REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.629 of 2004

Ramji Gupta & Anr. … Appellants

Versus

Gopi Krishan Agrawal (D) & Ors. … Respondents

With

CIVIL APPEAL NO. 630 of 2004

J U D G M E N T

Dr. B.S. Chauhan, J.

C.A. No.629 of 2004

1. This appeal has been preferred against the judgment and order dated 6.9.2002, passed by the High Court of Allahabad in CMWP No.25785 of 2002, by way of which, the High Court has dismissed the writ petition of the appellants, affirming the judgment and decree of the Small Causes Court dated 20.4.2001, which stood affirmed by the Revisional Court, vide judgment and decree dated 13.5.2002. Civil

Appeal No.630 of 2004 has been filed against the judgment and order dated 25.2.2003, in Review Application No.206905 of 2002 of the High Court of Judicature at Allahabad, dismissing the review petition. In the aforesaid judgments, the courts below have held, that the relationship of a landlord and tenant did not exist between respondent nos.1 and 2 and the appellants.

2. Facts and circumstances giving rise to this appeal are that:

A. The dispute pertains to the ownership of shop no.53/11 (old number) corresponding to its new number, i.e. 53/8, Nayayaganj, Kanpur Nagar. Janki Bibi (Ist) daughter of Har Dayal, was married to one Durga Prasad, son of Dina Nath. Radhey Shyam was the adopted son of Durga Prasad, whose son Shyam Sunder was married to Janki Bibi (2nd). Shyam Sunder died in the year 1914. Thus, Radhey Shyam created a life interest in the property in favour of Janki Bibi (2nd), by way of an oral Will, which further provided that she would have the right to adopt a son only with the consent of Mohan Lal, the grand son of Har Dayal. Gopi Krishan, the great grand son of Mohan Lal, claims to have been adopted by Janki Bibi (2nd), with the consent of Mohan Lal, and as regards the same, a registered document was also prepared.

B. Gopi Krishan filed a Regular Suit No.45 of 1956 against Smt. Janki Bibi (2nd) in the Court of the Civil Judge, Mohanlal Ganj in Lucknow, seeking the relief of declaration, stating that Janki Bibi was only a life estate holder in respect of the properties shown in Schedule 'A', and that further, she was not entitled to receive any compensation or rehabilitation grant bonds with respect to the village Nawai Perg, Jhalotar Ajgain, Tehsil Hasangunj, District Unnao. He stated all this, while claiming himself to be her adopted son.

C. Janki Bibi (2nd) contested the suit, denying the aforesaid adoption. However, the suit was decreed vide judgment and decree dated 23.4.1958, holding that while Smt. Janki Bibi (2nd) was in fact the life estate holder of Radhey Shyam's property, she was also entitled to receive the said compensation, in respect of the property in question herein.

D. The suit shop was under the tenancy of one Shri Badri Vishal. However, Janki Bibi (2nd) transferred the same in favour of the appellant's mother Smt. Ram Kumari, wife of Shri Badri Vishal, vide registered sale deed dated 7.5.1974. The said tenant, Shri Badri Vishal died on 23.1.1986, and the tenancy was hence inherited by the

appellants. They thus, continued to pay rent to the vendee Smt. Ram Kumari. Smt. Janki Bibi (2nd) died on 27.2.1996.

E. Respondent no.1 Gopi Krishan, filed SCC Suit No.77 of 1989 on 21.2.1989, alleging that the appellants had defaulted in making the payment of rent, and that a sum of Rs.2,768.62 was outstanding against them, as rent payable between the time period 17.2.1986 to 13.8.1988, and also damages for the period 14.8.1988 to 21.2.1989, amongst other amounts due. During the pendency of the suit, Shri Gopi Krishan respondent no.1, sold the said suit property to Smt. Vidyawati Rathaur respondent no.2, vide registered sale deed dated 3.8.1989. In view thereof, respondent no.2 got herself impleaded as plaintiff no.2 in Suit No.77 of 1989.

F. The appellants contested the suit on various grounds, claiming themselves to be the owners of the property on the basis of a sale deed. Smt. Vidyawati Rathaur respondent no.2, also filed Suit No.792 of 1995 before the Civil Court, Kanpur, seeking permanent injunction, restraining the appellants from causing any addition(s) or alteration(s) in the shop in dispute. The said suit is still pending.

G. The Small Causes Court, Kanpur, dismissed Suit No.77 of 1989 vide judgment and decree dated 10.5.1999, holding that no relationship of landlord and tenant existed between respondent nos.1 and 2 and the appellants. However, the said judgment and decree was set aside by the Revisional Court, vide judgment and decree dated 8.3.2000, and the case was remanded to the Judge, Small Causes Court for deciding the same afresh.

H. After such remand, the suit was decreed vide judgment and decree dated 20.4.2001, holding that the suit property had been acquired by Gopi Krishan Agrawal, plaintiff/respondent, by virtue of the judgment in Suit No.45 of 1956, which was decided on 23.4.1958, and that the relationship of a landlord and tenant, could in fact be deemed to have been created between the parties. The appellants/defendants had hence, been in default of payment of rent.

I. Aggrieved, the appellants filed Revision No.57 of 2001 before the learned District Judge, Kanpur, which was dismissed vide judgment and order dated 13.5.2002. The said judgment and order has been affirmed by the High Court, dismissing the writ petition vide judgment and order dated 6.9.2002.

J. Aggrieved, the appellants preferred a review petition, which has also been dismissed by the impugned judgment and order dated 25.2.2003.

Hence, this appeal.

3. Shri D.K. Garg, learned counsel appearing for the appellants, has submitted that the Small Causes Court has no jurisdiction/ competence, to determine the issue of title over the property, and that all the courts below have erred, as they have adjudicated upon the issue of title. Such a course is not permissible in collateral proceedings, as the issue of title can be adjudicated upon, only by the Civil Court. Moreover, the judgment and order dated 23.4.1958 could not be given effect, in view of the provisions of Section 14(2) of the Hindu Succession Act, 1956 (hereinafter referred to as the 'Act, 1956'). Therefore, the appeal deserves to be allowed.

4. Per contra, Shri Rakesh Dwivedi, learned senior counsel and Shri Arvind Kumar, learned counsel, appearing for the respondents, have opposed the appeals, contending that the courts below have not touched upon or determined the issue of title. It was necessary for the courts below, to rely upon the said judgment and decree dated

23.4.1958, wherein it was categorically held that Smt. Janki Bibi (2nd) was a life estate holder, and that as she had not acquired absolute title over the property, the sale deed executed by her in favour of Smt. Ram Kumari, was null and void. The said judgment and decree dated 23.4.1958, was also relied upon in collateral proceedings, wherein Smt. Ram Kumari, mother of the appellants and vendee in the sale deed dated 7.5.1974, had taken several pleas, all of which were rejected, and such findings have been affirmed by the High Court. Thus, the appeal has no merit, and is hence, liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties, and perused the record.

6. In **Shivdev Kaur (D) by L.Rs. & Ors. v. R.S. Grewal** (Civil Appeal Nos.5063-5065 of 2005, decided on 20.3.2013), this Court dealt with the issue of Section 14(2) of the Act 1956 and held :-

> *"Thus, in view of the above, the law on the issue can be summarised to the effect that if a Hindu female has been given only a "life interest", through Will or gift or any other document referred to in Section 14 of the Act 1956, the said rights would not stand crystallised into the absolute ownership as interpreting the provisions to the effect that she would acquire absolute ownership/title into the property by virtue of the provisions of Section 14(1) of the Act 1956, the*

provisions of Sections 14(2) and 30 of the Act 1956 would become otios.

Section 14(2) carves out an exception to rule provided in sub-section (1) thereof, which clearly provides that if a property has been acquired by a Hindu female by a Will or gift, giving her only a "life interest", it would remain the same even after commencement of the Act 1956, and such a Hindu female cannot acquire absolute title."

While deciding the said issue, this Court has placed reliance upon various previous judgments of this Court, including **Mst. Karmi v. Amru & Ors.**, AIR 1971 SC 745; **Navneet Lal** @ Rangi **v. Gokul & Ors.,** AIR 1976 SC 794; **Sadhu Singh v. Gurdwara Sahib Narike & Ors.**, AIR 2006 SC 3282; and **Jagan Singh** (Dead) Through LRs. **v. Dhanwanti & Anr.**, (2012) 2 SCC 628.

(See also: **Muniananjappa & Ors. v. R. Manual & Anr.**, AIR 2001 SC 1754; **Sharad Subramanyan v. Soumi Mazumdar & Ors.**, AIR 2006 SC 1993; and **Gaddam Ramakrishnareddy & Ors. v. Gaddam Ramireddy & Anr.,** (2010) 9 SCC 602).

7. In order to operate as *res judicata*, the finding must be such, that it disposes of a matter that is directly and substantially in issue in the former suit, and that the said issue must have been heard and

finally decided by the court trying such suit. A matter which is collaterally or incidentally in issue for the purpose of deciding a matter which is directly in issue in the case, cannot be made the basis for a plea *of res judicata*. A question regarding title in a small cause suit, may be regarded as incidental only to the substantial issue in the suit, and therefore, when a finding as regards title to immovable property is rendered by a Small Causes Court, *res judicata* cannot be pleaded as a bar in the subsequent regular suit, for the determination or enforcement of any right or interest in the immovable property. (Vide: **Dhulabai etc. v. State of M.P. & Anr.**, AIR 1969 SC 78; **Smt. Gangabai** w/o Rambilas Gilda v. **Smt. Chhabubai** w/o Pukharajji Gandhi, (1982) 1 SCC 4; **Life Insurance Corporation of India v. M/s. India Automobiles & Co. & Ors.**, AIR 1991 SC 884; and **Rameshwar Dayal v. Banda** (Dead) through His L.Rs. **& Anr.** (1993) 1 SCC 531).

8. In **Nirmal Jeet Singh Hoon v. Irtiza Hussain & Ors.**, (2010) 14 SCC 564, this Court has held, that the Small Causes Court has no right to adjudicate upon the title of the property, as Section 23 of the Provincial Small Cause Courts Act, 1887 (hereinafter referred to as the Act, 1887) reads:

"***Return of plaints in suits involving questions of title-****(1) Notwithstanding anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in a Court of Small Cause depend upon the proof or disproof of* ***a title to immovable property or other title which such a Court cannot finally determine****, the Court may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the title.*

(2) xx xx xx xx"

(Emphasis added)

Thus, it is evident from the above, that the Small Causes Court cannot adjudicate upon the issue of title. In the instant case therefore, the trial court has rightly refused to go into such issue, and neither can any fault be found with the findings recorded by the courts below in this regard. Furthermore, as it is an admitted fact that defendant nos.1 and 2 were tenants of the original plaintiffs, the question of title could not be adjudicated at the behest of the appellants under any circumstance.

9. While dealing with the provisions of Section 23 of the Act, 1887, this Court in **Budhu Mal v. Mahabir Prasad & Ors.,** AIR 1988 SC 1772 held, that a question of title could also be decided upon incidentally, and that any finding recorded by a Judge, Small Causes

Court in this behalf, could not operate as *res judicata* in a suit based on title.

Furthermore, the procedure adopted in the trial of a case before the Small Causes Court is summary in nature. Clause (35) of Schedule II to the Act 1887, has made the Small Causes Court a court of limited jurisdiction. Certain suits are such, in which the dispute is incapable of being decided in a summarily.

10. We have further examined the record of the case, and the Court of Small Causes, while determining the issues involved therein, has taken note of the result of the earlier Suit No.45 of 1956, decreed vide judgment and decree dated 23.4.1958, and also of the Execution Appeal No.64 of 1965, in the matter of Smt. Bibi Devi v. Janki Bibi, wherein it was held, that Janki Devi (2nd), being a life estate holder had no right to transfer the property. In Execution Appeal No.64 of 1965, Smt. Ram Kumari, mother of the appellants was made a party, however, so far as the issue of title by the courts below is concerned, the trial court held as under:

> *"**This court cannot determine the question relating to proprietary right/ownership of the parties**. On this point, this court has **limited jurisdiction** to decide as to whether there exists the relationship of house-owner and tenants in*

between the parties or not. As per the judgment passed by the competent court, Smt. Janakibibi had the right in the disputed property during her life time only. She had no right or authority to sale or transfer the disputed property. This court is bound to accept the aforesaid conclusion. Therefore, if Smt. Janakibibi has transferred the disputed property, contrary to her rights, to the defendant no. 4 – Smt. Ramkumari on 7th of May, 1974, then because of that, no rights are established to Smt. Ramkumari. Such document is a nullity and no legal cognizance can be taken in account." (Emphasis added)

The said finding has been upheld by all the courts.

11. We are not inclined to enter into the controversy regarding Section 34 of the Specific Relief Act, 1963, as it has been submitted that the remedy of declaration envisaged by the said provisions is not exhaustive, and that there can be a declaration even outside the scope of the said Section 34. In support of the said contention, submissions have been made on the basis of the judgments of this Court in **Radha Rani Bhargava v. Hanuman Prasad Bhargava** (deceased) thr. L.Rs. **& Ors.**, AIR 1966 SC 216; and **M/s. Supreme General Films Exchange Ltd. v. His Highness Maharaja Sir Brijnath Singhji Deo of Maihar & Ors.**, AIR 1975 SC 1810.

12. In view of the above, we do not see any cogent reason to interfere with the impugned judgments. The appeal lacks merit and is accordingly, dismissed.

C.A. No. 630 of 2004

In view of the judgment in C.A. No.629 of 2004, no specific order is required in this appeal. It is accordingly dismissed.

…….....J.
(Dr. B.S. CHAUHAN)

…..…….....J.
(FAKKIR MOHAMED IBRAHIM KALIFULLA)

NEW DELHI;
April 11, 2013.

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2798 of 2013

Ram Prakash Agarwal & Anr. … Appellants

Versus

Gopi Krishan (Dead through L.Rs.) & Ors. … Respondents

And

CIVIL APPEAL NO. 2799 of 2013

Hari Prakash Agarwal & Anr. … Appellants

Versus

Gopi Krishan (Dead through L.Rs.) & Ors. … Respondents

J U D G M E N T

Dr. B.S. Chauhan, J.

1. These appeals have been preferred against the impugned judgment and order, dated 20.10.2011, passed by the High Court of Allahabad, (Lucknow Bench) in Writ Petition No.764 of 2002 (MS),

by way of which, the High Court has set aside the order of the trial court dated 20.2.2002 by which it had rejected the application under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC'), for setting aside the judgment and decree dated 22.5.2000 in Misc. Case No. 66 of 1999.

2. Facts and circumstances giving rise to these appeals are that:

A. The dispute pertains to the ownership of shop no.53/11 (old number) corresponding to its new number, i.e. 53/8, Nayayaganj, Kanpur Nagar. Janki Bibi (Ist) daughter of Har Dayal, was married to one Durga Prasad, son of Dina Nath. Radhey Shyam was the adopted son of Durga Prasad, whose son Shyam Sunder was married to Janki Bibi (2nd). Shyam Sunder died in the year 1914. Thus, Radhey Shyam created a life interest in the property in favour of Janki Bibi (2nd), by way of an oral Will, which further provided that she would have the right to adopt a son only with the consent of Mohan Lal, the grand son of Har Dayal. Gopi Krishan, the great grand son of Mohan Lal, claims to have been adopted by Janki Bibi (2nd), with the consent of Mohan Lal, and as regards the same, a registered document was also prepared.

B. Gopi Krishan filed Regular Suit No.45 of 1956 against Smt. Janki Bibi (2nd), in the Court of the Civil Judge Mohanlal Ganj, Lucknow, seeking the relief of declaration, stating that Janki Bibi was only a life estate holder in respect of the properties shown in Schedule 'A', and that further, she was not entitled to receive the compensation or rehabilitation grant bonds with respect to the village Nawai Perg., Jhalotar Ajgain, Tehsil Hasangunj, District Unnao. He stated all this, claiming himself to be her adopted son.

C. Janki Bibi (2nd) contested the suit, denying the aforesaid adoption. However, the suit was decreed vide judgment and decree dated 23.4.1958, holding that while Smt. Janki Bibi (2nd) was in fact the life estate holder of Radhey Shyam's property, she was also entitled to receive the said compensation in respect of the property in question herein.

D. That the property bearing no.264/1-53 admeasuring 17 bighas, 2 biswas, 2 biswansi and 19 kachwansi to the extent of half share situated in village Suppa Rao, Pargana Tehsil, District Lucknow, was owned by Radhey Shyam. The aforesaid suit land was acquired by the State Government for Uttar Pradesh Avas Evam Vikas Parishad

(hereinafter referred to as, the 'Parishad'), for the development of the Talkatora Road Scheme, Lucknow, vide notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as `the Act, 1894') dated 20.10.1962. The possession of the said land was taken on 30.12.1971, after completion of certain formalities.

E. Gopi Krishan approached the Nagar Mahapalika Tribunal, constituted under the Municipal Corporation Act, 1959, under Sections 18/30 of the Act, 1894, by filing Misc. Case No.269 of 1983, claiming compensation in respect of the properties acquired by the State of U.P., on the ground that he possessed the legal right to do so, as a vested remainder, under the judgment and decree dated 23.4.1958. In the said case, Smt. Janki Bibi (2nd) was a party and after her death, Madhuri Saran and his legal heirs were also brought on record, pursuant to the Will of Janki Bibi as a legatee.

F. In the meanwhile, Madhuri Saran, predecessor in interest of the present appellants, filed a Reference under Section 18 of the Act, 1894 which was registered as Miscellaneous Case No.66 of 1999, for enhancement of compensation in respect of half share in the aforesaid suit land. During the pendency of the aforesaid proceedings, Madhuri

Saran died and his legal heirs were substituted. Gopi Krishan, respondent no.1 was not impleaded as a party. The Tribunal vide judgment and order dated 22.5.2000 held that the opposite parties were entitled to receive compensation (including enhancement) relating to the aforesaid property. In pursuance of the said Reference award, the appellants applied for withdrawal of the enhanced compensation. When respondent no.1 learnt about the order dated 22.5.2000, he filed an application under Order IX Rule 13 read with Section 151 CPC, for the purpose of setting aside the said award dated 22.5.2000. The Tribunal, vide order dated 20.2.2002, rejected the said application, on the ground that an application under Order IX Rule 13 can only be filed by a person who was a party to the proceedings in which such an order was passed, and that such an application was not maintainable at the behest of a stranger.

G. Aggrieved, the respondents preferred a writ petition before the High Court, which has been allowed by the Court holding, that while an application under Order IX Rule 13 was not maintainable, the said award should have been set aside in exercise of its powers under Section 151 CPC, as the same was required to be done, in order to do substantial justice between the parties. Hence, these appeals.

3. We have heard Shri S. Naphade and Shri Pradip Kant, learned counsel appearing for the appellants and Shri Rakesh Dwivedi, learned senior counsel appearing for the respondents, as regards the issues, particularly with respect to the extent that the provisions of the CPC are applicable to these proceedings, and further, in relation to whether an application under Order IX Rule 13 CPC can be maintained by a person who was never a party to the suit, and lastly, in the event that such an application is not maintainable, whether such relief can be granted in exercise of the inherent powers under Section 151 CPC.

4. In **Smt. Santosh Chopra v. Teja Singh & Anr.**, AIR 1977 Del 110, the Delhi High Court dealt with the issue with respect to whether a non-party/stranger has any *locus standi* to move an application under Order IX Rule 13 CPC, to get an *ex-parte* decree set aside, he would be adversely affected by such decree. In the said case, the Rent Controller had held, that it would be patently unjust to bar any remedy for such a landlord, since the applicant was the assignee of the rights of the previous landlord, therefore, he could apply for setting aside of the decree as such. The Delhi High Court came to the conclusion that the statutory provisions of Order IX Rule 13 CPC itself, refer to the

defendant in an action, who alone can move an application under Order IX Rule 13 CPC. Therefore, a person who is not a party, despite the fact that he might be interested in the suit, is not entitled to move an application under the rule. In fact he had no *locus standi* to have the order set aside. Such an order could not be passed even under Section 151 CPC. In view thereof, the order passed by the Rent Controller was reversed.

5. In **Smt. Suraj Kumari v. District Judge, Mirzapur & Ors.**, AIR 1991 All 75, the Allahabad High Court dealt with a similar issue, and rejected the contention that at the instance of a stranger, a decree could be reopened in an application under Order IX Rule 13 read with Section 151 CPC, even if such decree is based on a compromise, or has been obtained by practising fraud upon the court, to the prejudice of the said stranger.

6. However, in **Dulhim Suga Kuer & Anr. v. Deorani Kuer & Ors.**, AIR 1952 Pat 72, the Patna High Court dealt with the provisions of Section 146 CPC, which contemplate a change of title after the decree has been awarded and held that, the true test is whether the transferee is affected by the order or decree in question. Where, the

transfer is subsequent to the ex parte decree, the transferee would certainly be interested in setting aside the ex parte decree.

7. In **Surajdeo v. Board of Revenue U.P. Allahabad & Ors.**, AIR 1982 All 23, the Allahabad High Court dealt with an issue where an application was filed by a non-party, under Order IX Rule 13 CPC to set aside the ex parte decree. The Court held:

> *"the petitioner was vitally interested in the decree passed in favour of the contesting opposite parties which he wants to be vacated. If the decrees in favour of the contesting opposite parties remain intact, the petitioner's right of irrigating his fields from the disputed land shall be vitally affected. In such a circumstance even if the petitioner is assumed to have no locus standi to move the application for setting aside the ex parte decrees in favour of the contesting opposite parties, it cannot be said that the trial court had no jurisdiction to set aside the* ***ex parte decrees which were against the provisions of law and were the result of collusion and fraud practiced by the plaintiff and the defendants in the suits*** *in which decrees recognizing the claim of the contesting opposite parties in the disputed land as Sirdar were passed."*
>
> (Emphasis added)

8. Section 151 CPC is not a substantive provision that confers the right to get any relief of any kind. It is a mere procedural provision which enables a party to have the proceedings of a **pending suit**

conducted in a manner that is consistent with justice and equity. The court can do justice between the **parties before it**. Similarly, inherent powers cannot be used to re-open settled matters. The inherent powers of the Court must, to that extent, be regarded as abrogated by the Legislature. A provision barring the exercise of inherent power need not be express, it may even be implied. Inherent power cannot be used to restrain the execution of a decree at the instance of one who was not a party to suit. Such power is absolutely essential for securing the ends of justice, and to overcome the failure of justice. The Court under Section 151 CPC may adopt any procedure to do justice, unless the same is expressly prohibited.

The consolidation of suits has not been provided for under any of the provisions of the Code, unless there is a State amendment in this regard. Thus, the same can be done in exercise of the powers under Section 151 CPC, where a common question of fact and law arise therein, and the same must also not be a case of misjoinder of parties. The non-consolidation of two or more suits is likely to lead to a multiplicity of suits being filed, leaving the door open for conflicting decisions on the same issue, which may be common to the two or more suits that are sought to be consolidated. Non-consolidation may,

therefore, prejudice a party, or result in the failure of justice. Inherent powers may be exercised *ex debito justitiae* in those cases, where there is no express provision in CPC. The said powers cannot be exercised in contravention of, or in conflict with, or upon ignoring express and specific provisions of the law. (See: **B.V. Patankar & Ors. v. C.G. Sastry,** AIR 1961 SC 272; **Ram Chandra Singh v. Savitri Devi & Ors.**, AIR 2004 SC 4096; **Jet Plywood Pvt. Ltd. v. Madhukar Nowlakha**, AIR 2006 SC 1260; **State Bank of India v. Ranjan Chemicals Ltd. & Anr.**, (2007) 1 SCC 97; **State of Haryana & Ors. v. Babu Singh**, (2008) 2 SCC 85; **Durgesh Sharma v. Jayshree**, AIR 2009 SC 285; **Nahar Industrial Enterprises Ltd. v. H.S.B.C. etc. etc.**, (2009) 8 SCC 646; and **Rajendra Prasad Gupta v. Prakash Chandra Mishra & Ors.,** AIR 2011 SC 1137).

9. In exceptional circumstances, the Court may exercise its inherent powers, apart from Order IX CPC to set aside an *ex parte* decree.

An *ex-parte* decree passed due to the non appearance of the counsel of a party, owing to the fact that the party was not at fault, can be set aside in an appeal preferred against it. So is the case, where the absence of a defendant is caused on account of a mistake of the Court.

An application under Section 151 CPC will be maintainable, in the event that an *ex parte* order has been obtained by fraud upon the court or by collusion. The provisions of Order IX CPC may not be attracted, and in such a case the Court may either restore the case, or set aside the *ex parte* order in the exercise of its inherent powers.

There may be an order of dismissal of a suit for default of appearance of the plaintiff, who was in fact dead at the time that the order was passed. Thus, where a Court employs a procedure to do something that it never intended to do, and there is miscarriage of justice, or an abuse of the process of Court, the injustice so done must be remedied, in accordance with the principle of *actus curia neminem gravabit* - an act of the Court shall prejudice no person.

10. In **Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal**, AIR 1962 SC 527, this Court examined the issue with respect to whether, the court is competent to grant interim relief under Section 151 CPC, when the same cannot be granted under Order XXXIX Rules 1 & 2 CPC, and held :

> *"There is difference of opinion between the High Courts on this point. One view is that a Court cannot issue an order of temporary injunction if the circumstances do not fall within the provisions of Order 39 of the Code…… the other view is that*

*a Court can issue an interim injunction under circumstances which are not covered by Order 39 of the Code, if the Court is of opinion that the interests of justice require the issue of such interim injunction;……**We are of opinion that the latter view is correct and that the Court have inherent jurisdiction to issue temporary injunction in circumstances which are not covered by the provisions of Order 39, C.P.C.**, there is no expression in Section 94 which expressly prohibits the issue of temporary injunction in circumstances not covered by Order 39 or by any rule made under the Code. It is well-settled that the provisions of the Code are not exhaustive, for the simple reason that the Legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them. The effect of the expression ' if it is so prescribed' is only this that **when the rule prescribes the circumstances** in which the temporary injunction can be issued, ordinarily the **Court is not to use its inherent powers to make the necessary orders in the interests of justice**, but is merely to see whether the circumstances of the case bring it within the prescribed rule. If the provisions of Section 94 were not there in the Code, the Court could still issue temporary injunction, but it could do that in the exercise of its inherent jurisdiction. No party has a right to inherent jurisdiction **only when it considers it absolutely necessary for the ends of justice to do so.** It is in the incidence of the exercise of the power of the Court to issue temporary injunction that the provisions of Section 94 of the Code have their effect and not in taking away the right of the Court to exercise the inherent power."*

(Emphasis added)

11. In **Indian Bank v. M/s. Satyam Fibres (India) Pvt. Ltd.**, AIR 1996 SC 2592, this Court dealt with a similar case and observed, that fraud not only affects the solemnity, regularity and orderliness of the

proceedings of the court, but that it also amounts to abuse of the process of court. The Court further held, that "the judiciary in India also possesses inherent powers, specially under Section 151 CPC, to recall its judgment or order if the same has been obtained by **fraud upon the court**. In the case of fraud upon a party to the suit or proceedings, the court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud."

12. Similarly, in **Dadu Dayal Mahasabha v. Sukhdev Arya & Anr.,** (1990) 1 SCC 189, this Court examined a issue as to whether the trial court has the jurisdiction to cancel an order permitting the withdrawal of the suit under its inherent powers, if it is ultimately satisfied that the suit has been withdrawn by a person who is not entitled to withdraw the same. The court held that "the position is well established **that a court has the inherent power to correct its own proceedings** when it is satisfied that in passing a particular order it was misled by one of the parties". However, the Court pointed out that there is a distinction between cases where fraud has been practised upon the court and where fraud has been practised upon a party, while observing as under:

> *"If a party makes an application before the court for setting aside the decree on the ground that he did not give his consent, the court has the power and duty to* ***investigate the matter*** *and to set aside the decree if it is satisfied that the consent as a fact was lacking and* ***the court was induced to pass the decree on a fraudulent representation*** *made to it that the party had actually consented to it. However, if the case of the party challenging the decree is that he was in fact a party to the compromise petition filed in the case but his consent has been procured by fraud,* ***the court cannot investigate*** *the matter in the exercise of its inherent power, and the only remedy to the party is to institute a suit".* (Emphasis added)

13. In view of the above, the law on this issue stands crystalised to the effect that the inherent powers enshrined under Section 151 CPC can be exercised only where no remedy has been provided for in any other provision of the CPC. In the event that a party has obtained a decree or order by playing a fraud upon the court, or where an order has been passed by a mistake of the court, the court may be justified in rectifying such mistake, either by recalling the said order, or by passing any other appropriate order. However, inherent powers cannot be used in conflict of any other existing provision, or in case a remedy has been provided for by any other provision of the CPC.

Moreoveer, in the event that a fraud has been played upon a party, the same may not be a case where inherent powers can be exercised.

14. Be that as it may, the Tribunal decided the case of compensation filed by the appellants on 22.5.2000, and the application filed by the respondents under Order IX Rule 13 CPC was dismissed vide order dated 20.2.2002. The respondents challenged the said order dated 20.2.2002, by filing Writ Petition No. 764 of 2002 in the High Court, and the same stood dismissed in default. The same was restored, heard and disposed of vide order dated 12.12.2005, by way of which the said Writ Petition was dismissed, in view of the alternative remedy of appeal. Such an order was passed in view of the fact that the order passed by the Tribunal was appealable under Section 381 of the U.P. Nagar MahaPalika Adhiniyam, 1959, to the High Court. The respondents filed an appeal to recall the said order, the court heard such appeal on merits. However, the said application for recall was dismissed in default vide order dated 12.1.2009. A second application for recall was then filed, which was also dismissed in default vide order dated 15.3.2010. A third application was finally filed, and has been allowed vide impugned order.

15. In fact, while passing its final order, the High Court was convinced that the appellants had committed a fraud upon the court by not disclosing before the Tribunal, that at a prior stage, the matter had been adjudicated upon, with respect to the entitlement of the respondents, and also in respect of some other properties therein, the High Court had made certain observations against the respondents, and that the matter had ultimately come before this Court in Civil Appeal No. 3871 of 1990, wherein this Court had passed the following order:

> "Having considered the entire matter, we are of the view that special leave petition is fit to be dismissed. However, there may be some mis-apprehension with respect to certain observations made in the impugned judgment as having finally decided the adjudicated issues between the parties and we, therefore make it clear that those observations shall not be treated to have finally adjudicated upon any of the disputed points. The appeal is disposed of accordingly."

16. In the instant case, we have to bear in mind that the proceedings stood concluded so far as the court of first instance is concerned, and that the respondent was not the party before the said court. Permitting an application under Order IX Rule 13 CPC by a non-party, would amount to adding a party to the case, which is provided for under

Order I Rule 10 CPC, or setting aside the *ex-parte* judgment and decree, i.e. seeking a declaration that the decree is null and void for any reason, which can be sought independently by such a party. In the instant case, as the fraud, if any, as alleged, has been committed **upon a party,** and not upon the court, the same is not a case where Section 151 CPC could be resorted to by the court, to rectify a mistake, if any was made.

17. The matter basically relates to the apportionment of the amount of compensation received for the land acquired. This Court, in **May George v. Special Tahsildar & Ors.,** (2010) 13 SCC 98, has held, that a notice under Section 9 of the Act, 1894, is not mandatory, and that it would not by any means vitiate the land acquisition proceedings, for the reason that ultimately, the person interested can claim compensation for the acquired land. In the event that any other person has withdrawn the amount of compensation, the "person interested", if so aggrieved, has a right either to resort to the proceedings under the provision of Act 1894, or he may file a suit for the recovery of his share. While deciding the said case, reliance has been placed upon a large number of judgments of this Court, including **Dr. G.H. Grant v. State of Bihar,** AIR 1966 SC 237.

18. The said case is required to be examined from another angle. Undoubtedly, the respondents did not make any application either under Section 18 or Section 30 of the Act, 1894 to the Land Acquisition Collector. The jurisdiction of the Reference Court, vis-à-vis "persons interested" has been explained by this Court in **Shyamali Das v. Illa Chowdhry & Ors.**, AIR 2007 SC 215, holding that the Reference Court does not have the jurisdiction to entertain any application of *pro interesse suo,* or in the nature thereof. The Court held as under:

> *"The Act is a complete code by itself. It provides for remedies not only to those whose lands have been acquired but also to those who claim the awarded amount or any apportionment thereof. A Land Acquisition Judge derives its jurisdiction from the order of reference. It is bound thereby. His jurisdiction is to determine adequacy and otherwise of the amount of compensation paid under the award made by the Collector". Thus holding that, "It is not within his domain to entertain any application of pro interesse suo or in the nature thereof."*

The plea of the appellant therein, stating that the title dispute be directed to be decided by the Reference Court itself, since the appellant was not a person interested in the award, was rejected by

this Court, observing that the Reference Court does not have the power to enter into an application under Order I Rule 10 CPC.

19. In **Ajjam Linganna & Ors. v. Land Acquisition Officer, RDO, Nizamabad & Ors.**, (2002) 9 SCC 426, this court made observations to the effect that it is not open to the parties to apply directly to the Reference Court for impleadment, and to seek enhancement under Section 18 for compensation.

In **Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd. v. Allahabad Vikas Pradhikaran & Anr**., (2003) 5 SCC 561, this Court held as under:

> *"It is well established that the Reference Court gets jurisdiction only if the matter is referred to it under Section 18 or Section 30 of the Act by the Land Acquisition Officer and if the Civil Court has got the jurisdiction and authority only to decide the objections referred to it. The Reference Court cannot widen the scope of its jurisdiction or decide matters which are not referred to it."*

While deciding the said case, the Court placed reliance on the judgments in **Parmatha Nath Malik Bahadur v. Secretary of State**, AIR 1930 PC 64; and **Mohammed Hasnuddin v. The State of Maharashtra**, AIR 1979 SC 404.

(See also: **Kothamasu Kanakarathamma & Ors. v. State of Andhra Pradesh & Ors.**, AIR 1965 SC304)

It is evident from the above, that a person who has not made an application before the Land Acquisition Collector, for making a reference under Section 18 or 30 of the Act, 1894, cannot get himself impleaded directly before the Reference Court.

20. In view of the above, the legal issues involved herein, can be summarised as under:-

(i) An application under Order IX Rule 13 CPC cannot be filed by a person who was not initially a party to the proceedings;

(ii) Inherent powers under Section 151 CPC can be exercised by the Court to redress only such a grievance, for which no remedy is provided for under the CPC;

(iii) In the event that an order has been obtained from the Court by playing fraud upon it, it is always open to the Court to recall the said order on the application of the person aggrieved, and such power can also be exercised by the appellate court;

(iv) Where the fraud has been committed upon a party, the court cannot investigate such a factual issue, and in such an eventuality, a

party has the right to get the said judgment or order set aside, by filing an independent suit.

(v) A person aggrieved may maintain an application before the Land Acquisition Collector for reference under Section 18 or 30 of the Act, 1894, but cannot make an application for impleadment or apportionment before the Reference Court.

21. The instant case has been examined in light of the aforesaid legal propositions. We are of the considered opinion that the impugned judgment and order of the High Court cannot be sustained in the eyes of law, and is hence liable to be set aside.

In view of the above, the appeals succeed and are allowed. The judgment and order impugned herein are set aside. The respondents are at liberty to seek appropriate remedy, by resorting to appropriate proceedings, as permissible in law.

…….....J.
(Dr. B.S. CHAUHAN)

…..…….....J.
(FAKKIR MOHAMED IBRAHIM KALIFULLA)

NEW DELHI;
April 11, 2013.