

HIGH COURT OF CHHATTISGARH**Bench: Justice Goutam Bhaduri & Justice Deepak Kumar Tiwari****Date of Decision: 10-11-2023**

FA No. 16 of 2023

[Arising out of order dated 21-9-2022 passed by the Second Additional District Judge, Durg, in civil suit No.18-A/2020]

1. Mehul Kumar Patel S/o Late Laxman Bhai Patel Aged About 45 Years Patel Complex Utai Road Padmanabhpur Durg, Tahsil And District - Durg (C.G.)
2. Dinesh Kumar Patel S/o Late Laxman Bhai Patel Aged About 50 Years Patel Complex Utai Road Padmanabhpur Durg, Tahsil And District - Durg (C.G.)
3. Kailash Ben Patel W/o Harshad Bai Patel Aged About 52 Years Gandevi, District - Navasari (GJ)
4. Bharti Ben Patel, W/o Mahesh Bhai Patel Aged About 49 Years Deleware (USA)
5. Preeti Ben Patel W/o Alpesh Patel Aged About 46 Years Plot No.176, Road No.-14, Balamrai Society Secunderabad (TS)
6. Hitesh Kumar Patel S/o Bhikhu Bhai Patel Aged About 41 Years Complex Utai Road Padmanabhpur Durg, Tahsil And District - Durg (C.G.)
7. Parul Ben Mehta W/o Pramod Bhai Mehta Aged About 52 Years Padmanabhpur Durg, Tahsil And District - Durg (C.G.), In Front Of Trupti Restaurant, District - Durg (C.G.)
8. Neeta Ben Mehta W/o Khushal Bhai Mehta Aged About 62 Years Padmanabhpur Durg, Tahsil And District - Durg (C.G.) In Front Of Trupti Restaurant, District - Durg (C.G.)
9. Pramod Bhai Mehta S/o Late Babu Bhai Mehta Aged About 55 Years Padmanabhpur Durg, Tahsil And District - Durg (C.G.) In Front Of Trupti Restaurant, District - Durg (C.G.)
10. Jagriti Ben Patel S/o Dinesh Kumar Patel Aged About 47 Years Padmanabhpur Durg, Tahsil And District - Durg (C.G.) In Front Of Trupti Restaurant, District - Durg (C.G.)
11. Nikunj Kumar Patel S/o Shri Mukesh Bhai Patel Aged About 42 Years R/o Patel Complex, Utai Road, Padmanabhpur (wrongly typed in the cause title as Pandnapur), Durg, Chhattisgarh.

---- Appellants/Plaintiffs

Versus

1. Rishikesh Gupta S/o Late Suryaprakash Gupta Aged About 39 Years Azad Chowk Kasaridih, Durg, District - Durg (C.G.)
2. Jaya Agrawal W/o Piyush Agrawal Aged About 32 Years Lakhe Nagar Chowk, Raipur, District - Raipur (C.G.)
3. Shubham Gupta S/o Late Suryaprakash Gupta Aged About 28 Years Azad Chowk Kasaridih, Durg, District - Durg (C.G.)
4. Chandrakala Gupta W/o Late Suryaprakash Gupta Aged About 63 Years Azad Chowk Kasaridih, Durg, District - Durg (C.G.)
5. Sarala Gupta W/o Late Om Prakash Gupta, aged about 71 years, Baniyapara, Chandi Mandir Road Late Dharampala Gupta Ke Makan Ke Baju Durg, District - Durg (C.G.)
6. Jyoti @ Manish Agrawal W/o Rajesh Agrawal Aged About 50 Years Arya Nagar, Durg, District - Durg (C.G.)
7. Pushpanjali @ Renu Agrawal W/o Manish Agrawal Aged About 46 Years Mathpara, Durg, District - Durg (C.G.)
8. Ritu @ Geetanjali Agrawal W/o Manish Agrawal Aged About 44 Years Kanhaiya Puri Kasaridih, Durg , District - Durg (C.G.)
9. Aarati Gupta D/o Late Omprakash Gupta Baniyapara, Durg, District - Durg (C.G.)
10. Mangal Prakash Gupta D/o Late Omprakash Gupta Aged About 36 Years Baniyapara, Durg, District - Durg (C.G.)
11. Shubhanjali @ Rinku Gupta W/o Abhilash Gupta Aged About 39 Years Lily 235, Talpuri International Colony, Block - A, Roobandha, Bhilai, Tahsil And District - Durg (C.G.)
12. Shashi Prabha W/o Jagat Agrawal Aged About 67 Years Amapara Durg, District - Durg (C.G.)
13. Snehprabha Agrawal W/o Krishnakant Agrawal Aged About 65 Years R/o Santrabadi, Durg, Chhattisgarh (C.G.)
14. State Of Chhattisgarh Through District - Collector, Durg, District - Durg (C.G.)

---- Respondents/Defendants

For Appellants	Mr. B.P. Sharma, Adv. with, Mr. Ankit Singhal and Mr. M.L. Saket, Advocates
For Respondent No.1	Mr. J.K. Gupta, Advocate
For Respondents No.2 & 3	None, though served

For Respondent No.4	Mr. Sajal Kumar Gupta, Advocate appears on behalf of Mr. Surya R. Dangi Advocate
For Respondents No.5 to 11	Mr. H.B. Agrawal, Sr. Advocate with Ms A. Sandhya Rao, Advocate
For Respondents No.12 & 13	None, though served
For Respondent No.14/State	Mr. Trivikram Nayak, Panel Lawyer

Legislation:

Order 1 Rule 10(2), Order 6 Rule 17, Order 7 Rule 11(d), Order 22 Rule 4 & 9, Order 23 Rule 3 and 3A of the Code of Civil Procedure, 1908

Section 52 of the Transfer of Property Act, 1882

Section 5 of the Limitation Act

Subject: Challenge to the order of the trial court which dismissed a suit filed by the plaintiffs/appellants for declaration & injunction, involving issues related to the sale of property during the pendency of another suit, challenge of a compromise decree on grounds of fraud, and the application of the doctrine of lis pendens.

Headnotes :

Civil Procedure – Dismissal of Suit – Order 7 Rule 11(d) CPC – Suit dismissed by invoking Order 7 Rule 11(d) of CPC – Plaintiffs challenged the order for dismissal of suit filed for declaration & injunction – Trial court's rejection based on non-inclusion of plaintiffs in an earlier suit – Contention raised on purchase of property from a party in the earlier suit. [Para 1, 7]

Property Law – Sale of Property During Pendency of Suit – Plaintiffs purchased property during pendency of earlier suit – Sale deeds executed in 1993 – Issue on whether property can be claimed back by original party in the suit – Consideration of the doctrine of lis pendens and its applicability in the context of property sold. [Para 2, 8, 9]

Fraud and Deception – Challenge to Compromise Decree – Allegation of fraud in obtaining a compromise decree – Plaintiffs claimed the decree affected their rights as property purchasers – Examination of validity of compromise decree when allegations of fraud are raised. [Para 3, 13, 14]

Legal Doctrine – Doctrine of Lis Pendens – Discussion on the doctrine of lis pendens and its implications – Consideration of whether the doctrine applies to properties sold during pendency of litigation – The impact of fraudulent practices on the application of the doctrine. [Para 15]

Decision – Reversal of Trial Court's Order – High Court set aside the order of the Trial Court dismissing the suit – Direction for further proceedings in the trial court – Emphasis on the need for a detailed examination of the factual matrix and legal principles involved. [Para 16, 17]

Referred Cases:

- S.P. Chengalvaraya Naidu (Dead) by LRs Vs Jagannath (Dead) by LRs and Others (1994) 1 SCC 1
- Triloki Nath Singh Vs Anirudh Singh (Dead) through Legal Representatives and Others (2020) 6 SCC 629
- A.A. Gopalakrishnan Vs Cochin Devaswom Board and Others (2007) 7 SCC 482
- Ghanshyam Vs Yogendra Rathi Civil Appeal Nos.7527-7528 of 2012 (decided on 2-6-2023)
- Saleem Bhai and Others Vs State of Maharashtra and Others (2003) 1 SCC 557
- Popat and Kotecha Property Vs State of Bank of India Staff Association (2005) 7 SCC 510
- Ram Niwas (Dead) through LRs Vs Bano (Smt.) and Others (2000) 6 SCC 685

Representing Advocates

For Appellants: Mr. B.P. Sharma, Adv. With Mr. Ankit Singhal and Mr. M.L. Saket, Advocates

For Respondent No.1: Mr. J.K. Gupta, Advocate

For Respondent No.4: Mr. Sajal Kumar Gupta, Advocate appears on behalf of Mr. Surya R. Dangi Advocate

For Respondents No.5 to 11: Mr. H.B. Agrawal, Sr. Advocate with Ms A. Sandhya Rao, Advocate

For Respondent No.14/State: Mr. Trivikram Nayak, Panel Lawyer

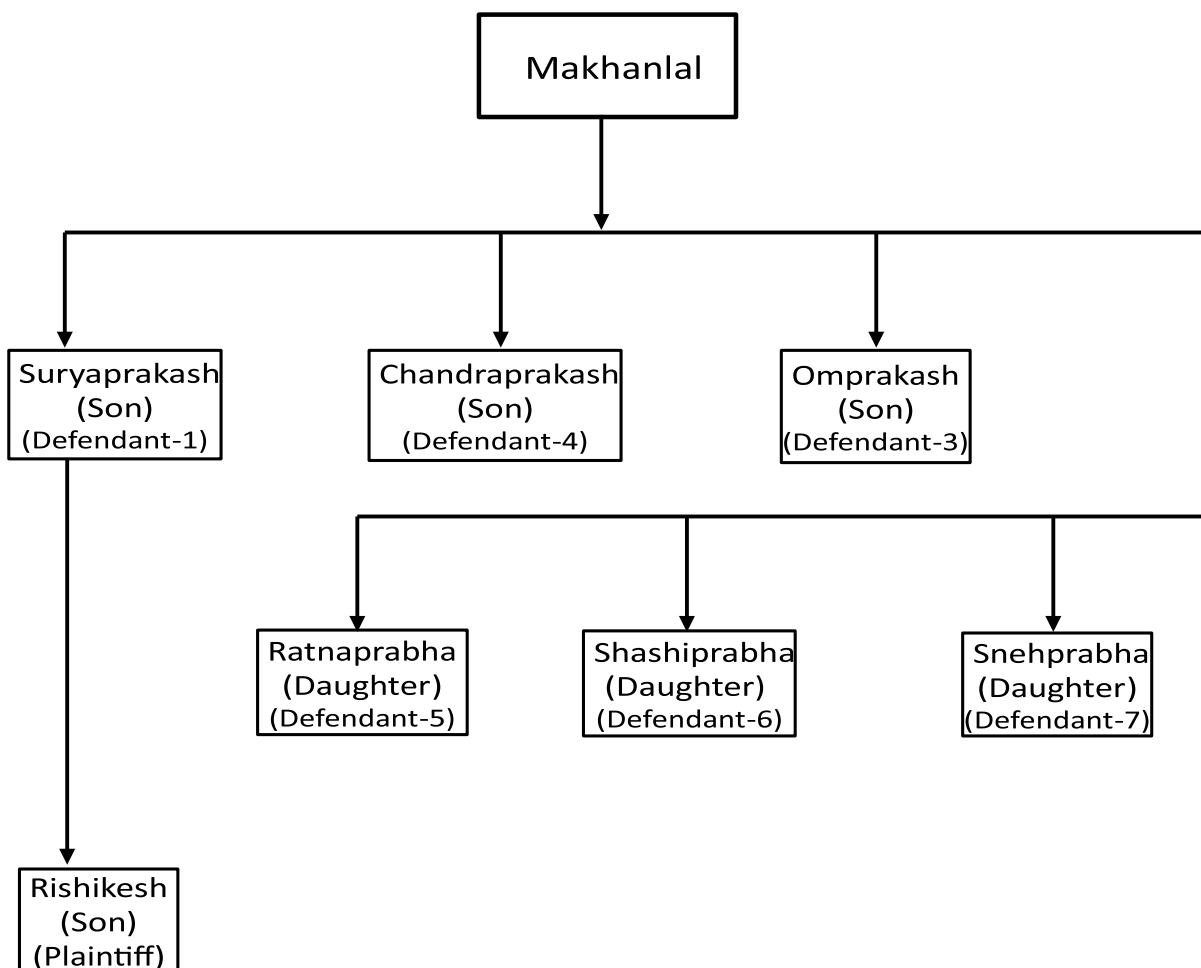
*****Judgment

Per Goutam Bhaduri, J.

1. Challenge in this appeal is to the order dated 21-9-2022 passed by the Second Additional District Judge, Durg, in civil suit No.18-A/ 2020 whereby

the suit filed by the appellants/plaintiffs has been dismissed by invoking power under Order 7 Rule 11 (d) of the Code of Civil Procedure, 1908 (for short 'the CPC') and has been non-suited.

2. (i) The facts of the case, as pleaded by the appellants/plaintiffs, in brief, are that the respondents are related to each other. Kanhaiyalal had three sons namely; Makhanlal, Bharatlal & Tirathlal. Makhanlal had six children i.e. three sons namely; Suryaprakash, Chandraprakash & Om Prakash and three daughters namely; Ratna Prabha, Shashi Prabha & Sneha Prabha. Respondent No.1 herein namely; Rishikesh Gupta is the son of Suryaprakash Gupta. For the sake of convenience, the genealogical tree of the descendants of Makhanlal, as impleaded in the cause title of civil suit No.7-A/2004 is as under :



- (ii) As per the plaint averments, plaintiffs purchased the suit land bearing khasra No.995/11 and 995/12 (original part of khasra No.995/1) by sale deeds dated 4-12-1993, 4-12-1993. 30-12-1993 from Chandraprakash Gupta for

himself and through the power of attorney for Anjani Agrawal, Amresh Agrawal, Smt. Sneha Prabha, Ravi Agrawal, Prashant Agrawal and Pradeep Choubey. (iii) It was stated that the land was wrongly entered in the revenue records of the State Government. Therefore, a suit was filed by Makhanlal Gupta. According to the plaintiffs (Appellants herein), during pendency of the above suit, a registered partition deed was effected in between Makhanlal and his sons namely; Suryaprakash, Chandraprakash & Om Prakash in the year 1982. The plaintiff further pleaded that the mutual partition also took place amongst them, which was earlier excluded from the registered partition deed for the reason that the said land is recorded in the name of the State Government.

- (iv) After decision of the High Court in the case bearing No.726/1978 decided in the year 1984, the revenue records were corrected by order dated 26-9-1988 passed by the Nazul Officer, Durg, in revenue case No.3A/20(3) year 1985-86. According to the plaintiff before the Nazaul Officer acknowledgment of partition was placed by the parties whereby the share of Chandra Prakash was also apportioned. After purchase of land in the year 1993 from Chandraprakash by three separate sale deeds, the plaintiffs became the absolute owner of the said land and the physical possession was also delivered to the plaintiffs herein.
- (v) The respondent No.1 Rishikesh Gupta initially filed a suit on 19-7-1990 bearing No.7-A/2004 (re-numbered) for partition through his paternal grandfather Ramkrishna Agrawal, as he was then minor. The detailed description of the properties was given in schedule 'A', 'B' & 'C'. Ramkrishna Agrawal, who filed the said suit on behalf of Rishikesh, died during pendency of the same. With the passage of time, Rishikesh became major and appeared in person to prosecute the suit.

(vi) Rishikesh filed an application under Order 1 Rule 10(2) of the CPC on 11-1-2005 to implead the appellant herein as a party in the said civil suit, which was dismissed by the learned First Additional District Judge by order dated 21-2-2005. The said dismissal order was subject of challenge in WP No.1447 of 2005 wherein this Court initially passed an order dated 8-4-2005 and the notice was issued to the respondents on merit. Paras 6 to 11 are quoted below :

6) This petition has been filed against the order dated 21st February 2005 whereby the learned Trial Judge rejected the application filed by the plaintiff under Order 1 Rule 10(2) of C.P.C. and gave an opportunity to the plaintiff to lead evidence on the next date of hearing.

7) Counsel for the petitioner submitted that the suit for partition was filed in the year 1990 by the next friend on behalf of plaintiff who at that time was minor. During pendency of the suit the next friend died on 26-01-2002. After his death, the plaintiff filed an application on 23-01-2004 for prosecuting the suit himself. An application dated 11-01-2005 was filed for joining 14 persons as respondents at the stage of evidence on the ground that during the pendency of the suit, the property has been alienated to them. The defendants opposed the application and submitted the reply to the application raising various grounds. Copy of the reply is not on record. The Court below after hearing and perusing the record, rejected the application for joining the parties.

8) Learned Counsel for the petitioner assailed the order of the trial Court and contended that the order is illegal.

9) So far as the transfer of property during pendency of the suit is concerned, Section 52 of the Transfer of Property Act is there and takes care.

10) Having considered the material placed on record, in the opinion of this Court, not a case for grant of stay at this stage.

11) However notice be issued to the respondents on merit.

(vii) The said civil suit No.7-A/2004 was eventually decreed on 8-4-2005. The same was subject to challenge before the High Court in FA No.271/2005. Chandra Prakash, the seller, was arrayed as appellant No.1 and was represented uptill last hearing in the said first appeal wherein by order dated

6-9-2018 the High Court remanded the case. Paras 8, 9 & 10 are quoted below :

8) Again it is not clear that on whose name the said property is recorded and on what basis such record is maintained. It is also not clear that any movable property is available for partition and who is in possession of said movable property. The trial court has power to call for record from the institution like Revenue Department and Municipal Corporation for deciding the issues, but record was not called for. It appears that the trial court has not addressed the real issues between the parties and therefore, the matter requires reconsideration by the said court.

9) Accordingly, the appeal is allowed and the judgment and decree passed by the trial court is set aside. The case is remanded back to the trial court for addressing real issues of the parties and decide the matter afresh.

10) Both the parties are directed to appear before the trial court on 25th October, 2018 for further proceedings.

(viii) Thereafter, the case commenced in the Court of First Additional District Judge, Durg, on 25-10-2018. It is pertinent to mention that during pendency of the first appeal before the High Court Chandra Prakash Gupta (A-1 in FA) and Smt. Ratna Prabha Jain (A-3 in FA) died on 14-8-2011 and January, 2018, respectively.

(ix) In the meanwhile, WP No.1447/2007 was dismissed by this Court as having become infructuous vide order dated 6-12-2008, which is quoted below :

1) On 12.04.2005, learned counsel appearing for the petitioner made a statement that he has received instructions that final order in the civil suit has already been passed. However, he sought for time to seek further instructions. Time was granted. Thereafter, the matter was again taken on 14.11.2008. On the request of learned counsel appearing for the petitioner, two more weeks time was granted. Shri Mishra has nothing to plead in the matter in view of the fact that the original suit has already been disposed of.

2) This petition impugning the interim order dated 21.02.2005 passed by the court below rejecting the application under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908, has become infructuous.

3) Accordingly, the petition is dismissed as having become infructuous.

- (x) Subsequently, Rishikesh filed the applications under Order 22 Rule 4 of the CPC; under Order 22 Rule 9 of the CPC; and under Section 5 of the Limitation Act before the Court below for the reason of death of Chandra Prakash (defendant No.4) and Smt. Ratna Prabha (defendant No.5). The said applications were decided by order dated 13-6-2019. In the said order, the Court observed that since the defendant No.4 Chandra Prakash Gupta had died issue less his name be deleted from the cause title of plaint and in respect of defendant No.5 Smt. Ratna Prabha the observation has been made that the suit has abated.
- (xi) Subsequent to such order above an amendment application was filed by the plaintiff namely; Rishikesh on 20-6-2019. By such application the subject land, which was purchased by the plaintiff was added i.e. khasra No.995/11 & 995/12 admeasuring 3.83 & 0.50 in total 4.33 acres. After filing of the application for amendment, a compromise application was filed on 21-8-2019. Subsequently, the amendment application was allowed, which takes into sweep the suit property which was already sold by Chandra Prakash. The compromise decree passed on 31-8-2019 and as per the plaintiff the property which was sold by Chandra Prakash was subject of compromise and in the amendment application or in the compromise application it was not disclosed that the property has already been sold out by Chandra Prakash much prior in the year 1993 and the names of purchasers were also mutated in the revenue records.
- (xii) The plaintiff being aggrieved by such compromise decree, since the property sold by Chandra Prakash was also included in compromise, filed the instant civil suit for declaration & injunction wherein the defendants No.5 to 11 filed an application under Order 7 Rule 11 (d) of the CPC on the ground that the compromise decree cannot be challenged by a third party, wherein the impugned order has been passed. Hence, this appeal.

3. Learned counsel appearing for the appellants/plaintiffs would submit that knowing fully well that the property has been sold out by Chandra Prakash and on his death his name was deleted and the property was included in the compromise. Therefore, the compromise was obtained by playing fraud on the Court as also the appellants. It is stated that the decree is effecting the right of the plaintiffs they have every right to challenge the same to get over it. In support of his contention, learned counsel would place reliance upon the decision rendered by the Supreme Court in the matter of **S.P. Chengalvaraya Naidu (Dead) by LRs v Jagannath (Dead) by LRs. And Others**¹ and would submit that finality of litigation cannot be based on fraud. He further referring the decision rendered by the Supreme Court in the matter of **Triloki Nath Singh v Anirudh Singh (Dead) through Legal Representatives and Others**², learned counsel would submit that the proposition laid down in the said matter would not be attracted in the instant case as the said decision does not consider the decree obtained by playing fraud. He would further submit that there is a distinction between 'lawfulness of compromise' and 'compromise decree obtained by fraud'. The above decision is in support of the plaintiffs and the validity of the compromise decree can be challenged even by a third party. He would also place reliance upon the decision of the Supreme Court in the matter of **A.A. Gopalakrishnan v Cochin Devaswom Board and Others**³ to submit that when allegation of fraud or collusion is made then the Court is empowered to examine the validity of compromise decree and the right of plaintiffs cannot be snatched away by resorting to the provision under Order 23 Rule 3 and 3A of the CPC.
4. Learned counsel appearing for the respondents/defendants, *per contra*, would submit that the ratio of **Triloki Nath Singh** (supra) would be applicable

¹ (1994) 1 SCC 1

² (2020) 6 SCC 629

³ (2007) 7 SCC 482

in the facts of the case in any manner for the reason that when the application under Order 1 Rule 10 of the CPC was filed by the respondent to implead the plaintiffs this Court in WP No.1447/2005 vide order dated 8-4-2005 observed that the sale made during pendency of the civil suit would be governed by the provisions of Section 52 of the Transfer of Property Act, 1882. Therefore, the appellant would be barred to raise any objection. He would also submit that the revenue records would show that the plaintiffs were very much in know of the fact about pendency of the civil suit, yet they have purchased the land, therefore, they have to choose their own fate. To buttress his contention, learned counsel would place reliance upon the decision rendered by the Supreme Court in the matter of **Ghanshyam v Yogendra Rathi**⁴. Learned counsel would pray for dismissal of the appeal.

5. We have heard learned counsel appearing for the parties at length and perused the record.
6. As per the plaint allegation, the cause of action arose on 27-9-2019 when the appellant got aware of the judgment and decree after summons were served by the Tahsildar in the mutation case at the behest of respondent Rishikesh Gupta. The Supreme Court in the matter of **Saleem Bhai and Others v State of Maharashtra and Others**⁵ held that the averments of the plaint are germane and the plea taken by the defendants in written statement would be wholly irrelevant at that stage. The Supreme Court further in the matter of **Popat and Kotecha Property v State of Bank of India Staff Association**⁶ held that disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 CPC. Clause (d) of Rule 11 of Order 7 applies in those cases only where the statement made by the plaintiff in the

⁴ Civil Appeal Nos.7527-7528 of 2012 (decided on 2-6-2023)

⁵ (2003) 1 SCC 557

⁶ (2005) 7 SCC 510

plaint, without any doubt or dispute shows that the suit is barred by any law in force. Order 7 Rule 11 of the CPC reads as under :

Order 7 (Plaint)

XXX XXX XXX

Rule 11:- Rejection of plaint.-- The plaint shall be rejected in the following cases :-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of rule 9.

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

7. The impugned order purports that the trial Court observed that in the earlier suit the plaintiffs were admittedly not a party. The averments of the plaint, however, would show that the plaintiffs have said that they purchased the property from Chandra Prakash in the year 1993 by three separate sale deeds. This fact is completely ignored by the trial Court. What would be the effect of such purchase cannot be sidelined to be adjudicated by a short cut method by resorting the provisions of Order 7 Rule 11 of the CPC. While examining the record, it would show that initially a decree was passed on 8-4-2005 in civil suit No.7-A/2004 wherein Chandra Prakash, the seller was a party. He along with other respondents filed an appeal before the High Court.

Chandra Prakash though expired on 14-8-2011 the first appeal continued and the High Court by order dated 6-9-2018 remanded the case. Thereafter, before the trial Court, the applications under Order 22 Rule 4 of the CPC; under Order 22 Rule 9 of the CPC and under Section 5 of the Limitation Act were filed on account of death of Chandra Prakash on 14-8-2011 and Smt. Ratna Prabha, who died in the month of January, 2018. The trial Court vide its order 13-62019 held that the suit against the defendant No.4 Chandra Prakash, from whom the appellant purchased the property, be deleted as he left no heirs and in respect of the defendant No.5 it was held to be abated. That order was not subject of any challenge, therefore, the same has attained its finality.

8. Subsequently, the property, which was sold by Late Chandra Prakash to the plaintiff/appellant was included by an application under Order 6 Rule 17 of the CPC. The order in WP No.1447/2005 would show that on an earlier occasion the plaintiff therein (Rishikesh) filed an application under Order 1 Rule 10 (2) CPC to implead the appellants herein as the respondents being purchasers, but that application was dismissed. When the said order was challenged before the High Court, the proceedings were not stayed in its order dated 8-4-2005. Eventually the civil suit was also decided by the trial Court finally on the same day i.e. 8-4-2005 as such by order dated 6-12-2008 the High Court while passing the final order observed that the order of rejection of application under Order 1 Rule 10 (2) of the CPC on 21-2-2005 has become infructuous as the case has been finally decided. In the earlier suit, the property which was purchased by Chandra Prakash since was purchased by the plaintiff, it was subject of dispute if the sale deeds were of the year 1993. If during pendency of the earlier suit name of Chandra Prakash was deleted as he left with no other legal representatives then how such property already sold by him can be taken into sweep by Rishikesh Gupta that question remains open,

which is required to be answered when the right of the plaintiff/appellant is being infringed.

9. Perusal of the record would show that when the respondent Rishikesh moved an application for amendment, who was the plaintiff before the Court below, to include the property which was sold to the appellant herein did not disclose this fact that the property has already been sold by Chandra Prakash (defendant No.4) in the year 1993 and the appellants are in possession and it was completely concealed.
10. Proceedings of the record would also show that the learned Court below categorically held in its order dated 13-6-2019 that name of Chandra Prakash stands deleted, which was at the behest of Rishikesh Gupta. Plaintiff therein namely; Rishikesh did not challenge the same, but in order to by-pass such sale and its effect moved an application for amendment and also a compromise application by including those properties.
11. The Supreme Court in the matter of ***Ram Niwas (Dead) through LRs v Bano (Smt.) and Others***⁷ held that at paras 6, 7 and 18 :

6)Section 3 of the Transfer of Property Act defines, inter alia, 'a person is said to have notice of a fact when he actually knows that fact, or when but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

And Explanation II appended to this definition clause says :

Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

7) Thus, it is seen that a statutory presumption of notice arises against any person who acquires any immovable property or any share or interest therein of the title, if any, of the person who is for the time being in actual possession thereof.

xxx xxx xxx

⁷ (2000) 6 SCC 685

- 18) Both the learned Single Judge as well as the learned Judges of the Division Bench of the High Court dealt with the question whether the purchasers had actual knowledge of Ext.1, the earlier contract, and on evidence found that the purchasers did not have any knowledge of it. But they failed to notice the provisions of Explanation II to Section 3 of the Transfer of Property Act which is germane on the point of notice. Indeed, issue No.10 was not properly framed. The word notice should have been used in issue No.10 instead of knowledge because Section 19(b) uses the word notice. From the definition of the expression, a person is said to have notice in Section 3 of the Transfer of Property Act, it is plain that the word notice is of wider import than the word knowledge. A person may not have actual knowledge of a fact but he may have notice of it having regard to the aforementioned definition and Explanation II thereto. If the purchasers have relied upon the assertion of the vendor or on their own knowledge and abstained from making enquiry into the real nature of the possession of the tenant, they cannot escape from the consequences of the deemed notice under Explanation II to Section 3 of the Transfer of Property Act. On this point, in the light of the above discussion, we hold that the purchasers will be deemed to have notice of Ext.1, should it be found to be true and valid.
12. In the above decision, the Supreme Court held that the word 'notice' is of wider import than the word 'knowledge'. Therefore, when the application for amendment was filed followed by a compromise application, it is crystal clear that the sale was well within the knowledge of Rishikesh and it cannot be shelved to reclaim the property by other route specially when such properties were sold by Chandra Prakash whose name was deleted. Admittedly, the conduct of the defendant while obtaining the compromise decree do not satisfy the conscience of the Court that it was sacrosanct.
13. The Supreme Court in the matter of **S.P. Chengalvaraya Naidu** (supra) has held that 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. Para 5 is quoted below :
- 5).....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, bankloan-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.

14. In the matter of **A.A. Gopalakrishnan** (supra) the Supreme Court held that the bar contained in Rule 3A will not come in the way of the High Court examining the validity of a compromise decree, when allegations of fraud/collusion are made against a statutory authority which entered into such compromise.
15. Reliance placed in the matter of **Triloki Nath Singh** (supra) would not be applicable inasmuch as in the instant case, despite the fact that the case against seller remained unchallenged but to bring those facts to fore it was conveniently avoided. The respondent Rishikesh in an earlier compromise decree while including the property by amendment, sold to the plaintiff, did not disclose the fact of sale and further it followed by the compromise application, which opens up the mind of litigant. When the case was initially decreed in 2005, subsequently remanded by the High Court, it would be a continuation of the suit and in the suit one of the litigant died, who sold the property and for which the Court ordered for deletion of his name. No claim in respect of the property from whom it was claimed can be agitated time and again. Therefore, the earlier suit, which ended in compromise though may be in its inception may be honest but with the passage of time the decree was obtained by collusion and by suppression of facts. Thus, certainly the doctrine of *lis pendens* cannot be applied, as it would incentive to a dishonest litigant and consequent thereof the subsequent suit at the behest of purchasers can be nip in the bud.
16. Applying the well settled law and for the reasons stated herein above, we are of the view that the impugned order dated 21-9-2022 passed by the Second Additional District Judge, Durg, in civil suit No.18-A/2020 cannot be

sustained. Accordingly, the same is set aside and direct the parties to appear before the trial Court on 14th December, 2023 for further proceedings.

17. In the result, the appeal is allowed, leaving the parties to bear their own cost(s).

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