pointed out in the written statement. The trial court found that a person cannot be permitted to assume inconsistent positions in the court of law to play fast and loose and to blow hot and cold. The trial court, relying on the judgment of the Punjab and Haryana High Court in the case of ***Jaspal Singh v. Sardul Singh***[5], held that a party cannot be permitted to approbate and reprobate and resile from that position. The trial court has also found that the explanation submitted by the plaintiff with regard to the circumstances under which the earlier suit was filed, speaks volumes of the dishonest intention of the plaintiff. The trial court also found that the plaintiff has made an attempt to defraud the State of its revenue. The trial court found that the past litigation has a direct bearing on the merits of the present controversy. It observed that the plaintiff was duty bound to plead the same

5 **1994 (3) Recent Revenue Reports 106 (Punjab and Haryana)**

in the plaint. The trial court found that under Order VII Rule 1 (j) of the CPC (as applicable in Punjab), the statement with regard to earlier litigation has to be made in the plaint. It will be relevant to refer to the said provision:

"ORDER VII

PLAINT

1. Particulars to be contained in plaint.

.....

(j) a statement to the effect that no suit between the same parties, or between the parties under whom they or any of them claim, litigating on the same grounds has been previously instituted or finally decided by a Court of competent jurisdiction or limited jurisdiction, and if so, with what results."

19. The trial court therefore, relying on the judgment of this Court in the case of ***S.P. Chengalvaraya Naidu (Dead) By LRs. v. Jagannath (Dead) By LRs. and Others***[6], dismissed the suit, though it had answered the other issues in favour of the respondents-plaintiffs.

20. This well-reasoned judgment of the trial court came to be reversed by the Appellate Court. Accepting the

6 **(1994) 1 SCC 1**

explanation of the respondents-plaintiffs in Replication that the earlier suit was filed in order to save the registration fee and the stamp duty, the Appellate Court held that the non-disclosure of the plaintiff about earlier litigation in the plaint but clarifying it later in the Replication, was not such a crucial point on the basis of which he could be non-suited in toto.

21. Though the suit was dismissed by the trial court and decreed by the Appellate Court, the High Court observed thus:

> "The learned trial Court came to the conclusion that the agreement to sell and the default on the part of the appellant has been established and therefore directed the agreement to be enforced by way of execution of the sale deed.
>
> In appeal, the findings of the learned trial Court were affirmed."

22. It could thus be seen that there is total non-application of mind by the High Court. The High Court did not even care to refer to the grounds raised in the appeal with regard to the effect of non-disclosure of filing and withdrawal of the earlier suit. The High Court dismissed the

suit on the basis that it arises out of the concurrent findings of fact and no question of law is involved.

23. What would be the effect of suppression of earlier proceedings has been considered by this Court in the case of ***S.P. Chengalvaraya Naidu*** (supra). The Court observed thus:

> "**5.** The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, 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.

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

24. Again in the case of ***A.V. Papayya Sastry and Others v. Govt. of A.P. and Others***[7], this Court observed thus:

7 **(2007) 4 SCC 221**

"**21.** Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed:

> "Fraud avoids all judicial acts, ecclesiastical or temporal."

22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order—by the first court or by the final court—has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.

23. In the leading case of *Lazarus Estates Ltd.* v. *Beasley* [(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. In *Duchess of Kingstone, Smith's Leading Cases*, 13th Edn., p. 644, explaining the nature of fraud, de Grey, C.J. stated that though a judgment would be res judicata and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was "mistaken", it might be shown that it was "misled". There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been

rendered, but it can be set aside, if the court was imposed upon or tricked into giving the judgment.

25. It has been said : fraud and justice never dwell together (*fraus et jus nunquam cohabitant*); or fraud and deceit ought to benefit none (*fraus et dolus nemini patrocinari debent*).

26. Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of "finality of litigation" cannot be stretched to the extent of an absurdity that it can be utilised as an engine of oppression by dishonest and fraudulent litigants."

25. As observed, there is an essential distinction between mistake and trickery. In the present case, it is sought to be argued on behalf of the respondents-plaintiffs that the averment in paragraph (15) of the plaint was with regard to a lis on the basis of the agreement. It is submitted that the earlier suit was not based on the agreement and as such, there was no suppression. We find the argument to be unsustainable. We are of the view that such a statement was

made as a trickery so as to obtain the judgment by misleading the court.

26. In the case of ***H.N. Jagannath and Others v. State of Karnataka and Others***[8], the land owners filed civil suits one after other in respect of acquired lands. The said suits were withdrawn without liberty to approach the court again. Simultaneously, land owners also filed writ petitions challenging the acquisition on different grounds. The same were dismissed. Thereafter, the land owners submitted an application to the State Government for denotification of the land. Since it was not considered, one more writ petition came to be filed in which a direction was issued for consideration of the representation. The said representation was rejected in the year 1992. The land owners filed another writ petition questioning the rejection of its representation. The same was also dismissed. Thereafter, six more writ petitions were filed again questioning the validity of acquisition proceedings and yet again, they were dismissed. In an intra-court appeal, the Division Bench relegated the parties to the civil court to work out their remedies.

8 **(2018) 11 SCC 104**

Criticizing the approach of the Division Bench, this Court observed thus:

> "**14.** It is not in dispute that the property in question along with other properties was acquired by the BDA in accordance with law by issuing notifications under Sections 17(1) and 19(1) of the BDA Act as far back as in the year 1977 and in the year 1979. BDA has formed and allotted the sites. Most of the allottees have constructed houses and are residing peacefully. However, Respondent 4 still contends that possession has remained with it and therefore the acquisition needs to be set aside and that the land should be denotified. As detailed supra, Respondent 4 has already approached the civil court thrice and High Court on six occasions. Whenever the suits are withdrawn, Respondent 4 has not sought any liberty to approach the civil court once again. Thus, it was not open for Respondent 4 to approach the civil court repeatedly for the very same reliefs. Consistently, the civil court on three occasions has negatived the contention of the appellant.
>
> **15.** Even when Respondent 4 approached the High Court of Karnataka by filing the writ petitions and writ appeals, it has failed. Futile attempts have been made by Respondent 4 only to see that the allottees are harassed and to keep the litigation pending. After the final notification, an award was passed and compensation was deposited. Possession was taken and the same was evidenced by the panchnama prepared as far back as on 23-9-1986. The notification under Section 16(2) of the Land Acquisition Act was issued on 20-1-1987 disclosing the factum of taking possession of the land in question. Attempt made by Respondent 4 for getting the disputed land denotified has also failed as far back as on 15-1-1993, when the State Government had rejected the representation of Respondent 4 seeking

denotification. The writ petition filed by Respondent 4 challenging such order of dismissal of the representation was also dismissed. Despite the same, Respondent 4 is pursuing the matter by filing writ petition after writ petition. It is a clear case of abuse of process of law as well as the court.

16. We do not find any reason to interfere in the finding of fact rendered by the learned Single Judge that possession was taken by BDA on 23-9-1986. There is nothing to be adjudicated further in respect of the title or possession of the property. The title as well as the possession of the property has vested with BDA for about more than 30 years prior to this day and sites were formed and allotted to various persons including the appellant herein. In the light of such voluminous records and having regard to the fact that Respondent 4 has been repeatedly making futile attempts by approaching the courts of law by raising frivolous contentions, the Division Bench ought not to have granted liberty to Respondent 4 to approach the civil court once again for the very same relief, for which it has failed earlier. In view of this, the learned counsel for the appellant is justified in contending that the Division Bench has completely erred in reviving the dispute which had long been given a legal quietus after a series of litigations. The judgment of the Division Bench, if allowed to stand, will unsettle the settled state of affairs involving hundreds of allottees of sites who have constructed the houses and are residing therein. The impugned judgment of the Division Bench virtually sets at naught a number of judgments rendered by the civil court as well as the High Court in the very matter (and was given without any reason much less a valid reason).

17. .....

18. .....

19. Having regard to the discussion made supra, in our considered opinion, it is a clear case of contempt

committed by Respondent 4 by repeatedly approaching the courts of law for almost the same relief which was negatived by the courts for three decades. However, we decline to initiate contempt proceedings and to impose heavy costs, under the peculiar facts and circumstance of this case."

27. We find that the Appellate Court has grossly erred in reversing the judgment and decree of the trial court which had dismissed the suit taking into consideration the conduct of the respondents-plaintiffs.

28. Insofar as the reliance placed by Shri Gupta on the judgment of this Court in the case of ***Arunima Baruah*** (supra) is concerned, the Court observed thus:

"**12.** It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands

become clean, whether the relief would still be denied is the question."

29. It could thus be seen that this Court has held that what would be a 'material fact' would depend upon the facts and circumstances of each case. It has also been held that 'material fact' would mean material for the purpose of determination of the lis. It has also been held that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. In the present case, filing of the earlier suit and withdrawal thereof without liberty to file another suit was a material fact. Undisputedly, the respondents-plaintiffs had failed to approach the court with clean hands. As such, we find that the said judgment would be of no assistance to the case of the respondents-plaintiffs.

30. Insofar as the judgment in the case of ***Harjas Rai Makhija*** (supra) is concerned, in the facts of the said case, the Court held that though the appellant Makhija had an opportunity to prove the allegation of fraud when he filed an application under Order XLI Rule 27 of the CPC, he missed

that opportunity right up to this Court. He took a second shot at alleging fraud and filed another suit. However, he failed in the trial court as well as the High Court as he could not produce any evidence to prove that fraud was committed by the respondent when she obtained the decree dated 4th October 1999. As such, the said judgment would not be applicable to the facts of the present case.

31. Insofar as the judgment in the case of ***M/s Chaturbhai M. Patel and Co.*** (supra) is concerned, it was the case of defendant that some amount of fraud had been played on the defendant by the collusion of the plaintiff with his father. This Court, concurring with the findings of the High Court, found that the circumstances relied on by the appellant were not at all conclusive to prove the case of fraud. The present case is a case of suppression of a material fact with regard to filing and withdrawal of earlier proceedings. As such, the said judgment would not be applicable to the facts of the present case.

32. Similarly, the facts in the case of ***Svenska Handelsbanken*** (supra) were also totally different and as

such, reliance on the said judgment is also of no assistance to the case of the respondents-plaintiffs in the present case.

33. In that view of the matter, we find that the Appellate Court has grossly erred in reversing the well-reasoned judgment and decree of the trial court. As already observed hereinabove, the judgment of the High Court is passed without application of mind. The High Court has gone on a premise that the trial court had decreed the suit and the Appellate Court has dismissed the appeal. This is factually erroneous.

34. In the result, we pass the following order:

(i) The appeal is allowed;

(ii) The judgment and decree dated 26th July 2007 passed by the Appellate Court in Civil Appeal No. 191 of 2006 and the judgment passed by the High Court dated 28th January 2009 in R.S.A. No. 3205 of 2007 (O&M) are quashed and set aside; and

(iii) The judgment and decree dated 6th August 1997 passed by the trial court in Suit No. 536 of 1994

thereby dismissing the suit of the respondents-plaintiffs is upheld.

35. Pending application(s), if any, shall stand disposed of in the above terms. No order as to costs.

.....J.
[B.R. GAVAI]

.....J.
[C.T. RAVIKUMAR]

NEW DELHI;
SEPTEMBER 12, 2022.