

RAM CHANDRA SINGH
v.
SAVITRI DEVI AND ORS.

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OCTOBER 9, 2003

[V.N. KHARE, C.J. AND S.B. SINHA, J.]

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Code of Civil Procedure—Section 11—Res-judicata—Default of loan repayment by respondents to Bank—Decree by Trial Court in favour of the Bank—First appeal by respondents before High Court—During pendency of the appeal, auction sale of mortgaged lands in favour of appellant in execution—Direction by High Court to pay the decretal amount in instalments on basis of consent between the parties—Review Petition by appellant before High Court on ground of suppression of auction sale and commission of fraud—Dismissal of review petition by High Court on ground of res-judicata—Validity of—Held, is not valid since the consent order was obtained on fraud and the appellant was not party to the appeal—Hence, remanded back to High Court for fresh consideration to take into account subsequent events.

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Respondent 2 had taken a loan from respondent-Bank by mortgaging lands admeasuring 95.20 acres. On default of repayment, the Bank filed a suit before trial court claiming the loan amount with pendente-lite and future interest and for a preliminary decree for possession of the mortgaged lands. In the suit of the Bank, respondent 1, sister of respondent 2, filed an application claiming a share in the mortgaged lands on the basis of a preliminary decree of the trial court passed in her favour in a partition suit. The trial court passed a preliminary decree in favour of the Bank for the loan amount with pendente-lite and future interest. A preliminary decree was also passed for sale of the share of respondent 2 in the mortgaged lands. The trial court passed a final decree for sale of the mortgaged lands.

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The respondent filed a First Appeal before High Court. The High Court allowed the First Appeal passing a consent order directing the respondents to pay the decretal amount to the Bank in two instalments. On failure of the respondents to pay the decretal amount, the Bank filed an Execution application before the Executing court for sale of

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A the mortgaged-lands. The trial court directed sale of part of the mortgaged lands through auction. The auction sale was confirmed by the Executing Court in favour of the appellant, being the highest bidder, and the appellant deposited the bid-amount accordingly. The respondents filed an application for setting aside the auction sale. The application was dismissed. The appellant took possession of the auctioned land. The respondents filed a Revision Petition before High Court on the ground that the decretal amount has been paid as per the consent order. The High Court allowed the revision petition and set aside the auction sale.

C The appellant filed a Title suit for setting aside the preliminary decree passed by the trial court in the partition suit in favour of respondent 1. The appellant also filed an application before the trial court in the partition suit of respondent 1 stating that the preliminary decree obtained by respondent 1 was collusive and fraudulent and hence the final decree proceeding initiated is null and void; and that the father of respondent 2, having died in 1944, respondent 2 alone succeeded to the mortgaged lands as the Hindu Succession Act, 1956 came in force much later. The trial court allowed the application of the appellant.

E The respondents filed a Civil Revision Petition before the High Court. The appellant also filed a Civil Review Application before the High Court for reviewing the consent order passed in the First appeal filed by the respondents on the ground that the parties to the appeal had suppressed the fact of auction sale of the mortgage lands to the appellant before the Court. The High Court allowed the Civil Revision Petition of the respondents and dismissed the Civil Review Application of the appellant on the ground of *res-judicata*. Hence these appeals.

G The appellant contended that the respondents obtained a consent order from the High Court by committing fraud on the court and hence cannot be allowed to take the benefit thereof; and that the mortgaged lands were purchased by him in auction sale even before the consent order passed by the High Court in First Appeal to the respondents to pay the decretal amount to the Bank in two instalments and hence the consent order is null and void.

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The respondents contended that they have paid the decretal amount to the Bank pursuant to consent order passed by the High Court in the First appeal. A

Allowing the appeals and remanding the matters to the High Court, the Court

HELD: 1.1. Fraud vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of former either by word or letter. Misrepresentation itself amounts to fraud. Innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void *ab initio*. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated, or saved by the application of any equitable doctrine including *res-judicata*. Any order obtained by practicing fraud on court is non-est in the eyes of law. [551-E-H, 554-A, F, 559-C] B C D E

1.2. The High Court observed that the application for intervention filed by the appellant purported to be under Order XXVI, Rules 13 and 14(2) and Order XX Rule 18 CPC was not maintainable as they do not confer any power to court for setting aside a preliminary decree on the ground that it was obtained by practicing fraud. From the aforesaid principle, the High Court must be held to have inherent jurisdiction in relation thereto. [556-F] F G

Ram Preeti Yadav v. U.P. Board of High School & Intermediate Education & Ors., JT (2003) Supp. 1 SC 25; *Smt. Shrisht Dhawan v. M/s Shaw Brothers*; AIR (1992) SC 1 555; *S.P. Chengalvaraya Naidu v. Jagannath*, [1994] 1 SCC 1; *Indian Bank v. Satyam Fibres (India) Pvt. Ltd.*, H

A [1996] 5 SCC 550 and *Chittaranjan Das v. Durgapore Project Ltd. & Ors.*, [99 CWN 897], referred to.

Derry v. Peek, (1989) 14 AC 337, referred to.

B *Kerr on Fraud and Mistake; Bigelow on Fraudulent Conveyances; Arlidge & Parry on Fraud*, referred to.

1.3. Once it is held that a judgment and decree has been obtained by practicing fraud on the court, it is trite that the principles of *res-judicata* shall not apply. The High Court, therefore, committed a serious error in referring to the earlier orders passed by it so as to shut the doors of justice on the face of the appellant for all time to come. In the Civil Review Petition of the appellant, the High Court should have considered the question as to whether the right of the auction purchaser could have been set at naught by reason of a consent order passed in his absence. The appellant was not a party in the First Appeal. He was also not a party to the compromise. [557-F-H]

Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal, AIR (1962) SC 527 and *Sharda v. Dharmpal*, [2003] 4 SCC 493, referred to.

E 1.4. The consent order is an agreement between the parties with the seal of the Court superadded to it. The appellant in the Review application stated that the parties to the appeal had suppressed the auction sale as also the confirmation thereof. The effect of the events appearing subsequent to the filing of the First Appeal resulting in creation of a third party right was bound to be taken into consideration by the High Court. A third party right cannot be set at naught by consent. The High Court, therefore, was required to consider the contention of the appellant in their proper perspective. The High Court was obliged to address itself on these questions for the purpose of reviewing its order. [558-A-C]

G *Dwaraka Prasad Agarwal (d) by Lrs. & Anr. v. B.D. Agarwal & Ors.*, [2003] 6 SCC 230, relied on.

H 1.5. Though in furtherance of the consent order, the respondents had deposited the amount and the Bank has appropriated the same,

the legal issues as regard the effect of commission of fraud on court *vis-à-vis* the conduct of the parties are still at large. The High Court is therefore required to adjust the equities between the parties. The Bank cannot also unjustly enrich itself insofar as while enforcing a preliminary decree of mortgage, it cannot take recourse to recover the decretal amount from the judgment-debtor at the expense of the auction purchaser. The High Court also failed to notice the principle '*actus curiae neminem gravabit*'. [559-D-F]

Rajesh D. Darbar & Ors. v. Narasingrao Krishnaji Kulkarni & Ors., JT (2003) 7 SC 209, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8216 of 2003.

From the Judgment and Order dated 10.12.98 of the Patna High Court in C.R. No.1520 of 1997.

WITH

C.A. No. 8217 of 2003.

Dr. G.C. Bharuka, Sanjiv Goel, Devashish Bharuka, B.K. Satija, S.B. Upadhyay (NP), R.S. Dvivedi, Ajay Kumar, S.R. Setia, Ajay Choudhary, (NP), Amit Kumar (NP), Ram Lal Roy, R.N. Keshwani for the appearing parties.

The Judgment of the Court was delivered by

S.B. SINHA, J. : Leave granted.

Effect of fraud on court is the primal question involved in these appeals which arise out of judgments and order dated 10.12.1998 passed in CR No. 1520 of 1997 and dated 10.5.1999 passed in Civil Review No. 245 of 1998 by the High Court of Judicature at Patna.

Respondent No. 2 herein Arun Prakash Pandey (hereinafter called as 'the Mortgagor') had taken loan from State Bank of India, wherefor lands mortgaged in favour of the Bank. He became a defaulter in the matter of repayment of loan. The Bank filed a suit claiming a sum of Rs. 1,15,312.62

A with pendente-lite and future interest as also for a preliminary decree as regard mortgaged property admeasuring 95.20 acres. In the said suit, the sisters of the mortgagor were claiming 6 annas shares in the suit properties purporting to be relying on or on the basis of a preliminary decree passed in a partition suit dated 19.7.1979 filed by the respondent No. 1 in relation to the said mortgaged land. A preliminary decree in favour of the bank for the aforementioned amount with pendente-lite and future interest @ 6% p.a. was passed. A preliminary decree of sale of 10 Annas shares of the mortgagor was also passed by the learned Vth Additional Sub Judge on or about 22.6.1981 whereafter a final decree for sale of the mortgage property was passed on 4.8.1982 in suit No. 88/9/1977-80.

C A First Appeal was preferred thereagainst by the respondents herein and by an order dated 22.5.1988 a Division Bench directed that the decretal amount be paid in two instalments. Allegedly, the said direction had not been complied in letter been spirit. However, on an Execution Application D filed by the Bank, 30 acres out of total area of 57.12 acres of land was put on auction sale on or about 7.6.1988 wherein the petitioner became the highest bidder upon offering a sum of Rs. 1,61,598.53 therefor. The said auction sale had been confirmed by the Executing Court on 7.7.1988 pursuant whereto, the appelland deposited the amount. The brother of the E mortgagor, thereafter, filed an objection in the said Execution case purported to be in terms of Section 47 of the Code of Civil Procedure for setting aside the auction sale which was marked as Misc. Civil Case No. 11/88. The said application was dismissed by Judgment dated 27.8.1988 *inter alia* on the ground that keeping in view the extent of land inherited F by the parties from their father being 95.20 acres, 60 acres of land belonged to the mortgagor out of which only 30 acres had been auctioned. The appelland herein in terms of order passed on or about 11.12.1990 took delivery of possession of the auctioned land. Questioning the judgment and order dated 27.8.1988, the respondents filed a Revision Petition Application before the High Court in the year 1990 marked as Revision Petition No. G 1700 of 1990. The auction sale was set aside by reason of the judgment dated 21.5.1992 by the High Court *inter alia* directing that the following remedy be taken recourse to by the appelland:—

H (a) to seek a partition by filing a separate suit for causing out a separate area from the share of Arun Prakash Pandey or

(b) to file an application in the aforesaid partition suit for including the area purchased by him in the Takhta of Arun Prakash Pandey.” A

The appellant filed a Special Leave Petition thereagainst which was marked as SLP (C) No. 8119/92 before this Court which was disposed of by an order dated 25.6.1992 stating : B

“Learned counsel for the Petitioner withdraws this petition to cash upon the order impugned against. Special leave Petition is disposed of as withdrawn.” C

The appellant contends that upon obtaining possession, he made the land cultivable wherefor he had spent a sum of about Rs. 2 lakhs.

The appellant herein, however, filed a Title Suit being No. 4/1994 *inter alia* for setting aside the decree passed in Partition Suit No. 17/1976 as also for setting aside the order in CR No. 1700 of 1990. D

The appellant herein also filed an application in the said partition suit No. 17/76 *inter alia* on the ground that the preliminary decree dated 19.7.78 was a collusive and fraudulent one and the final decree proceeding initiated on the basis thereof is null and void; *inter alia* on the ground that Ugam Prakash Pandey, father of the mortgagor having died in the year 1944, the mortgagor alone succeeded to the properties and not his sisters as the Hindu Succession Act, 1956 did not come into force thence. In support of the said contention the appellant filed various documents. The said application was allowed holding : E F

“(a) Ugam Pandey died in the year 1944 when the Hindu Succession Act, 1956 had not come into force.

(b) the documents prove that the plaintiff Smt. Savitri Devi had no interest in the suit property and that the preliminary decree prepared in the partition suit is fraudulent, collusive and void documents obtained in collusion with Arun Prakash Pandey by suppressing the death of Ugam Pandey in the plaint and in her evidence by playing fraud. G H

A (c) the final decree proceeding initiated by the Plaintiff on the basis of preliminary decree is collusive and nullity and therefore final decree proceeding is dropped.”

B A Civil Revision application was filed thereagainst which has been allowed by the High Court, S.L.P. (Civil) No. 6535 of 1999 arises out of the said order.

C The appellant furthermore filed a Civil Review application being No. 245 of 1998 for reviewing the order dated 22.5.1988 passed in First Appeal No. 450 of 1981 whereby and whereunder the High Court of Patna modified the judgment and preliminary decree dated 22.6.1981 by directing that the decretal amount be paid in two instalments *inter alia* on the ground that the fact relating to the sale of the mortgage property in favour of the petitioner has not been brought to its notice. The said Civil Review application was dismissed by a learned Judge on 10.5.1999. S.L.P. (Civil) D No. 20273 of 2000 arises out of the said order.

E Dr. G.C. Bharuka, the learned senior counsel appearing on behalf of the appellant, *inter alia* would submit that the respondents, having obtained a decree by practising fraud on the court, cannot be allowed to take the benefit thereof. Having regard to the fact that the father of the mortgagor died in the year 1944, the learned counsel would urge, the question of his sisters becoming his co-sharers did not arise as the Hindu Succession Act, 1956 did not come into force. The learned counsel would submit that although an appeal was preferred from the preliminary decree passed in favour of the Bank, no stay having been granted, the property could be put F on auction and even if there were certain mistakes on the part of the court, the appellant cannot suffer therefor. The judgment and order dated 27.8.1988 setting aside the auction sale at the instance of the sisters, the learned counsel would contend, must, therefore, be held to be illegal.

G It was further submitted that the High Court committed a manifest error in modifying their judgment and order dated 22.6.1981 by passing the judgment dated 22nd May, 1988 in First Appeal No. 450 of 1981 by directing that the decretal amount payable to the bank be paid in two instalments without taking into consideration the effect and purport of the H sale of the mortgaged properties in court auction.

The learned counsel would submit that such an order could not have been passed on concession of the parties as the properties having been sold on auction, the appellant derived a right in relation thereto. In any event, the learned counsel would contend, as the parties have taken recourse to suppression of the aforementioned facts, the consent decree was a nullity and in that view of the matter the High Court should have reviewed its earlier order. A B

Mr. Ram Lal Roy, the learned counsel appearing on behalf of the respondents, on the other hand, would urge that the appellant herein having not questioned the judgment and decree passed in the First Appeal, these appeals should not be entertained. Mr. Roy would submit that having regard to the fact that the auction sale was set aside as far back as on 21.5.1992 and the Special Leave Petition filed thereagainst having been dismissed by the Court, the review application was not maintainable. In any event, the learned counsel would contend that as pursuant to and in furtherance of the consent order passed in First Appeal : the respondents have already deposited the amount, this Court in exercises of its equitable jurisdiction should not interfere with the impugned orders. C D

Commission of fraud on court and suppression of material facts are the core issues involved in these matters. Fraud as is well-known vitiates every solemn act. Fraud and justice never dwells together. E

Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by word or letter. F

It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. G

A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. H

A In *Derry v. Peek*, (1889) 14 AC 337, it was held :

In an 'action of deceit the plaintiff must prove actual fraud. Fraud is proved when it is shown that a false representation has been made knowingly, or without belief in its truth, or recklessly, without caring whether it be true or false.

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A false statement, made through carelessness and without reasonable ground for believing it to be true, may be evidence of fraud but does not necessarily amount to fraud. Such a statement, if made in the honest belief that it is true, is not fraudulent and does not render the person make it liable to an action of deceit.

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In Kerr on Fraud and Mistake at page 23, it is stated :

"The true and only sound principle to be derived from the cases represented by *Slim v. Croucher* is this : that a representation is fraudulent not only when the person making it knows it to be false, but also when, as Jessel, M.R., pointed out, he ought to have known, or must be taken to have known, that it was false. This is a sound and intelligible principle, and is, moreover, not inconsistent with *Derry v. Peek*. A false statement which a person ought to have known was false, and which he must therefore be taken to have known was false, cannot be said to be honestly believed in. "A consideration of the grounds of belief", said Lord Herschell, "is no doubt an important aid in ascertaining whether the belief was really entertained. A man's mere assertion that he believed the statement he made to be true is not accepted as conclusive proof that he did so."

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In Bigelow on Fraudulent Coveyances at page 1, it is stated :

"If on the facts the average man would have intended wrong, that is enough."

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It was further opined :

"This conception of fraud (and since it is not the writer's, he may speak of it without diffidence), steadily kept in view, will render the administration of the law less difficult, or rather will make its

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administration more effective. Further, not to enlarge upon the last matter, it will do away with much of the prevalent confusion in regard to 'moral' fraud, a confusion which, in addition to other things, often causes lawyers to take refuge behind such convenient and indeed useful but often obscure language as 'fraud upon the law'. What is fraud upon the law? Fraud can be committed only against a being capable of rights, and 'fraud upon the law' darkens counsel. What is really aimed at in most cases by this obscure contrast between moral fraud and fraud upon the law, is a contrast between fraud in the individual's intention to commit the wrong and fraud as seen in the obvious tendency of the act in question."

Recently this Court by an order dated 3rd September, 2003 in *Ram Preeti Yadav v. U.P. Board of High School & Intermediate Education & Ors.*, reported in JT (2003) Supp. 1 SC 25 held :

"Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by words or letter. Although negligence is not fraud but it can be evidence on fraud. (See *Derry v. Peek*, (1889) 14 AC 337).

In *Lazarus Estate v. Berly*, [1956] 1 All ER 341, the Court of Appeal stated the law thus :

"I cannot accede to this argument for a moment "no Court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a Court, on order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything". The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments contracts and all transactions whatsoever."

In *S.P. Changalvaraya Naidu v. Jagannath*, [1994] 1 SCC 1 this Court stated that fraud avoids all judicial acts, ecclesiastical or temporal."

A An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void *ab initio*. Fraud and deception are synonymous.

B In *Arlidge & Parry on Fraud*, it is stated at page 21 :

C “Indeed, the word sometimes appears to be virtually synonymous with “deception”, as in the offence (now repealed) of obtaining credit by fraud. It is true that in this context fraud” included certain kinds of conduct which did not amount to false pretences, since the definition referred to an obtaining of credit “under false pretences, or by means of any other fraud”. In *Jones*, for example, a man who order a meal without pointing out that he had no money was held to be guilty of obtaining credit by fraud but not of obtaining the meal by false pretences: his conduct, though fraudulent, did not amount to a false pretence. Similarly it has been suggested that a charge of conspiracy to defraud may be used where a “false front” has been presented to the public (e.g. a business appears to be reputable and creditworthy when in fact it is neither) but there has been nothing so concrete as a false pretence. However, the concept of deception (as defined in the Theft act 1968) is broader than that of a false pretence in that (*inter alia*) it includes a misrepresentation as to the defendant’s intentions; both *Jones* and the “false front” could now be treated as cases of obtaining property by deception.”

F Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res-judicata*.

G In *Smt. Shrisht Dhawan v. M/s. Shaw Brothers*, AIR (1992) SC 1555, it has been held that :

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

In *S.P. Chengalvaraya Naidu v. Jagannath*, [1994] 1 SCC 1 this Court in no uncertain terms observed :

“...The principle of “finality of litigation” cannot be passed 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 whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.... 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... 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.”

In *Indian Bank v. Satyam Fibres (India) Pvt. Ltd.*, [1996] 5 SCC 550, this Court after referring to *Lazarus Estates* (supra) and other cases observed that ‘since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court it also amounts to an abuse of the process of the Court, that the Courts have inherent power to set aside an order obtained by practising fraud upon the Court, and that where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order’.

It was further held :

“The judiciary in India also possesses inherent power, specially under Section 151 CPC, to recall its judgment or order if it is obtained by fraud on Court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file

A a separate suit for setting aside the decree obtained by fraud, Inherent powers are powers, which are resident in all Courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or Courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Court's business."

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C In *Chittaranjan Das v. Durgapore Project Limited & Ors.*, [99 CWN 897], it has been held :

D "Suppression of a material document which affects the condition of service of the petitioner, would amount to fraud in such matters, Even the principles of natural justice are not required to be complied within such a situation.

E It is now well known that a fraud vitiates all solemn acts. Thus, even if the date of birth of the petitioner had been recorded in the service returns on the basis of the certificate produced by the petitioner, the same is not sacrosanct nor the respondent company would be bound thereby."

F Keeping in view the aforementioned principles, the questions raised in these appeals are required to be considered. The High Court observed that the application of intervention filed by the appellant purported to be under Order XXVI, Rules 13 and 14(2) and Order XX, Rule 18 was not maintainable as they do not confer any power to court for setting aside a preliminary decree on the ground that it was obtained by practising fraud. But once the principles aforementioned are to be given effect to, indisputably the court must be held to have inherent jurisdiction in relation thereto.

G In *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal*, AIR (1962) SC 527, the law is stated in the following terms:

H "The Code of Civil Procedure is undoubtedly not exhaustive: it does not lay down rules for guidance in respect of all situations nor does it seek to provide rules for decision of all conceivable

cases which may arise. The civil courts are authorized to pass such orders as may be necessary for the ends of justice, or to prevent abuse of the process of court, but where an express provision is made to meet a particular situation the Code must be observed, and departure therefrom is not permissible.”

In *Sharda v. Dharmpal*, [2003] 4 SCC 493, a three-Judge Bench, of which both of us are parties, held that directing a person to undergo a medical test by a matrimonial court is implicit stating :

“Even otherwise the Court may issue an appropriate direction so as to satisfy himself as to whether apart from treatment he requires adequate protection *inter alia* by way of legal aid so that he may not be subject to an unjust order because of his incapacity. Keeping in view of the fact that in a case of mental illness the Court has adequate power to examine the party or get him examined by a qualified doctor. We are of the opinion that in an appropriate case the Court may take recourse to such a procedure even at the instance of the party to the lis.

Furthermore, the Court must be held to have the requisite power even under Section 151 of Code of Civil Procedure to issue such direction either *suo motu* or otherwise which, according to him, would lead to the truth.”

Once it is held that a judgment and decree has been obtained by practising fraud on the court it is trite that the principles of *res-judicata* shall not apply. The High Court, therefore, in our opinion committed a serious error in referring to the earlier orders passed by it so as to shut the doors of justice on the face of appellant for all time to come. We, therefore, are of the opinion that the impugned judgment dated 10.12.1998 cannot be sustained.

So far as the order dated 10.5.1999 passed in Civil Review No. 245/1998 is concerned, suffice it to say that the High Court should have considered the question as to whether the right of the auction purchaser could have been set at naught by reason of a consent order passed in his absence. The appellant was not a party in the First Appeal, He was also not a party to the compromise.

A The consent order, as is well-known, is an agreement between the parties with the seal of the Court superadded to it. The appellant herein in the Review Application categorically stated that the parties to the appeal had suppressed the auction sale as also the confirmation thereof. The effect of the events appearing subsequent to the filing of First Appeal resulting in creating subsequent to the filing of First resulting in creation of a third party right was bound to be taken into consideration by the High Court. A third party right cannot be set at naught by consent. The High Court, therefore, was required to consider the contention of the appellant in their proper perspective. The High Court, in our opinion, was obligated to address itself on these questions for the purpose of reviewing its order.

In *Dwarka Prasad Agarwal (D) By Lrs. and Another v. B.D. Agarwal and Others*, [2003] 6 SCC 230, it was observed :

D “Several issues of grave importance were required to be addressed by the High Court. The High Court sought to take a short cut in holding that the said compromise was not binding upon Dwarka Prasad Agarwal and thereby no writ was issued. The consequence of recording of the said compromise was tell-tale. Not only pursuant thereto or in furtherance consequence of recording of the said compromise was tell-tale. Not thereof the Registrar of Newspapers, New Delhi, passed an order dated 3.9.1992; it was construed to be a judgment of the High Court which had been taken aid of by the respondents herein for the purpose of withdrawal of suits wherein various disputed questions of facts and law including the genuineness or otherwise of the agreements were in question and required adjudication. The High Court was also required to address itself, more so while disposing of the review application, as to whether the purported settlement on the grounds raised by the appellants herein, was a lawful one. Without any application of mind, the High Court proceeded to hold that the agreement was lawful. It did not pose unto itself the right question so as to enable himself to arrive at a finding of fact resulting in correct answer thereto and, thus, the same would amount to a misdirection in law.”

H It was further observed :

“It is now well-settled that an order passed by a court without jurisdiction is a nullity. Any order passed or action taken pursuant thereto or in furtherance thereof would also be nullities. In the instant case, as the High Court did not have any jurisdiction to record the compromise for the reasons stated hereinbefore and in particular as no writ was required to be issued having regard to the fact that public law remedy could not have been resorted to, the impugned orders must be held to be illegal and without jurisdiction and are liable to be set aside. All orders and actions taken pursuant to or in furtherance thereof must also be declared wholly illegal and without jurisdiction and consequently are liable to be set aside. they are declared as such.”

It will bear repetition to state that any order obtained by practising fraud on court is also non-est in the eyes of law.

It is true that pursuant to or in furtherance of the consent order, the respondents had deposited the amount and the State Government has appropriated the same. The legal issues as regard the effect of commission of fraud on court *vis-à-vis* the conduct of the parties are still at large. The High Court was, therefore, required to adjust the equities between the parties. The Bank cannot also unjustly enrich itself insofar as; while enforcing a preliminary decree of mortgage, it cannot take also recourse to recover the decretal amount from the judgment-debtors at the expenses of the auction purchaser.

In such an event also, the Court may have to find out a remedy which would be just and equitable.

The High Court furthermore failed to notice the principle ‘*actus curiae neminem gravabit*’.

In *Rajesh D. Darbar & Others v. Narasingrao Krishnaji Kulkarni & Ors.*, JT (2003) 7 SC 209, this Court noticed :

“The courts can take notice of the subsequent events and can mould the relief accordingly. But there is a rider to these well established principles. This can be done only in exceptional circumstances, some of which have been highlighted above. This

A equitable principle cannot, however, stand on the way of the court
 adjudicating the rights already vested by a statute. This well
 settled position need not detain us, when the second point urged
 by the appellants is focused. There can be no quarrel with the
 proposition as noted by the High Court that a party cannot be
 B made to suffer on account of an act of the Court. There is a well
 recognised maxim of equity, namely, *actus curiae neminem
 gravabit* which means an act of the court shall prejudice no man.
 This maxim is founded upon justice and good sense which serves
 a safe and certain guide for the administration of law. The other
 C maxim is, *lex non cogit ad impossibilia*, i.e. the law does not
 compel a man to do that what he cannot possibly perform. The
 applicability of the abovesaid maxims has been approved by this
 Court in *Raj Kumar Dey and Ors. v. Tarapada Dey and Ors.*,
 [1987] 4 SCC 398; *Gursharan Singh v. New Delhi Municipal
 Committees*, [1996] 2 SCC 459 and *Mohammed Gazi v. State of
 D M.P. and Ors.*, [2000] 4 SCC 342.”

For the reasons aforementioned, we are of the opinion that the
 impugned judgments cannot be sustained which are set aside accordingly.

E The matters may now be considered afresh by the High Court in the light
 of the observations made hereinbefore. These appeals are allowed. No
 costs. B.S. Appeals allowed:

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