



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 9837 OF 2017

MALLIKA

... APPELLANT

VERSUS

R. NALLATHAMBI & ORS.

... RESPONDENTS

J U D G M E N T

VIPUL M. PANCHOLI, J.

1. The present appeal arises out of the judgment and order dated 03.01.2017 passed by the High Court of Judicature at Madras in Second Appeal No. 714 of 2016, whereby the High Court dismissed the second appeal preferred by the appellant and affirmed the judgment and decree of the First Appellate Court reversing the decree granted by the Trial Court.
2. The dispute concerns two items of agricultural land situated at Kalapatty Village, Coimbatore Taluk, purchased by the appellant in 1996 through registered sale deeds, being:

- A.** Item No. 1 - Punja Acre 1.66 (Doc. No. 6369/1996, Ex. A1/B2)
- B.** Item No. 2 - Punja Acre 0.37½ (Doc. No. 6370/1996, Ex. A2/B3)

The appellant claimed absolute ownership over approximately 2.03½ acres in S.F. Nos. 437/2B and 438/3B.

- 3.** According to the appellant, in 1997 and 1998, she executed two registered General Powers of Attorney (for brevity “GPAs”), being Doc. No. 416/1997, Ex. A3/B5 and Doc. No. 465/1998, Ex. A4/B4), in favour of Respondent Nos. 1 and 2 (brothers), solely as security for loans of Rs. 2 lakhs and Rs. 5 lakhs carrying 18% interest, respectively. Original title deeds of the suit properties were handed over only as collateral security.
- 4.** It is stated that Respondent Nos. 1 and 2 misused the GPAs and executed sale deeds, being Doc. No. 29/1998, Ex. A5/B8 and Doc. No. 3189/1998, Ex. A6/B6, in favour of close relatives and family members. The receipts acknowledging consideration, being Ex. B7 and Ex. B9, did not mention the amount paid, were not proved through attesting witnesses and contained stereotyped language.

- 5.** The suit properties were repeatedly transferred among relatives through various sale deeds, being Ex. A7/B11, Ex. A8/B13 and Ex. A9, ultimately reaching members of the respondents' own family and later third parties.
- 6.** It is stated by the appellant that she repaid the loans fully through monthly interest and yearly principal installments, but the respondents failed to cancel the GPAs or return the original title deeds despite repeated assurances. The appellant discovered the transactions only in 2008 after inspecting records in the Sub-Registrar's office. It is further stated that the respondents along with a few men attempted to forcibly enter the suit properties and were obstructed by the appellant and her neighbours.
- 7.** The respondents' case is that the transactions in question were genuine sale transactions and not loan-security arrangements as alleged by the appellant.
- 8.** According to the respondents, the appellant executed two registered GPAs in favour of Respondent Nos. 1 and 2 and also handed over possession. Respondent Nos. 1 and 2 sold the suit properties and executed two sale deeds, whereby full sale consideration was paid

and acknowledged by the appellant through two receipts. Subsequent transactions took place in 2006 and 2007 through further powers of attorney and sale deeds among family members and purchasers.

- 9.** In August 2008, the appellant instituted Original Suit No. 472 of 2008 before the Principal Subordinate Court, Coimbatore, seeking declaration that the impugned sale deeds executed pursuant to the GPAs, being Ex. A5 to Ex. A9, are null and void and seeking a permanent injunction protecting possession and against further alienation. The case of the appellant was that the GPAs had been executed only as security for loan transactions and that the respondents had misused the said GPAs to execute sale deeds in favour of themselves and their relatives.
- 10.** The respondents contested the suit contending that the transactions were genuine, valid consideration had passed under Exs. B7 and B9, possession had also been delivered and the subsequent purchasers had derived valid title. It was further contended that the suit was hopelessly barred by limitation and that the appellant had failed to establish either discharge of the loan or continued possession over the suit properties.

- 11.** The Trial Court decreed the suit by judgment dated 22.03.2012 principally holding that the GPAs had been executed only as security for loan and that the respondents had failed to satisfactorily establish Exs. B7 and B9, thereby declaring all five sale deeds, being Ex. A5 to Ex. A9, null and void and permanent injunction was granted.
- 12.** In the first appeal, the Court of IVth Additional District Judge, Coimbatore, by judgment dated 08.03.2016 in Appeal Suit No. 52 of 2012, reversed the decree of the Trial Court. The First Appellate Court held that the burden had been wrongly cast upon the respondents and that the appellant had failed to prove loan repayment or her continued possession and consequently failed to establish that the GPAs were executed merely as security for loans. Reliance was also placed upon mutation entries and revenue records standing in the names of the respondents and the purchasers.
- 13.** Thereafter, the appellant filed Second Appeal No. 714 of 2016 before the High Court of Madras under Section 100 of the Code of Civil Procedure, 1908 (for brevity "*the CPC*").

- 14.** The High Court, in the impugned judgment dated 03.01.2017, while dismissing the second appeal under Section 100 CPC, held that no substantial question of law arose for consideration. The High Court observed that the appellant had not entered the witness box, had failed to prove discharge of the loan and had approached the Court after a considerable lapse of time despite the execution of registered documents and mutation in revenue records.
- 15.** Aggrieved by the impugned judgment, the appellant filed the present appeal.
- 16.** Mr. Sivagnanam Karthikeyan, learned counsel appearing on behalf of the appellant assailed the judgments of the First Appellate Court and the High Court.
- 17.** It is contended that the First Appellate Court failed to comply with the mandatory requirements of Order XLI Rule 31 of the CPC. The appellate court did not frame proper points for determination and merely reproduced the reliefs sought in the suit without independently analysing the issues arising in appeal. It was argued that Order XLI Rule 31 of the CPC prescribes the manner in which a first appeal must be decided and non-compliance vitiates the

appellate judgment. Reliance was placed on ***H. Siddiqui (dead) by LRs v. A. Ramalingam***.¹ It is therefore submitted that the First Appellate Court judgment itself was liable to be set aside on this ground alone.

- 18.** It is argued that the GPAs were executed only as collateral security for loans advanced by Respondent Nos. 1 and 2 as the respondents were professional money lenders who routinely obtained registered documents and signed blank papers as security and no independent agreement for sale existed between the parties. It is highlighted that the respondents executed multiple conveyances within their own family circle and thus the transactions lacked bona fides and were structured only to create encumbrances and defeat the title of the appellant. The Trial Court correctly appreciated these surrounding circumstances and held that the transactions were not genuine sale transactions.
- 19.** It is submitted that the respondents failed to prove receipts, being Ex. B7 and Ex. B9, which were relied upon as acknowledgments of consideration. According to the appellant, neither receipt mentioned

¹ 2011 (4) SCC 240

the amount paid, attesting witnesses were never examined, both receipts contained identical stereotyped language and the documents appeared to have been created using signed blank papers obtained earlier from the appellant. It was contended that the High Court erred in affirming the First Appellate Court despite these defects.

- 20.** It is argued that Respondent Nos. 1 and 2, holding GPAs, occupied a fiduciary position and were bound to render proper accounts to the appellant, establish bona fide exercise of authority and prove payment of consideration through clear and cogent evidence. Instead, the respondents conveyed the properties among close relatives, no accounts were rendered, consideration passed only on paper and the respondents routed the property back into their own family. The appellant emphasized that such conduct itself demonstrated fraud and misuse of authority. Reliance was placed on ***Subhra Mukerjee v. Bharat Coking Coal Ltd.***,² to urge that where fraud and fiduciary abuse are alleged, the burden lies heavily upon the beneficiary of the transaction to establish bona fides.

² (2000) 3 SCC 312

- 21.** It is contended that mere mutation entries, patta, chitta and adangal records do not confer title, revenue entries are relevant only for fiscal purposes and possession remained with the appellant, which was independently proved through PW-2 (appellant's neighbour). It was argued that the High Court wrongly treated mutation records as proof of possession and title.
- 22.** It is submitted that the sale deeds, being Ex. A5 to Ex. A9, were never acted upon, the appellant continued in possession and enjoyment of the lands, agricultural operations were continuously carried out by the appellant and attempts by respondents and their henchmen to forcibly enter the property were resisted by the appellant and neighbouring landholders. The appellant relied heavily on the testimony of PW-2, which had been accepted by the Trial Court.
- 23.** It is argued that the First Appellate Court wrongly drew an adverse inference merely because the appellant did not personally enter the witness box. The respondents relied upon ***Vidhyadhar v. Manikrao***,³ to urge the Court to draw adverse inference for non-examination of the appellant. However, it is submitted that sufficient

³ (1999) 3 SCC 573

evidence had already been adduced through PW-1 (appellant's husband) and PW-2, documentary and circumstantial evidence independently established the case of the appellant and non-examination could not override the inherent suspicious nature of the transactions.

- 24.** It is contended that the High Court dismissed the second appeal without framing substantial questions of law despite several substantial legal issues arising, including improper reversal of burden of proof, non-compliance with Order XLI Rule 31 of the CPC, validity and proof of the receipts (Ex. B7 and Ex. B9), evidentiary value of mutation entries and fiduciary obligations of GPAs holders. It is therefore submitted that the High Court failed to properly exercise jurisdiction under Section 100 of the CPC.
- 25.** It is emphasized that almost every subsequent transfer was among close relatives of Respondent Nos. 1 and 2, one transferee was a medical student and another a close family member, the transactions were sham and collusive, consideration recitals were merely paper entries and the transfers demonstrated a coordinated attempt to defeat the appellant's ownership rights.

- 26.** Therefore, learned counsel appearing for the appellant prayed for setting aside the judgments of the High Court and First Appellate Court and for restoration of the Trial Court decree.
- 27.** *Per contra*, Mr. V. Chitambaresh alongwith Mr. Jayanth Muth Raj, learned senior counsels appearing on behalf of the respondents opposed the present appeal and supported the judgments of the First Appellate Court and the High Court on the ground that the appellant had failed to establish any substantial question of law warranting interference under Section 100 of the CPC or by this Court.
- 28.** It is contended that the dispute is entirely factual in nature, the First Appellate Court, being the final court on facts, had thoroughly reappreciated the evidence and the High Court correctly held that no substantial question of law arose. It was submitted that the appellant merely sought reassessment of factual findings, which is impermissible in second appeal jurisdiction under Section 100 of the CPC. It is emphasized that the High Court nevertheless examined the findings of both courts below and independently affirmed the First Appellate Court's conclusions and thus there was no perversity or legal infirmity warranting interference.

- 29.** In answer to the appellant's principal challenge, it is argued that the First Appellate Court had framed issues/points for determination in paragraph 7 of its judgment and the appellate court thereafter discussed oral and documentary evidence in detail and rendered findings issue-wise. Accordingly, the contention regarding violation of Order XLI Rule 31 of the CPC was described as false and misleading. It is submitted that substantial compliance with Order XLI Rule 31 of the CPC was present and no prejudice had been caused.
- 30.** It is submitted that the appellant voluntarily executed the GPAs, possession was handed over to Respondent Nos. 1 and 2, the respondents erected fencing around the suit properties, the sale deeds were executed pursuant to authority granted under the GPAs and the entire sale consideration was paid to the appellants. According to the respondents, the receipts, being Ex. B7 and Ex. B9 acknowledged payment, the appellant never denied her signatures on those receipts and despite alleging forgery, the appellant failed to enter the witness box or examine attesting witnesses who were admittedly her own relatives. It is therefore argued that the

appellant's allegation of fraud remained entirely unproved and the receipts and sale deeds stood admitted and acted upon.

- 31.** It is repeatedly stated that the appellant produced no evidence proving the loan transactions, payment of interest, repayment of principal amounts and discharge of debt. It was pointed out that even the Trial Court had found that the appellant failed to prove repayment/discharge, vital documents were withheld and the appellant herself abstained from entering the witness box. It is therefore argued that the burden never shifted to the respondents and that the appellant failed to discharge the initial onus.
- 32.** It is submitted that the appellant intentionally avoided the witness box despite serious allegations of fraud and forgery and attesting witnesses to the receipts and the GPAs, who were appellant's relatives, were also withheld. The First Appellate Court therefore rightly drew an adverse inference against the appellant. Reliance was placed upon the principle laid down in ***Vidhyadhar v. Manikrao (supra)*** holding that where a party abstains from entering the witness box, an adverse inference may legitimately be drawn.

- 33.** It is contended that mutation entries, patta, chitta and adangal stood in the names of purchasers for many years, the appellant never challenged such mutations before competent authorities and the respondents and subsequent purchasers remained in possession continuously. It is further argued that PW-2's testimony was unreliable, PW-2 did not even know the survey numbers, no neighbouring landowner was examined and the suit properties were vacant land. Thus, the First Appellate Court rightly concluded that possession stood proved in favour of the respondents.
- 34.** One of the principal submissions for the respondents was that the suit was filed nearly ten years after execution of the GPAs, sale deeds, mutation entries and receipts acknowledging consideration. It is emphasized that the appellant never cancelled the GPAs, no objection was raised for nearly a decade and third-party rights had intervened through subsequent transactions. It is therefore argued that the suit was hopelessly barred by limitation, the appellant had slept over her rights and the suit was instituted only to harass the respondents and extract money. The First Appellate Court's finding that the suit ought to have been filed within three years of execution of the sale deeds was specifically relied upon.

- 35.** It is argued that the appellant's case was internally contradictory, on one hand she admitted executing the GPAs and on the other she alleged forgery of receipts from signed blank papers. According to the respondents, such inconsistent pleadings undermined the credibility of the appellant and the allegations of collusion and forgery were unsupported by evidence. It is asserted that the sale deeds were genuine, consideration had been paid and the transactions were acted upon long ago.
- 36.** Learned counsel appearing on behalf of the respondents emphasized that the First Appellate Court and High Court had concurrently held against the appellant on possession, limitation, burden of proof, genuineness of transactions and absence of proof of loans. It was therefore submitted that interference by this Court was wholly unwarranted and the present appeal sought merely to reopen factual findings recorded by the appellate courts.
- 37.** We have considered the rival submissions advanced by the learned counsel appearing for the parties and carefully perused the material placed on record.

38. The principal contention urged on behalf of the appellant is that the judgment of the First Appellate Court stands vitiated for non-compliance with the mandatory requirements of Order XLI Rule 31 of the CPC. It has been argued that the appellate court merely reproduced the reliefs sought in the suit and failed to frame proper points for determination as required in law. The relevant paragraph of the judgment, which is in question, is reproduced as under:

“7. On consideration of the Plaintiff. Written Statement, evidence, documents, judgments and decree of the trial court and the appeal grounds the point arises for consideration is;

1) Whether the Trial Court is right in declaring the sale deeds executed by the D1 and D2 is null and void and not binding upon the plaintiff?

2) Whether the Judgment and Decree passed by the lower court is not sustainable and the Plaintiff is not entitled for the reliefs claimed in the plaint?

3) To what relief the parties are entitled for?

In this appeal suit, no evidence was let in and no document was marked on either side.”

39. Order XLI Rule 31 of the CPC is reproduced, for convenience, as under:

“31. Contents, date and signature of judgment.—*The judgment of the Appellate Court shall be in writing and shall state—*

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled,

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.”

- 40.** There can be no dispute with the proposition that the First Appellate Court, being the final court on facts, is duty bound to independently assess the entire evidence on record and assign reasons while reversing the judgment of the Trial Court. In ***paragraph 21 of H. Siddiqui (dead) by LRs v. A. Ramalingam, (supra)***, this Court reiterated that compliance with Order XLI Rule 31 of the CPC is mandatory and the appellate court must formulate points for determination and record findings thereon supported by reasons.
- 41.** However, it is pertinent to note that the requirement of Order XLI Rule 31 of the CPC is one of substantial compliance and not one of mere technical formality. The substance of the judgment and the manner in which the appellate court has dealt with the controversy are of greater significance than the form in which points are framed.
- 42.** In the present case, the First Appellate Court has undertaken detailed reappraisal of oral and documentary evidence. The appellate court examined the issues relating to the loan transactions

in question, the evidentiary value of Exs. B7 and B9, possession over the suit properties, mutation entries, limitation and the conduct of the parties. The appellate court thereafter recorded independent findings while reversing the decree of the Trial Court. We are therefore unable to hold that the judgment of the First Appellate Court is liable to be set aside solely on the ground of non-compliance with Order XLI Rule 31 of the CPC.

- 43.** The next and more substantial issue concerns the nature of the transactions between the parties. According to the appellant, the GPAs executed in favour of Respondent Nos. 1 and 2 were merely collateral securities for loans advanced by the respondents and that the said GPAs were subsequently misused for executing sale deeds in favour of close relatives and family members.
- 44.** It is an admitted position that the appellant executed registered GPAs in favour of Respondent Nos. 1 and 2. It is equally undisputed that original title deeds were handed over and registered sale deeds were thereafter executed pursuant to the said GPAs, followed by mutation entries in favour of purchasers and subsequent transferees.

- 45.** The burden of establishing that the transactions were not genuine sale transactions, but merely security arrangements for loans, rested upon the appellant and mere allegations of fraud or misuse of fiduciary position are not sufficient unless supported by reliable and cogent evidence. Learned counsel for the appellant relied upon the decision of this Court in ***Subhra Mukerjee v. Bharat Coking Coal Ltd. (supra)***, to contend that where fraud and fiduciary misuse are alleged, the beneficiaries of the transactions must establish their bona fides. The principle laid down therein is well settled. However, before the burden can shift upon the respondents, the appellant was required to first establish foundational facts constituting fraud or fiduciary misuse. In the absence of such foundational evidence, the initial burden continued to remain upon the appellant.
- 46.** In the present case, the appellant failed to produce any documentary material substantiating the alleged loan transactions, payment of interest or repayment of principal amounts. Significantly, even the Trial Court recorded a categorical finding that neither repayment nor discharge of the alleged loans had been proved. Consequently, the appellant failed to establish that the GPAs were executed merely as security for loans. The said finding is reproduced as under:

“9. ... Thereafter, she repaid the principal and interest to the 1st and 2nd defendants. It was denied by the defendants. While so it is the bounden duty of the plaintiff to prove that she repaid the interest and principal amount to the 1st and 2nd defendants. Whereas the plaintiff has not produced any piece of evidence with regard to payment of interest and principal. Further, the plaintiff would say that the 1st and 2nd defendants maintaining accounts with regard to receipt of principal and interest in a pocket note book kept by them and the same has been under the custody of the 1st and 2nd defendants. While so, the plaintiff has not taken steps to direct the 1st and 2nd defendants to produce the pocket note book in the Court. Further, the plaintiff has not appeared before this Court and given evidence with regard to payment of interest and principal. Her husband only examine as PW 1 and deposed that the entire loan was repaid with interest, which is not satisfactory. Hence, the contention (end of 12th page of this original) of the plaintiff that she repaid the loan amount with interest as alleged to be obtained from the 1st and 2nd defendant is not sustainable.”

47. At this stage, it is pertinent to observe that the appellant has not challenged the above reproduced finding of the Trial Court before the appellate courts.

48. Another important circumstance which cannot be ignored is that the appellant herself did not enter the witness box. In the present case, even though serious allegations of fraud, forgery of receipts, misuse of signed blank papers and collusive transfers have been levelled by the appellant against the respondents, the appellant abstained from examination. Learned counsel for the respondents has rightly placed reliance on the case of ***Vidhyadhar v. Manikrao (supra)***, wherein

this Court held that where a party possessing special knowledge of facts fails to enter the witness box, an adverse inference may legitimately be drawn against such party.

- 49.** In the facts of the present case, the adverse inference drawn by the First Appellate Court and the High Court cannot be said to be unjustified. The relevant extract of the impugned judgment reads as under:

“9. ... P.W.1 is aware of the power deed. The plaintiff has not chosen to come before this Court by examining herself. Even as per the evidence of P.W.1, both the plaintiff and P.W.1 are doing real estate business. Therefore, it is not as if she is an illiterate. Even the Trial Court has found that the plaintiff has not proved the factum of discharge. For proving, Exs-B7 and B9, there is no necessity to hear any other third party.”

- 50.** The appellant strongly argued that the receipts, namely Exs. B7 and B9, were doubtful because they did not mention the exact amount paid and because the respondents did not examine the attesting witnesses to those receipts. It is true that the receipts may not represent ideal documentary evidence, however, the Court cannot examine these documents in isolation and must consider them along with the surrounding facts and circumstances of the case.

51. The appellant admittedly executed the GPAs, registered sale deeds were executed pursuant thereto in the year 1998 and mutation entries thereafter stood in favour of purchasers for several years. Multiple subsequent transactions were also entered into openly through registered documents. Despite this, the appellant neither cancelled the GPAs nor initiated any proceedings for almost a decade. The explanation furnished by the appellant that she became aware of the transactions only in the year 2008 upon inspection of records in the office of the Sub-Registrar does not inspire confidence, particularly when the evidence on record indicates that both the appellant and PW-1 (appellant's husband) were engaged in real estate business.

52. Further, the appellant neither entered the witness box to substantiate the allegations of forgery and misuse of blank signed papers nor examined the attesting witnesses to the receipts and GPAs, who were admittedly her own relatives. No expert evidence was also adduced to establish forgery of signatures or interpolation in the documents. In such circumstances, the contention that Exs. B7 and B9 were forged documents, cannot be accepted.

- 53.** The High Court also recorded findings regarding possession. Though the Trial Court relied upon the testimony of PW-2 (appellant's neighbour) to hold that possession remained with the appellant, the First Appellate Court upon reappreciation of evidence found the testimony unreliable. The High Court noted that the appellant failed to prove her possession over the suit properties, whereas the respondents had produced revenue records under Exs. B14 to B23, which were rightly relied upon by the First Appellate Court. We are conscious of the fact that mutation entries alone do not create or transfer ownership rights. However, when such revenue records continue for many years, are supported by registered sale transactions and remain unchallenged for a long period (a decade in the present case), they become relevant factors while considering possession and the conduct of the parties. Therefore, the High Court cannot be said to have committed any error in considering the mutation entries as one of the important circumstances in the case.
- 54.** One of the important circumstances against the appellant is the unexplained delay of nearly ten years in instituting the suit. The principal sale transactions were executed in the year 1998, whereas the suit came to be filed only in 2008. During this long period, the

GPA's remained uncanceled, mutation entries continued in the names of purchasers and further sale transactions also took place without any objection being raised by the appellant before any authority. Such conduct is inconsistent with the conduct normally expected from a person alleging fraudulent and unauthorized alienation of immovable property. Even assuming limitation commenced from the date of knowledge, the explanation offered by the appellant regarding delayed discovery of the transactions was not found credible by the courts below. Therefore, the prolonged silence and inaction on the part of the appellant for almost ten years was rightly taken into consideration by the High Court while assessing the case.

- 55.** The scope of interference by the High Court under Section 100 of the CPC is well settled and unless the findings recorded by the courts below give rise to a substantial question of law, the High Court cannot interfere. In the present case, the First Appellate Court, being the final court on facts, undertook a reappraisal of the oral and documentary evidence on record and reversed the judgment and decree of the Trial Court with reasoned findings. The High Court, upon independent examination of the record, concluded that no

substantial question of law arose for consideration. We find no perversity, patent illegality or jurisdictional error in the said conclusion warranting interference by this Court.

- 56.** For the aforesaid reasons, we are of the considered view that the appellant has failed to make out any case warranting interference with the impugned judgment and order dated 03.01.2017 passed by the High Court of Judicature at Madras in Second Appeal No. 714 of 2016.
- 57.** The appeal is accordingly dismissed.
- 58.** Pending application(s), if any, shall stand disposed of.

.....**J.**
[UJJAL BHUYAN]

.....**J.**
[VIPUL M. PANCHOLI]

NEW DELHI
22nd MAY, 2026