

Anupama Gupta and Others Vs Kuldeep Singh and Others

Court: Delhi High Court

Date of Decision: July 17, 2014

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 10 Rule 10, Order 21 Rule 58, Order 7 Rule 11, Order 8 Rule 10, Order 9 Rule 13

Constitution of India, 1950 â€” Article 141

Limitation Act, 1963 â€” Section 17

Specific Relief Act, 1963 â€” Section 20, 28

Hon'ble Judges: G.S. Sistani, J

Bench: Single Bench

Advocate: Arunav Patnaik and Bhabna Das, Advocates for the Appellant; P.S. Patwalia, Sr. Adv., Ashok Mahajan and Kamlesh Mahajan, Advocates for the Respondent

Judgement

G.S. Sistani, J.

I.A.3470/2014

1. This is an application filed by defendant under Order VII Rule 11 CPC read with Section 151 CPC seeking rejection of the plaint on the ground

that all the disputes between the parties have attained finality before the Supreme Court of India by a detailed judgment dated 7.2.2014 passed in

Civil Appeals Nos. 1873, 1874 and 1875/2014, and, thus, there is no cause of action in favour of the plaintiffs for the continuation of the present

suit.

2. This application has been opposed by counsel for the plaintiffs/non- applicants on the ground that issues raised in the present suit with respect to

fraud played upon by defendant no.1 on the Court was not a subject matter before the Supreme Court of India and, thus, this question remains

wide open to be adjudicated upon by this Court.

3. Before the rival submissions of the parties can be noticed, it would be necessary to notice the background in this matter. This case has a long

and chequered history. The basic dispute between the parties arises out of an Agreement to Sell dated 30.7.1980, with respect to the property

bearing no.9, Sunder Nagar, New Delhi (hereinafter referred to as the "suit property"). The defendant no.1 is the purchaser of the suit property.

The undisputed facts are as that the suit property initially belonged to one Sh.Nand Lal, who expired in the year 1962. Thereafter the property was

inherited by his four legal heirs i.e. (i) Sh.Banarsi Dass, (ii) Sh.Dhanpat Raj, (iii) Sh.Din Dayal and (iv) Smt. Gaindo Devi, widow of Sh.Paras Ram,

one of the sons of late Sh.Nand Lal, with 1/4th share, each. After the demise of Sh.Nand Lal, the property stood mutated in the name of the four

legal heirs of late Sh.Nand Lal.

4. The Agreement to Sell with respect to the suit property was signed by eight legal heirs of late Sh.Nand Lal, as disclosed by the sellers. It is the

case of defendant no.1 that the name of one legal heir, who was a minor, Sh.Rajinder Kumar, (hereinafter referred to as "the minor") was not

disclosed to the purchaser. On 12.11.1981 L&DO granted permission to the legal heirs to sell the suit property subject to payment of unearned

increase of Rs.7,17,330/-. The permission was sought by the sellers being the owners of the suit property. In the year 1981, the minor filed a suit

with the prayer that he had succeeded to 1/24th share in the suit property and he was not bound by the Agreement to Sell dated 30.7.1980.

Meanwhile, defendant no.1 filed CS(OS) 280/1982 on 10.1.1982 for specific performance of the Agreement to Sell against the sellers including

the minor (all legal heirs). The defendants were duly served with the summons in the suit. Time was granted to file the written statement, however,

since, the defendants after service and after seeking time to file the written statement failed to file written statement, the Single Judge decreed the

suit for specific performance on 30.4.1984 under Order VIII Rule 10 CPC in favour of the plaintiff (defendant no.1 herein).

5. Aggrieved by the decree so passed, defendants in the suit filed RFA 14/1985 before a Division Bench of this Court. This said RFA was

dismissed on 22.3.1985. Thereafter the judgment debtors (defendants no.1 to 8 in Suit No. 280/1982) filed an application under Order IX Rule

13 CPC on 15.7.1985 seeking to set aside the ex parte decree dated 30.4.1984. This application under Order IX Rule 13 CPC was dismissed

on 15.7.1985. Meanwhile, the decree holder filed an execution petition, being Ex.Pet.No.164/1990 on 7.11.1990. One of the judgment debtors,

being judgment debtor no.5, Sh.Mahender Kumar Gupta, filed objections to the said Execution Petition on 19.4.1981 on the ground that the

decree did not satisfy the requirement of Section 2(2) of the Code of Civil Procedure. Another application was filed by the minor under Order

XXI Rule 58 CPC stating that there was no decree against him. During the pendency of the execution petition on 24.4.1999 judgment debtors

filed I.A.4274/1999 in CS(OS) 280/1982 under Section 20 of the Specific Relief Act for rescission of the Agreement to Sell dated 29.7.1980 and

to set aside the decreed so passed. This application was filed on the ground that the purchaser, Sh.Kuldeep Singh, had failed to deposit the

balance sale consideration of Rs.12.60 lakhs. The matter was contested by Sh.Kuldeep Singh, being defendant no.1, in the said suit and the

application was dismissed on 23.2.2000. Thereafter against the order dated 23.2.2000, an appeal, being FAO(OS) 110/2000, was filed on

24.4.2000 before a Division Bench of this Court.

6. Meanwhile, the Single Judge dismissed the objections filed by judgment debtors on 1.2.2002 holding the decree dated 30.4.1984 as an

executable decree. Against the aforesaid order, FAO(OS) 66/2002 was filed by the judgment debtor in the month of February, 2002. The High

Court directed defendant no.1 to deposit the balance sale consideration on 6.1.2010 at the time of final hearing of FAO(OS) 110/2000 and

FAO(OS) 66/2002.

7. Vide two separate judgments of the same date, FAO(OS) 110/2000, which had arisen out of dismissal of the application filed under Section 20

of Specific Relief Act, and FAO(OS) 66/2002, which had arisen out of dismissal of the objections, were dismissed by the Division Bench on

19.2.2010.

8. Two review petitions were filed in both FAO(OS) NOS.110/2000 and 66/2002, which were dismissed by two separate judgments dated

25.4.2011. Against the judgments dated 19.2.2010 and 25.4.2011 four Special Leave Petitions were filed in the Supreme Court of India by the

judgment debtors including the plaintiffs in the present suit. The Supreme Court dismissed all the Special Leave Petitions in part and allowed the

appeals arising out of an application filed under Section 28 of the Specific Relief Act by a detailed judgment dated 7.2.2014. The Supreme Court

directed defendant no.1 herein to deposit the sale consideration at the circle rate as fixed by the Supreme Court at the rate of Rs.2.15 lakhs, per

sq. meters, which amounts to Rs.15,50,15,000/-. This Court is informed that this amount stands deposited by defendant no.1.

9. The submission of learned counsel for both the parties are to be considered in this backdrop.

10. The first submission of learned senior counsel for defendant no.1/applicant is that the averments made and the issues raised in the present suit

were also argued before the Apex Court by the plaintiffs herein and the Apex Court finally passed a judgment on 7.2.2014 exercising jurisdiction

under Article 141 of the Constitution of India with a view to do substantial justice in the matter, which is evident upon reading of paras 38, 44 and

45 of the judgment and with a view to finally decide all the disputes between the parties except the rights of the minor, although it is pointed out that

as of today the suit filed by the minor also stands dismissed and the RFA is still pending.

11. To buttress his arguments further, Mr. Patwalia learned senior counsel for the contesting defendant no.1 submits that the Supreme Court of

India in the judgment dated 7.2.2014 observed that two issues would arise for their consideration as noticed in para 12 of the judgment, being: (A)

Is the decree executable? and (B) Was the application for rescission properly decided?

12. It is contended by learned senior counsel for defendant no.1 that issue no.(A), being a broad issue, would cover each and every aspect relating

to the subject property including the issues raised in the present suit and all the disputes and arguments, which were raised before the Apex Court.

As far as issue no.(B) is concerned, the same was decided in favour of the judgment debtors inasmuch as the Apex Court, to balance the equities,

directed payment to be made at the circle rate from 16 November, 2011, onwards. Paras 44 and 45 read as under:

44. The circle rate of the residential property based on which the unearned increase is calculated by the L&DO, would show a sharp increase

during the period. Sunder Nagar comes under Category "A" colonies. Under the Delhi Stamp (Prevention of Undervaluation of Instruments)

Rules, 2007, the notified circle rate for Category "A" colonies from July 2007 was Rs.43,000/- per square meter and from February 8, 2011, it

was Rs.86,000/- per square meter. From November 16, 2011, it was Rs.2,15,000/- per square meter and from January 5, 2012, it is

Rs.6,45,000/- per square meter.

45. In the peculiar facts and circumstances of the case, we are of the view that the trial court should have passed an equitable order while

considering the application for rescission. Having regard to the fact that the decree was passed in 1984, we feel that it would be unjust and unfair

to relegate the parties to the trial court at this distance of time. For doing complete justice to the parties, we are of the view that it is a case where

the purchaser should be directed to pay the land value to the vendors as per the circle rate notified for the residential property in Category "A"

colonies prevailing during November 16, 2011 to January 5, 2012, at the rate of Rs.2,15,000/- per square meter. The purchaser shall also be

liable to meet the liability arising by way of unearned increase to be paid to the Land and Development Office. He is free to withdraw the amounts

deposited by him in the court as per order dated 06.01.2010. It is also ordered that in case the plaintiff does not deposit the amount to be paid to

the vendors within three months from today, the vendors shall deposit in court within two months thereafter the amount calculated as per the circle

rate referred to above by way of compensation to be paid to the purchaser, and in which event, they shall stand discharged of their obligations

under the contract and the decree. In the event of the purchaser depositing the amount as above, the execution proceedings shall be finalized within

another one month. The Court in seisin of the Suit OS No. 1428 of 1981 shall dispose of the same within three months from today.

13. Mr. Patwalia, learned senior counsel for the defendant no.1, submits that the issues raised in the present suit were also raised by the plaintiffs

before the Supreme Court of India at the time of arguments and detailed written submissions were filed with respect to the issues before this Court.

Further to show that the subject matter of the present suit was also argued before the Supreme Court of India, reliance is placed by learned senior

counsel for defendant no.1 on the contents of an application filed by the present plaintiffs, who were arrayed as petitioners no.1A to 1D in the

Special Leave Petition No. 29361-29361/2012. In the application for permission to file additional documents an averment was made in para 2

that the subsequent to filing of the petition (SLP) there have been important subsequent developments in the execution proceedings as well as in a

connected suit entitled Rajinder Kumar v. Kuldeep Singh, which would have an essential bearing on the petition and also the accompanying

documents, sought to be relied upon by the applicants/plaintiffs herein and also the petitioners before the Supreme Court were party to the

proceedings in courts below. In para 2 of this application, the applicant has averred that the documents would establish that the decree dated

30.4.1984 was obtained by concealment and fraud on the Court and such a decree would be a nullity and non-est in the eyes of law. Para 2 of the

application filed before the Supreme Court of India reads as under:

2. That, after the filing of this Petition, there have been important subsequent developments in the Execution proceedings, as well as in connected

Suit entitled Shri Rajinder Kumar v. Kuldip Singh, that have an essential bearing on the present Petition. The accompanying documents, are a part

of the proceedings in the Courts below. They are necessary to be placed on Record before this Hon"ble Court. These documents establish that the

Decree dated 30.04.1984 was obtained by concealment and fraud on the Hon"ble Court. Such a Decree is a nullity on its own and is non-est in

the eyes of law. It has been held in numerous pronouncements that such a Decree can be and has to be held as a nullity in any connected

proceeding - including these proceedings [Vide Smt. Badami (Deceased) By her L.Rs. Vs. Bhali, ; (1994) 1 SCC 1].

14. It is further submitted by Mr. Patwalia, learned senior counsel for defendant no.1, that the plaintiffs herein (petitioners before the Supreme

Court) had also filed written submissions before the Supreme Court wherein reference to the present suit has been mentioned in the first para of the

written submissions, which reads as under:

At the very outset, it is submitted that the judgment and decree dated 30.4.1984 is a nullity being (a) obtained by deception, concealment and

fraud both prior to the passing of the decree as well as after, and (b) against statutory provisions of the Urban Land Ceiling Act, 1976 wherein

there was a bar against the vendee decree holder (DH) from purchasing the suit property. These issues have been dealt with in the arguments and

submissions made on behalf of respondent no.6, Vijay Lakshmi, by learned senior counsel, Mr. Jayant Bhushan. The petitioners adopt the same

and are not repeating them to avoid prolixity. These frauds are the subject matter of pending objections before the Executing Court as well as Suit

No. 948/2013 pending in the High Court of Delhi for a declaration that the decree is a nullity as it was obtained by fraud.

15. Thereafter in para 6 under the heading ""fraud played by the decree holder"", it has been observed as under:

6. The DH obtained the Decree by manifest concealment and fraud. In the pre Decree period, the DH did not disclose his inability to pay the

money demanded by the L&DO, he also did not disclose his ineligibility to purchase the property as he was debarred from such a purchase under

Sec. 29(b) of the ULCA 1976. These aspects are subject matter of pending objections in the Executing Court.

16. Reliance was also placed by the plaintiffs herein before the Supreme Court of India on various decisions including the decision rendered in S.P.

Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, , in support of the contention that a decree obtained by

concealment is a nullity and can be challenged at any time and also mentioned that the same decision was followed in Union of India (UOI) and

Others Vs. Ramesh Gandhi, (both decisions are being relied upon by counsel for the plaintiff today as well.)

17. Learned senior counsel for defendant no.1 submits that a complete reading of the judgment of the Supreme Court would leave no room for

doubt that the aim and purpose of the Apex Court was to put the entire controversy between the parties at rest and the same very issues, which

are subject matter of the present suit, were argued before the Supreme Court, which is also evident upon reading the preliminary submissions made

in the written submissions extracted hereinabove.

18. Once these issues were raised before the Apex Court and the Supreme Court has finally decided the matter the plaintiff cannot be allowed to

re- agitate the same in the present suit as the present suit would now have been left with no cause of action.

19. It has also been argued that the present suit is hopelessly barred by limitation as the affidavit was filed within the knowledge of the sellers and

the sellers were aware of the same even at the time when the suit was filed and decreed.

20. Mr. Patnaik, learned counsel for the plaintiffs, further submits that the present suit was filed within the period of limitation as the period of

limitation would commence from the date the fraud was discovered and in this case the fraud was discovered in the year 2012.

21. Counsel for the plaintiffs/non-applicants submits that the subject matter before the Supreme Court was entirely different and the dispute

between the parties has not attained finality.

22. Mr. Patnaik, learned counsel for the plaintiffs/non-applicants, submits that as per the policy of L&DO, no person was allowed to be allotted

any leasehold residential property if he/she his/her spouse/dependent children owned any residential property in Delhi/New Delhi/Cantonment.

Further any such person who did not satisfy the above mandatory requirement was not allowed to acquire such property even by indirect sale. This

was ensured by an affidavit which was required to be filed with the L&DO under its Policy as well as the competent authority under the Urban

Land Ceiling Act, 1976. Thus in the year 1980, in order to obtain the said permission, the vendee was mandatorily required to submit an affidavit

wherein the vendee was, inter alia, required to swear the affirm as follows:

I further declare that neither my wife/ nor any of my dependent children nor any of my other dependents own any residential plot/ house in Delhi /

New Delhi/ cantonment either in his/her own name or in the name(s) of any other person.

23. Shri Kuldeep Singh, defendant no.1 herein, signed the above affidavit of 22.09.1980, which was attested by the Indian Embassy in Kuwait

and submitted the same on 30.01.1981. Based on the same, and other relevant documents, L&DO granted the sale permission on 12.11.1981.

However, it was later discovered that Gurcharan Kaur, the wife of Shri Kuldeep Singh, was, as on the date of the affidavit, and continues to be,

the owner of a property being N-7, Green Park Extension, New Delhi. The said property was purchased by defendant no.1 in his wife"s name

vide registered sale deed no.5240, additional book no.1, Volume 1168, page no.179-182, dated 30.07.1964, and supplementary sale deed

no.5723, additional book no.I, volume 1177, at page 163, dated 22.08.1964. In addition, it was discovered that defendant no.1 also owns

numerous other properties in his own name, and that the address of his father-in-law was given in all correspondence in order to deliberately cheat

and mislead the property owners.

24. Mr. Patnaik further submits that it was further discovered, by way of an application under the Right to Information Act, 2005, that on

13.11.1981, a letter was sent on behalf of defendant no.1 to L&DO seeking an extension of 1 month to deposit the unearned increase in price of

the property. However, the said amount, which was the responsibility of the vendee to pay as per the agreement, was never deposited with

L&DO, as the said Vendee was not ready with the funds in the time period required to be deposited by L&DO. It is therefore evident that the

vendee was not ready and willing to perform his obligations under the agreement. Further, as a result of non-payment of the unearned increase by

the vendee within the extended period (which expired on 12.12.1981), the sale permission was closed by L&DO. Therefore, in any event, in the

absence of the sale permission from L&DO, the agreement to sell cannot be enforced.

25. It is thus contended that a completely false and misleading affidavit and declaration as regards ownership of other property in Delhi was

submitted by defendant no.1 to L&DO, and were it not for this false affidavit, L&DO would not have granted permission to sell the said property.

These crucial facts had been concealed not only from the owners of the property but also from the High Court while it was deciding Suit No. 280

of 1982. It is submitted that if the Court was aware of these facts it would undoubtedly not have decided the matter in favour of Shri Kuldeep

Singh, defendant no.1. Hence, the decree dated 30.04.1984 was obtained by fraud and suppression of crucial facts which strike at the heart of the

matter.

26. As far as the submission of learned senior counsel for defendant no.1 that the decision of the Supreme Court covers all the aspects of the

matter, learned counsel for the plaintiff submits that the Supreme Court had not returned any finding on the subject matter of the present suit i.e.

question of fraud and secondly while the Supreme Court had made a categorical observation with regard to the suit filed by the minor no such

observation was made to the present suit. It is strenuously argued that the judgment or decree obtained by fraud on the Court is a nullity and non-

est in the eyes of law.

27. I have heard learned counsel for the parties and considered their rival submissions. Defendants no.1 has filed the present application for

rejection of the plaint in view of the judgment dated 7.2.2014 rendered by the Supreme Court of India. The arguments of learned senior counsel

for defendant no.1 can be summarised as under:

(i) The Supreme Court of India in its judgment dated 7.2.2014 has decided all the issues between the parties including the subject matter of the

present civil suit.

(ii) Reading of the judgment dated 7.2.2014 rendered by the Supreme Court of India would show that the subject matter of the present suit and all

arguments relating thereto were argued in detail before the Supreme Court of India, which is evident from the fact that:

(a) in the application filed by the plaintiffs before the Supreme Court of India to file additional documents, an averment was made in para 2 of the

application that the decree dated 30.4.1984 was obtained by defendant no.1 by concealment and fraud and, thus, the decree would be a nullity

and non-est in the eyes of law.

(b) the plaintiff, who was also party before the Supreme Court of India, that filed written submissions before the Supreme Court of India wherein

reference of the present suit was maintained. Relevant extract of the written submissions have been extracted hereinabove.

(c) reliance placed on judgments before the Supreme Court of India and this Court is identical.

(iii) In view of the judgment rendered by the Supreme Court of India, the present suit has become infructuous as the cause of action is

disappeared.

(iv) Reading of the judgment passed by the Supreme Court of India would show that the Apex Court had passed the judgment exercising

jurisdiction under Article 141 of the Constitution of India with a view to do substantial justice in the matter, which is evident upon reading of paras

38, 44 and 45 of the judgment.

(v) The present suit is hopelessly barred by limitation.

28. The arguments of learned counsel for the plaintiffs/non-applicants can be summarised as under:

(i) The subject matter before the Supreme Court of India was entirely different than the dispute raised in the present suit.

(ii) Defendant no.1 has played a fraud on the Court and sale permission was granted by the L&DO on 12.11.1981 based on a false affidavit.

(iii) In case the Supreme Court of India had decided issues raised in the present suit such an observation would have been made by the Court.

(iv) The plaintiffs only learnt in the year 2012 after filing of the SLPs that the decree dated 30.4.1984 had been obtained by fraud and suppression

of crucial facts.

(v) A judgment was obtained by fraud is to be treated as a nullity.

(vi) Application was filed before the Supreme Court of India only to bring on record details of the present suit, however, no orders were passed

therein.

29. The plaintiffs have sought the following reliefs in the present suit:

(i) Declare that the Judgment and Decree dated 30.04.1984 passed in Suit no.280/1982 (Annexure II), is a nullity as it was obtained by

concealment and fraud.

(ii) Pass a Decree of mandatory injunction restraining the Defendant No. 1 to 35 levy the fraudulently procured decree dated 30.04.1984 on the

plaintiff and defendant 2 to 38.

30. The stand taken by the plaintiffs/non-applicants in the suit as also in the reply to the present application who were arrayed as petitioners no.1A

to 1D in the Special Leave Petition Nos. 29361-29362/2012 is that the decree obtained by defendant no.1 is a nullity as it was obtained by fraud

and by deliberate concealment of essential facts.

31. During the pendency of the proceedings before the Supreme Court of India the present plaintiffs had made an application to file additional

documents. Para 2 of the application reads as under:

2. That, after the filing of this Petition, there have been important subsequent developments in the Execution proceedings, as well as in connected

Suit entitled Shri Rajinder Kumar v. Kuldip Singh, that have an essential bearing on the present Petition. The accompanying documents, are a part

of the proceedings in the Courts below. They are necessary to be placed on Record before this Hon"ble Court. These documents establish that the

Decree dated 30.04.1984 was obtained by concealment and fraud on the Hon"ble Court. Such a Decree is a nullity on its own and is non-est in

the eyes of law. It has been held in numerous pronouncements that such a Decree can be and has to be held as a nullity in any connected

proceeding - including these proceedings [Vide Smt. Badami (Deceased) By her L.Rs. Vs. Bhali, ; (1994) 1 SCC 1].

32. The submission of learned counsel for the plaintiffs/non-applicants that the application filed before the Supreme Court of India was simply to

place additional subsequent events on record cannot be accepted as reading of para 2 of the application, extracted hereinabove, would show that

according to the plaintiffs the subsequent events would have an essential bearing on the Special Leave Petition. The plaintiffs further goes on to

state in para 2 that the documents, sought to be placed before the Supreme Court of India, are necessary documents and those documents would

establish that the decree obtained on 30.4.1984 was obtained by concealment and fraud. Reliance was placed on Smt. Badami (Deceased) By her

L.Rs. Vs. Bhali, and S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, .

33. Moreover, in case the only aim and object of the plaintiffs was to bring subsequent events on record the same is not borne out from the record

as in case the plaintiffs before Supreme Court of India were not agitating the question of fraud and concealment (subject matter of this suit) then

there was no occasion for the plaintiffs to submit written submissions on this issue, which read as under:

At the very outset, it is submitted that the judgment and decree dated 30.4.1984 is a nullity being (a) obtained by deception, concealment and

fraud both prior to the passing of the decree as well as after, and (b) against statutory provisions of the Urban Land Ceiling Act, 1976 wherein

there was a bar against the vendee decree holder (DH) from purchasing the suit property. These issues have been dealt with in the arguments and

submissions made on behalf of respondent no.6, Vijay Lakshmi, by learned senior counsel, Mr. Jayant Bhushan. The petitioners adopt the same

and are not repeating them to avoid prolixity. These frauds are the subject matter of pending objections before the Executing Court as well as Suit

No. 948/2013 pending in the High Court of Delhi for a declaration that the decree is a nullity as it was obtained by fraud.

34. Reading of the application for placing additional documents on record and the written submissions leave no room for doubt that the plaintiffs

had fully argued the grounds taken in the present suit before the Supreme Court of India. If the aim and objective of the plaintiffs was not to seek a

decision from the Supreme Court and only bring to the notice of the Supreme Court the pendency of the present suit there was no reason for the

plaintiff to cite list of judgments in support of the submission that a decree obtained by concealment is a nullity.

35. Upon reading of the entire judgment of the Supreme Court of India, it may be noticed that the Supreme Court in para 12 of his judgment

observed that two issues would arise for consideration i.e. (A) Is the decree executable? and (B) Was the application for rescission is properly

decided?

36. In my view the issue no.(A) As to whether the decree is executable is a very wide issue and the same would pertain to all the issues between

the parties. In view of the written submissions and the application to bring additional documents on record, it cannot be said that this issue was not

agitated before the Supreme Court of India for the reason that if a matter had not been argued there was no occasion for the plaintiffs to give

written submissions on the issue of concealment and fraud.

37. In the case of Shipping Corporation of India Ltd. Vs. Machado Brothers and Others, , the Apex Court has held that during the pendency of

the suit, if certain events takes place which makes the suit infructuous then the suit cannot be kept pending. Relevant paragraphs of the judgment

read as under:

25. Thus it is clear that by the subsequent event if the original proceeding has become infructuous, ex debito justitiae, it will be the duty of the court

to take such action as is necessary in the interest of justice which includes disposing of infructuous litigation. For the said purpose it will be open to

the parties concerned to make an application under Section 151 of CPC to bring to the notice of the court the facts and circumstances which have

made the pending litigation infructuous. Of course, when such an application is made, the court will enquire into the alleged facts and circumstances

to find out whether the pending litigation has in fact become infructuous or not.

31. For the reasons stated above, we are of the opinion that continuation of a suit which has become infructuous by disappearance of the cause of

action would amount to an abuse of the process of the court and interest of justice requires such suit should be disposed of as having become

infructuous. The application under Section 151 of CPC in this regard is maintainable.

38. In view of the decision rendered by the Supreme Court of India on 7.2.2014, the cause of action has disappeared and continuation of the suit

would amount to abuse of the process of Court and the plaint is liable to be rejected.

39. The sequence of events, which have been detailed above, would show that the parties have been fighting tooth and nail. Further decision has

been appealed and reviews have been filed.

40. It has also been argued before this Court that the present suit is hopelessly barred by limitation as the plaintiffs seek to challenge the decree

passed in the year 2004. It may also be noticed that the case of the plaintiff in the present suit is that a fraud has been played by defendant no.1 on

the Court and the fraud is that a false affidavit was filed with the L&DO. Further it was suppressed that the unearned increase was not deposited

by defendant no.1 and the sale permission was closed. There is no explanation on the part of the plaintiffs as to why the fraud was not unearthed

earlier when the parties have been locked into serious litigation during the period 1982 upto the year 2014. Two FAO(OS), application under

Order IX Rule 13 CPC, RFAs, Objections to the execution petition and in fact two review petitions and four Special Leave Petitions were filed,

which would show that the parties were actively pressing their respective proceedings in every court of law.

41. Section 17 of the Limitation Act reads as under:

17. Effect of fraud or mistake (1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act-

(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or

(b) the knowledge of the right or title on which suit or application is founded is concealed by the fraud of any such person as aforesaid; or

(c) the suit or application is for relief from the consequences of a mistake; or

(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him;

the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable

diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the

concealed document or compelling its production:

PROVIDED that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or

set aside any transaction affecting, any property which-

(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the

purchase know, or have reason to believe, that any fraud had been committed, or

(ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a

person who did not know, or have reason to believe, that the mistake had been made, or

(iii) in the case of concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and,

did not at the time of purchase know, or have reason to believe, that the document had been concealed.

(2) Where a judgement-debtor has, by fraud or force, prevented the execution of a decree or order with the period of limitation, the court may, on

the application of the judgment-debtor or creditor made after the expiry of the said period extend the period for execution of the decree or order:

PROVIDED that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may

be.

42. A careful reading of Section 17 of the Limitation Act would show that the period of limitation would not begin to run until the plaintiff or the

applicant has discovered the fraud or the mistake with reasonable diligence have discovered it or in the case of concealed document until the

plaintiff or the applicant first had the means of producing the concealed document or compelling its production.

43. It is not in dispute that the affidavit, which according to the plaintiffs is a false affidavit, was filed within the knowledge of the plaintiffs and in

fact their predecessors, as the application seeking permission to sell was filed by the predecessors of the plaintiffs and no such objection was

raised. Moreover in case the plaintiffs were as serious as claimed about the fraud, the minimum plaintiffs could have done was to implead the

L&DO as a party, which the plaintiffs has failed to do. In my view fraud, if any, was not played upon the Court or on the plaintiffs but against the

L&DO and in case the present suit was bona fide L&DO would surely have been impleaded as a party. It is surprising that the alleged false

affidavit has been filed before the L&DO. There is no explanation as to why L&DO has not been made a party in the present suit. The plaintiffs

had agreed to sell the property for valuable consideration and not as to whether defendant no.1 had another property in his name or anyone

dependent upon him or not. The relevant paragraph of the plaint with regard to the present suit being within the period of limitation reads as under:

4. That under the provisions of the Right to Information Act [2005], as a result of inspection of the records of the Land and Development Office

[L&DO] on 06.11.2012, the present Plaintiff has come to know that Defendant No. 1 deliberately concealed and suppressed essential material

facts that go to the very root of the issues pertinent for proper adjudication of the Suit No. 280/1982. The Defendant No. 1 made completely false

averments regarding the eligibility of the Defendant No. 1 to purchase the suit property and his entitlement to the Decree sought in the said Suit.

The concealment and suppression of material facts as well as false statements pertaining to the eligibility of the plaintiff to seek the Decree for

purchase of the suit property, are a fraud played on the Hon"ble Court. It has been held in numerous Judgments and precedents that such a

Decree obtained by fraud is non-est and a nullity. That,

a. To this date, the Defendant and their legal heirs are opposing the Execution of the Decree dated 30.04.1984, inter-alia, on the grounds that (i)

the Decree holder never deposited the sale consideration in Court as per the Decree, and, (ii) Each of the prayers in the decree dated 30.4.1984

was contingent to adjudication in the Original Suit, which adjudication was never done. However, notwithstanding the above objections, the

Plaintiffs have now discovered that the Decree dated 30.4.1984 was obtained by Defendant no.1 by a manifestly blatant fraud, not only on this

Hon"ble Court, but also on all the co- owners of the Suire property.

b. On 15.10.2012, a property broker Sh.Baleshwar Sharma, approached Plaintiff No. 2, with an investment proposal in flats in a property

numbered N-7, Green Park Extension, New Delhi. On examination of property papers, the plaintiff no.2 was surprised to learn for the first time

that the said property was owned by the wife of Defendant No. 1, Sh.Kuldeep Singh. The plaintiffs were in a quandary as the basic eligibility of the

defendant no.1 to purchase the suit property was that neither he, nor his wife or children could own any property in Delhi, New Delhi, or Delhi

Cantonment area. Thereupon, the said Plaintiff No. 2 decided to investigate this matter further.

44. In the above stated paragraphs extracted above it has been explained that on an application made under the Right to Information Act on

6.11.2012 the plaintiff learnt that defendant no.1 had deliberately concealed and suppressed material facts. They had made false averments

regarding the eligibility of defendant no.1 to purchase the suit property and further it is only on 15.10.2012 that the plaintiffs learnt through a broker

that the wife of defendant no.1 was the owner of N-7, Green Park Extension, Delhi. The point which would require consideration is "could either

of these two facts be not made available to the plaintiff if he was diligent in pursuing the matter?". The answer is in the negative for the reason that

the affidavit was handed over to the plaintiffs in the year 1980. It was open for the plaintiffs to have made reasonable inquiries to learn as to

whether defendant no.1 or his wife own any other property in Delhi and secondly during the entire period of various litigations the plaintiffs could

have well ascertained whether sale permission had elapsed or not. Moreover, the plaintiffs/their predecessors had agreed to sell the property to the

defendant no.1, if anyone is entitled to raise an objection with regard to the affidavit it is L&DO alone.

45. In the absence thereof, I am of the view that the present suit is patently barred by limitation. Even otherwise during the pendency of the suit

even of the decision of the Supreme Court dated 7.2.2014 where the same grounds raised before this Court stands decided.

46. In the case of T. Arivandandam Vs. T.V. Satyapal and Another, the Apex Court has very strongly condemned entertaining vexatious and

meritless complaints and observed that ""An activist Judge is the answer to irresponsible law suits"" and also observed that such litigation should be

nipped in the bud at the earliest. Paragraph 5 of the judgment reads as under:

We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly

resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now, pending before the First

Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a

meaningful-not formal- reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should

exercise his power under Order VII Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has

created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist

Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first bearing so that bogus

litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, and must be triggered against them.

In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

It is dangerous to be too good.

47. In my view once the Supreme Court of India has decided all the disputes between the parties, there was no reason for the plaintiffs to continue

with the suit, which has become infructuous. Moreover, the suit is barred by time.

48. Accordingly, application is allowed. Plaint stands rejected under Order VII Rule 11 CPC.

CC /2014 (To be numbered and registered separately)

49. Written statement to the counter claim has been filed. Replication be filed within six weeks from today. Parties to file documents, which are in

their possession and power, within the same period.

50. List the matter before Joint Registrar for admission/denial of documents on 25.9.2014.