

Ramesh Kumar & Anr vs Furu Ram & Anr. Etc on 18 August, 2011

Equivalent citations: 2011 AIR SCW 5763, 2011 (8) SCC 613, 2012 (1) AIR JHAR R 766, AIR 2011 SC (CIVIL) 2462, (2011) 5 MAD LW 73, (2011) 8 MAD LJ 1121, (2011) 3 ARBILR 477, (2011) 9 SCALE 16, (2012) 1 CIVLJ 315, (2011) 2 CLR 542 (SC), (2011) 6 MAH LJ 842, (2012) 1 ANDHLD 53, (2012) 3 UC 1997, (2012) 5 CAL HN 183, 2011 (107) AIC (SOC) 1 (SC)

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Bench: A.K. Patnaik, R. V. Raveendran

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 7085-7086 OF 2011

[Arising out of SLP (C) Nos. 10049-10050 of 2010]

Ramesh Kumar & Anr.

... Appellants

Vs.

Furu Ram & Anr. etc.

... Respondents

J U D G M E N T

R.V.RAVEENDRAN, J.

Leave granted. For convenience parties will also be referred by their ranks in the suit or by name.

2. The appellants - two brothers, are the co-owners with equal shares, in lands measuring in all 98 Kanals and 19 marlas situated in village Udana, Tehsil Indri, District Karnal. They entered into an agreement to sell the said lands to the sons of Furu Ram and Kalu Ram (brothers) the respective first respondent in these two appeals, on 18.10.1991 for a consideration of Rs.14,22,000/- and received Rs.1,00,000 as earnest money. As per the terms of the agreement, the balance was to be paid by the purchasers at the time of registration of the sale deed and the sale was to be completed by 31.1.1992.

The case of appellants (Ramesh Kumar & Naresh Kumar)

3. The respondents were not in a position to pay the balance of the sale consideration and therefore failed to get the sale completed by 31.1.1992.

The respondents requested for refund of the earnest money of Rs.100,000/-.

The appellants were not willing to return the earnest money in view of the breach by the respondents. There was a panchayat in that behalf wherein it was decided that the appellants should permit the respondents to cultivate their said lands for a period of one and half years without any rent in satisfaction and discharge of the claim for refund of Rs.100,000/-. In pursuance of the said panchayat settlement, appellants delivered possession of the suit lands to the respondents. The respondents represented that they would reduce the terms of the said settlement into writing and requested the appellants to come to Kurukshetra to sign some papers. The appellants trusted the respondents as it was a panchayat settlement and went to Kurukshetra, and signed the papers given by the respondents, under the bonafide belief that they were signing papers relating to the terms of the aforesaid settlement. The respondents also asked the appellants to appear in court and confirm the same. The appellants accordingly went to the court and nodded their assent when asked whether they were agreeable for the settlement.

4. Some months thereafter, a suit was filed against appellants in June 1992 by one Lal Singh and others claiming pre-emption. During the pendency of that suit, the appellants learnt that the respondents had obtained a mutation in their favour on the basis of some decrees obtained by them from the court of Senior Sub-Judge, Kurukshetra. On verification, the appellants were surprised to learn that consent orders had been passed by the court of Sr. Sub-Judge, Kurukshetra on 30.3.1992 in C.S.No.366/1992 and C.S.No.367/1992, directing decrees be drawn in terms of arbitration awards dated 13.3.1992 made by one Chandra Bhushan Sharma, Advocate, Kurukshetra, appointed as per reference agreements dated 12.3.1992.

5. According to appellants, the agreements dated 12.3.1992, the arbitration awards dated 13.3.1992, the consent decrees dated 30.3.1992 and the mutations in favour of respondents were all illegal, null and void and non-est, being the result of fraud and misrepresentation on the part of respondents. According to appellants, the allegations in the said agreements, awards and as also the complaints in CS Nos.366 and 367 of 1992 that appellants had borrowed Rs.8 lacs from Furu Ram and Rs.8 lacs from Kalu Ram agreeing to repay the same with interest at 2% per month, that they had given their lands to Furu Ram and Kalu Ram as they were not able to repay the two loans of Rs.800,000/- each, were

all false. They alleged that they had not engaged any counsel for appearance in CS Nos.366 and 367 of 1992, nor signed any written statements, nor participated in any arbitration proceedings, nor made any statements agreeing for making decrees in terms of any award. The appellants claimed that they only signed some papers which respondents had represented to be documents relating to giving their lands on licence basis for one and half years instead of returning the earnest money deposit of Rupees One Lakh. The appellants therefore filed two suits on 11.11.1993 (renumbered as CS No.63 and 64 of 1997) in the court of the Civil Judge, Junior Division, Kurukshetra, against Furu Ram and Kalu Ram respectively for a declaration that the judgments and decrees dated 30.3.1992 in C.S.No.366/1992 and 367/1992 (by which the awards dated 13.3.1992 were made the rule of the court), the agreements dated 12.3.1992, the awards dated 13.3.1992, the proceedings in C.S.No.366/1992 and 367/1992 and the mutations in pursuance of the said decrees were all null and void, non-est and not binding on them and for the consequential relief of possession of the suit properties. In the said suits (CS No.63 of 1997 and 64 of 1997) the arbitrator 'C.B. Sharma' was impleaded as the second defendant.

The case of respondent (Furu Ram and Kalu Ram)

6. In their respective written statements in the two suits, Furu Ram and Kalu Ram alleged that they were ready to get the sale deeds registered on the date fixed for sale as per the agreement of sale dated 18.10.1991, but the appellants evaded, and therefore the matter was referred to Arbitrator C B Sharma by both parties for settlement. It was further alleged that the Arbitrator recorded the statements of appellants as well as respondents and made the awards. They contended that the awards made by the arbitrator and the decrees made in terms of the awards were lawful and valid.

The Proceedings

7. In the two suits filed by appellants (C.S.Nos.63 and 64 of 1997) the trial court framed appropriate issues as to whether judgments and decrees dated 30.3.1992 were null and void; whether plaintiffs were entitled to possession; whether the suits were not maintainable; whether the suits were not within time; and whether plaintiffs were estopped from filing the suits, by their own conduct; and whether the suits were bad for misjoinder/non-

joinder of parties. Parties led oral and documentary evidence in support of their cases.

8. The trial court decreed the two suits of appellants by common judgment dated 7.2.1998. The trial court held that as the awards dated 13.3.1992 created a right in immovable properties in favour of the respondents who did not have any pre-existing right therein, they were compulsorily registrable; and as the arbitration awards were not registered under the Registration Act, 1908, they were invalid and consequently the judgments and decrees dated 30.3.1992 of the court, making decrees in terms of the said awards were also invalid. In view of the said finding the trial court declared that the decrees dated 30.3.1992, the agreements dated 12.3.1992, the awards dated 13.3.1992 and the mutations were illegal, null and void, not binding on the plaintiffs and granted the relief of possession.

In the course of the said judgment, the trial court however held that the evidence of the advocate Sudhir Sharma (DW-3) and the arbitrator C.B. Sharma (DW-1) showed that the appellants had full knowledge of the facts and circumstances of the two cases (CS Nos.366 and 367 of 1992) and only thereafter they filed written statements admitting the claims; and that therefore the case of the appellants that the consent decrees dated 30.3.1992 were obtained by fraud and misrepresentation could not be accepted.

9. The respondents filed appeals against the said common judgment and decrees dated 7.2.1998 of the trial court. The said appeals, filed on 19.3.1998, renumbered as C.A. No.37/2003 and 38/2003, were allowed by the first appellate court (Addl. District Judge, Kurukshetra) by judgment dated 3.8.2004 and the common judgment and decrees of the trial court in the two suits were set aside and the suits filed by the appellants were dismissed with costs. The first appellate court held that the consent decrees in terms of the awards could not be challenged on the ground that they were not registered; that having regard to section 32 of the Arbitration Act, 1940, no suit would lie on any ground whatsoever, for a decision upon the existence, effect or validity of an award, nor could any award be enforced, set aside, modified or in any way affected, otherwise than as provided under the said Act; that an award could be challenged or contested only by an application under section 33 of the Act, and an award could be set aside only on any of the grounds mentioned in section 30 of the said Act. The first appellate court further held that as no application was filed under sections 30 and 33 of the said Act by appellants for setting aside the awards and as the awards had been made rule of the court, the suits for declaration filed by the appellants were barred by section 32 of the Arbitration Act, 1940, and were not maintainable. The second appeals filed by the appellants against the said common judgment of the first appellate court were dismissed by the High Court by judgment dated 11.8.2009 holding that decrees passed by a court in terms of the arbitration awards under section 17 of the Arbitration Act, 1940, did not require registration and that arbitration awards could be challenged only by applications under section 33 of the said Act.

Questions for consideration

10. The said common judgment of the High Court is challenged in these appeals by special leave. On the contentions urged, the questions that arise for our consideration are as under:

- (i) Whether the suits by appellants were not maintainable?
- (ii) Whether the courts below were justified in holding that there was no fraud or misrepresentation on the part of the respondents in obtaining the decrees in terms of the awards dated 13.3.1992?
- (iii) Whether the arbitration awards dated 13.3.1992 were invalid for want of registration?
- (iv) Whether the orders dated 30.3.1992 directing that the said awards be made the rule of the court, invalid?

Re: Question (i)

11. The appellants sought a declaration that the orders dated 30.3.1992 passed by the Senior Sub-Judge, Kurukshetra in C.S.No.366 and 367 of 1992 (directing that decrees be drawn in terms of the awards dated 13.3.1992) and the decrees drawn in terms of the awards as also the agreements dated 12.3.1992 and the awards dated 13.3.1992 which led to such decrees, were null and void, as they were the result of fraud and misrepresentation; and that the mutations obtained on the basis of the said decrees were also null and void. In other words, the appellants were seeking a declaration that the proceedings before the court of Sr. Sub-Judge, Kurukshetra, in the two suits under sections 14 and 17 of the Arbitration Act 1940 resulting in the orders dated 30.3.1992 and decrees made pursuant to the said orders dated 30.3.1992 were null and void as they were vitiated by fraud and misrepresentation and for the consequential relief of setting aside the mutations based on such decrees and possession of the lands. The challenge to the validity of the agreements dated 12.3.1992 and awards dated 13.3.1992 was incidental to challenge the orders dated 30.3.1992 and the decrees drawn in pursuance of such orders. The first appellate court and the High Court have therefore erroneously proceeded on the basis that the suits were filed only for declaring that the arbitration agreements dated 12.3.1992 and awards dated 13.3.1992 were invalid and that suits for such declaration were not maintainable having regard to the bar contained in sections 32 and 33 of the Arbitration Act, 1940. What has been lost sight of is the fact that the challenge was to the orders dated 30.3.1992 making the awards rule of the court. To establish that the said judgments and decrees were obtained by fraud and misrepresentation and therefore invalid, it was also contended that the agreements dated 12.3.1992 and the awards dated 13.3.1992 and the proceedings initiated under sections 14 and 17 of the Arbitration Act, 1940 seeking decrees in terms of the awards were all fraudulent. Therefore, sections 32 and 33 of Arbitration Act, 1940 were not a bar to the suits (C.S.Nos. 63 and 64 of 1997) filed by the appellants.

Re : Question (ii)

12. The manner in which the agreements dated 12.3.1992 were entered, the awards dated 13.3.1992 were made and the said awards were made rule of the court, clearly disclose a case of fraud. Fraud can be of different forms and different hues. It is difficult to define it with precision, as the shape of each fraud depends upon the fertile imagination and cleverness who conceives of and perpetrates the fraud. Its ingredients are an intention to deceive, use of unfair means, deliberate concealment of material facts, or abuse of position of confidence. 'Fraud' is 'knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his detriment'. 'Fraud' is also defined as a concealment or false representation through a statement or conduct that injures another who relies on it in acting.

(vide The Black's Law Dictionary). Any conduct involving deceit resulting in injury, loss or damage to some one is fraud.

13. Section 17 of the Indian Contract Act, 1872 defines 'fraud' thus :

"17. `Fraud' defined.- `Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract :

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares fraudulent.

Explanation.- Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence, is in itself, equivalent to speech."

The word `fraud' is used in section 12 of Hindu Marriage Act, 1955 in a narrower sense. The said section provides that a marriage shall be voidable and annulled by a decree of nullity if the consent of the petitioner was obtained by `fraud' as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent. In the context in which it is used refers to misrepresentation, false statement, deception, concealment.

14. Differently nuanced contextual meanings of the word `fraud' are collected in P.Ramnatha Aiyar's Advanced Law Lexicon (3rd Edition, Book 2, Page 1914-1915). We may extract two of them :

"Fraud, is deceit in grants and conveyances of lands, and bargains and sales of goods, etc., to the damage of another person which may be either by suppression of the truth, or suggestion of a falsehood. (Tomlin) The colour of fraud in public law or administrative law, as it is developing, is assuming different shade. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. That is misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which power can be exercised."

Any wilful attempt to defeat or circumvent any tax law in order to illegally reduce one's tax liability

is a tax evasion which is termed as a tax fraud. The stamp duty payable under Stamp Act is considered to be a species of tax levied on certain transfer documents and instruments. Any wilful attempt to defeat the provision of the Stamp Act or illegally evade one's liability to pay stamp duty will be a stamp evasion which would amount to a fraud.

15. One of the plaintiffs (Naresh Kumar) was examined as PW-1 and Raj Kumar, a member of the Panchayat was examined as PW-2. The evidence of PW1 (Naresh Kumar) and PW2 (Raj Kumar) is consistent and narrate the events described in the plaints in the two suits showing the deceit and fraud practiced upon the appellants. The plaintiffs exhibited two documents that is revenue extracts showing the mutation in favour of the respondents and the decrees made in pursuance of the orders dated 30.3.1992 by the Sr. Sub-

Judge in CS Nos.366 and 367 of 1992.

16. The defendants - respondents did not step into the witness box to give their version, which leads to an adverse inference that if the defendants had examined themselves, their evidence would have been unfavourable to them (vide section 114 of Evidence Act, 1872 read with illustration (g) thereto).

They however examined five witnesses : C.B. Sharma, the arbitrator, was examined as DW-1; Ram Kumar, their power of attorney holder was examined as DW 2; Sudhir Sharma, their Advocate who appeared in C.S.No.366 and 367 of 1992, was examined as DW-3; Chander Pal, said to be a member of the panchayat was examined as DW4; and Devi Dayal, a court officer, was examined as DW-5 in connection with the production of documents from the court. They also got exhibited among other documents, the agreement of sale dated 18.10.1991, the reference agreements dated 12.3.1992 appointing C. B. Sharma as arbitrator, the statements of parties allegedly recorded by the Arbitrator on 12.3.1992, the awards dated 13.3.1992 made by the Arbitrator, the plaints, written statements and order-

sheets all dated 16.3.1992 and the final order dated 30.3.1992 in CS Nos.366 and 367 of 1992, the decrees in terms of the awards and the declarations made by appellants on 31.3.1992.

17. The oral evidence of defendants' witnesses (DW1 to DW4) unfolds a story, different from what was pleaded by them in their written statement.

We may refer to the said evidence briefly.

18. C. B. Sharma who was examined as DW-1 stated that the parties gave him the agreements dated 12.3.1992 appointing him as arbitrator, that as arbitrator he recorded the statements of the appellants and the respondents and on that basis, made the awards dated 13.3.1992. He states that appellants appeared before the court and consented to the award as per proceedings Ex.D4 dated 16.3.1992 and he identified them as their counsel before the court. On further questioning, he admitted that he was not aware about the transaction of sale and purchase between the parties or whether there was any dispute at all in regard to sale or purchase of land. He stated that the parties submitted an arbitration agreement in regard to a loan and that he gave the awards in regard to the

loan; and that the reference agreements dated 12.3.1992 were not in regard to any dispute relating to property nor about the sale or purchase thereof nor about specific performance of any agreement of sale and that the dispute was only in regard to money and he was not appointed as arbitrator to settle any dispute in regard to any land.

He also stated that he did not charge any fee in regard to the arbitration or making the awards.

19. DW2 - Ram Kumar, (son of Furu Ram), power of attorney holder of defendants, stated that the agreement of sale in regard to 98 kanals 19 marlas was got executed for a consideration of Rs.14 lakhs in favour of three sons of Furu Ram (Ram Swaroop, Veer Singh and Ram Kumar) and four sons of Kalu Ram (Bhagat Ram, Jagir Singh, Ramesh Kumar and Lala Ram); that Rs.One lakh was given as earnest money under agreement dated 18.10.1991;

that there was a dispute in regard to the price and the dispute was decided by a panchayat consisting of Chander Pal, Purushottam, Harbhajan, C. B. Sharma (Advocate) and Sudhir Sharma (Advocate) and Rs.15 lakhs was paid in cash in their presence to the appellants; that after paying the money it was decided that a court decree should be obtained in favour of the respondents and C.B. Sharma was then appointed as the arbitrator to obtain a decree; that C. B. Sharma made the awards and decrees were obtained from the court on the basis of the said awards.

20. DW-3 - Sudhir Sharma who was the counsel for the respondents stated that there was a dispute in regard to the sale price of the property agreed to be sold by appellants to respondents. There was a panchayat on 12.3.1992 where it was agreed that the sale price should be increased by Rs.200,000/-. In addition to the earnest money of Rs.100,000/-, earlier paid, another sum of Rs. fifteen lakhs was paid in cash by the defendants to the plaintiffs in full and final settlement before the members of the panchayat.

The parties felt that the expenses of stamp duty and registration of sale deed would be high and agreed for an arbitration award and a decree in terms of it. The panchayat resolved the dispute at around 1.30 p.m. Both parties and C.B. Sharma thereafter came to his chamber. The agreements dated 12.3.1992 referring disputes to arbitration, were prepared by the arbitrator C.B. Sharma. The said agreements were signed by the parties in his (Sudhir Sharma's) office. The parties had also given their statements to C.B. Sharma in his office. The arbitrator made the awards on 13.3.1992. On the instructions of respondents (Furu Ram and Kalu Ram), he filed the two suits under sections 14 & 17 of the Act for making decree in terms of the two awards in the sub-court on 16.3.1992. The owners of the land Ramesh Kumar and Naresh Kumar were impleaded as defendants 1 and 2 in the said two suits and the Arbitrator C.B. Sharma was impleaded as the third defendant. C.B. Sharma, represented defendants and 1 and 2 as their counsel in the two suits. The court recorded the statements of both parties. After the statements of the appellants (defendants in those suits) were recorded by the court, they were identified by their counsel C.B. Sharma. He stated (in cross-

examination) that the payment of Rs.15 lakhs was made after the appellants made statements before court agreeing for a decree in terms of awards.

21. DW-4 Chander Pal Singh stated that he was instrumental in getting the parties to enter into the agreement of sale; that dispute arose as respondents wanted to register sale deeds showing a lesser consideration and appellants wanted the sale deed for the full consideration; that therefore a panchayat was conveyed; that he was present when the negotiations took place before the panchayat and settlement was reached by agreeing for a price of Rs.16 lakhs; that Rs.15 lakhs was paid by Ram Kumar (Power of Attorney Holder of respondents) to appellants in the presence of Panchayat consisting of himself, Purushottam, Harbhajan and Sudhir Sharma. Sudhir Sharma, counsel for respondents got C.B.Sharma as Arbitrator to make an award. After the decrees were made in terms of the awards, he tore the receipt for Rs.15 lakhs given by appellants.

22. The respondents' version of what transpired as emerging from the evidence of their four witnesses (DW1 to DW4) (shorn of inconsistencies in the evidence) can thus be summarized as follows : The sale in terms of the agreement of sale dated 18.10.1991 did not take place, as the appellants unreasonably demanded an increase in price for executing the sale deed. The dispute was brought up before a panchayat. It was agreed before the panchayat that the respondents should pay a sum of Rs.15,00,000 in addition to earnest money of Rs.1,00,000/-, thereby increasing the price to Rs.16,00,000/- instead of Rs.14,22,000/-. The respondents paid the entire balance of Rs.15,00,000/- in cash in a lump sum to the appellants in the presence of the panchayat. To avoid the heavy expenditure towards stamp duty and registration charges for the sale deed, it was agreed that arbitration awards would be obtained in favour of respondents and the appellants would agree for decrees in terms of the awards, so as to confer title upon the respondents, instead of executing sale deeds. In pursuance of it, the parties entered into two agreements dated 12.3.1992 appointing C.B. Sharma, Advocate, as arbitrator. The said arbitrator recorded the statements of parties on 12.3.1992 and made awards dated 13.3.1992 declaring Furu Ram to be the owner in possession of 49 Kanals 10 Marlas of land and Kalu Ram to be the owner of 49 Kanals and 9 Marlas of land. Thereafter, Furu Ram and Kalu Ram filed petitions under sections 14 and 17 of the Arbitration Act, 1940 in the Court of the Senior Sub Judge, Kurukshetra praying that the awards in their favour be made the rule of the court. By orders dated 30.3.1992 the court directed decrees be drawn up in terms of the award. In pursuance of the decrees, Furu Ram and Kalu Ram also got the lands mutated to their names. The decrees dated 30.3.1992 in terms of the awards were valid and binding, and neither the decrees nor the awards were fraudulent.

23. We may now refer to the documentary evidence produced by the defendants - respondents, which narrate a completely different story.

24. The reference agreements dated 12.3.1992, the statements recorded by the Arbitrator on 12.3.1992 and the awards dated 13.3.1992, all stated that appellants had borrowed Rs.8 lacs from Furu Ram and Rs.8 lacs from Kalu Ram in November 1991 and had agreed to repay the same with interest at the rate of 2% per month that as they were not able to repay the amounts borrowed with interest, they agreed to give 49 kanals 10 marlas of land to Furu Ram and 49 kanals 9 marlas of land to Kalu Ram and delivered possession and confirmed the same before the arbitrator. The arbitral awards stated that the disputes relating to payment of Rs.8 lacs with interest thereon were referred to the Arbitrator, that the appellants had admitted borrowing Rs.8 lacs from Furu Ram and Rs.8 lacs from Kalu Ram and further admitted that being unable to pay the said amount, had given 49

kanals 10 marlas of land to Furu Ram and 49 kanals 9 marlas of land to Kalu Ram and therefore, Furu Ram has become the owner of 49 Kanals and 10 Marlas of land and Kalu Ram had become the owner of 49 kanals and 9 marlas of land.

25. The identical plaints dated 13.3.1992 in the two suits (CS Nos.366- 367 of 1992) under sections 14 and 17 of the Arbitration Act, 1940 filed by Furu Ram and Kalu Ram read as under :

"Application u/s 14/17 of the Arbitration Act to make the award dated 13.3.1992 the rule of the court.

Sir, It is prayed as under:-

1. That the respondents no.1 and 2 had borrowed a sum of Rs.8,00000/- from the applicant-plaintiff.
2. That the respondents no.1 and 2 failed to repay the amount and interest to applicant - plaintiff.
3. That vide agreement dt.12-3-1992 the respondent no.3 was appointed as Arbitrator to decide the matter.
4. That the respondent no.3 has decided the matter vide award dated 13- 3-1992.
5. That the applicant - plaintiff has been declared as owner in possession of the property mentioned in the award enclosed herewith.
6. That the applicant - plaintiff has been put in possession of the said property at the spot and is debarred from recovering the amount and interest from the respondents no.1 and 2.
7. That the respondents no.1 and 2 have refused to admit the award.
8. That the agreement and award were executed at Thanesar, Kurukshetra so this learned court has got jurisdiction to try this application.
9. That the required court fees is paid on the application.

It is, therefore, prayed that the award dated 13-3-1992 may kindly be made the rule of the court whereby the plaintiff-applicant may kindly be declared as owner in possession of the land measuring 49 Kanals 10 Marlas detailed as under:-"

[Note : The other plaint by Kalu Ram was identical except the extent which was 49 kanals 9 marlas and the description of the lands].

26. The written statements were also filed on the same day the suits were filed, that is 16.3.1992. The written statements were not signed by either of the appellants but were signed by C.B. Sharma (defendant no.3 in those suits) as advocate for the defendants 1 and 2 (appellants). The brief written statements stated that paras 1 to 7 of the plaint were correct and admitted and that paras 8 and 9 were legal and that therefore the suit be decreed.

27. The order-sheets dated 16.3.1992 in the said two suits, recorded that the appellants (defendants 1 & 2 in the suits) appeared and stated that they had no objection for decrees being made in terms of the award. The appellants signed the order-sheets and were identified by the arbitrator C.B. Sharma as their counsel. The cases (C.S.Nos.366 and 367 of 1992) thereafter came up before the learned Sr.Sub-Judge on 30.3.1992. The parties were not present. The orders of the court dated 30.3.1992 in both suits were identical and they are extracted below :

"Present : Counsel for the parties.

Heard. Since the parties are not at issue, so the award dated 13.3.1992 - Ex C1 is made the rule of the court. Decree sheet be prepared accordingly and the award dated 13.3.1992 - Ex C1 shall form the part of the decree sheet. The file be consigned to the record room."

28. We find three different versions from the pleadings and evidence led by the respondents. The case set forth in their written statements was completely different from the case made out in the evidence of their witnesses DW1, DW2, DW3 and DW4. More interestingly, the case set forth in the written statements and the case made out in the oral evidence were completely different from what is stated in the documentary evidence. Let us refer to them briefly.

(a) The written statements filed by the respondents merely stated that the appellants did not execute the sale deed, on the date fixed for sale, as per agreement of sale dated 18.10.1991 and therefore, and the said dispute was referred to arbitration and awards were made by the arbitrator on the basis of their statements and decrees were made in terms of the award.

(b) The evidence of DW1 to DW4 was that appellants unreasonably demanded the price to be increased from Rs.14,22,000/- to Rs.16,00,000/-, that the resultant dispute was referred to Panchayat, that a price of Rs.16,00,000/- was agreed before the Panchayat on 12.3.1992, that immediately the respondents paid the balance of Rs.15,00,000/- in cash to the appellants in the presence of the panchayat, that the respondents felt that the stamp duty and registration expenses were high and that therefore, it was agreed on the suggestion of their counsel that they should resort to the process of getting an arbitration award and decree to convey the title instead of execution of a sale deed. It was stated that C. B. Sharma was appointed as the arbitrator who made the awards and decrees were obtained in terms of the awards.

(c) The documentary evidence, that is the reference agreements, the statements recorded by the Arbitrator, the awards, the complaints in the suits under sections 14 and 17 of Arbitration Act, 1940, on the other hand do not refer to the agreement of sale or the payment of price. They showed that the appellants had borrowed Rs.8 lakhs from Furu Ram and Rs.8 lakhs from Kalu Ram, about four months prior to 12.3.1992, and had agreed to repay the same with interest at 2% per month; that thereafter, Furu Ram and Kalu Ram demanded the money and the appellants were not in a position to repay the loans and therefore a dispute arose; and that by mutual consent, C.B. Sharma was appointed as an Arbitrator and parties agreed to be bound by his decision. The appellants allegedly made statements before C.B. Sharma (Arbitrator) admitting that they had taken Rs.8 lakhs from Furu Ram and Rs.8 lakhs from Kalu Ram as loans, agreeing to repay the same with interest at 2% per month, and that as they did not have the means to repay the same, they had given 49 Kanals 10 Marlas to Furu Ram and 49 Kanals 9 Marlas of land to Kalu Ram and also delivered possession of respective lands to Furu Ram and Kalu Ram.

It is well settled that no amount of evidence contrary to the pleading can be relied on or accepted. In this case, there is variance and divergence between the pleading and documentary evidence, pleading and oral evidence and between the oral and documentary evidence. It is thus clear that the entire case of the respondents is liable to be rejected. The different versions clearly demonstrate fraud and misrepresentation on the part of the respondents.

29. The trial court in its judgment in C.S.Nos.63 and 64 of 1997 inferred from the evidence of DW1 (C.B. Sharma) and DW3 (Sudhir Sharma) that appellants had knowledge of the full facts and circumstances of the cases filed under sections 14 and 17 of the Arbitration Act and that with such knowledge, they had filed written statements therein, admitting the facts and, therefore it could not be said that the judgments and decrees dated 30.3.1992 were obtained by misrepresentation and fraud. But the documentary evidence produced by the respondents clearly showed that in CS Nos. 366 and 367 of 1992, no notice/summons were issued to defendants; that appellants (defendants 1 & 2) did not sign the written statements which admitted the plaint averments; that the arbitrator who was the third defendant in those suits, very strangely appeared as advocate for defendants 1 and 2 (appellants) and signed the written statement and made a statement before the court on 30.3.1992 that defendants did not have any objection to the awards. All this lends credence to the case of appellants that respondents had conspired with DW1 and DW3 and got certain documents prepared and persuaded appellants who were barely literate, to give their consent on 16.3.1992 by misrepresenting to them that they were giving consent for giving their lands for cultivation to respondents for a period of one and half years as per the settlement. The trial court ignored relevant evidence and drew a wrong inference that there was no fraud or misrepresentation.

30. Let us now refer to the fraudulent manner in which the orders were obtained from the Sr. Sub-Judge, Kurukshetra for making decrees in terms of the award. According to the evidence of respondents, the events took place as under :

Stage I (12.3.1992)

(a) Settlement before the Panchayat that appellants 12.3.1992 should sell the property to the respondents for Rs.16 lacs

(b) Decision of respondents to avoid stamp duty and 12.3.1992 registration charges and instead have an arbitration award through Advocate C. B. Sharma as arbitrator and then get decrees in terms of the awards

(c) Reference agreements prepared by CB Sharma for 12.3.1992 referring the dispute to himself

(d) The signing of the reference agreement by parties 12.3.1992

(e) Statements of parties recorded by CB Sharma in 12.3.1992 the office of Sushil Sharma, Advocate for respondents wherein appellants confirmed that they had given the lands to respondents Stage II (13.3.1992)

(a) Awards made by the Arbitrator 13.3.1992

(b) Complaints under sections 14 and 17 of Arbitration Act 13.3.1992 prepared by Sushil Sharma, on behalf of respondents Stage III (16.3.1992)

(a) CS Nos.366 and 367 of 1992 under sections 14 16.3.1992 and 17 of the Arbitration Act filed by respondents on

(b) Written statements in the said suits signed by C.B. 16.3.1992 Sharma as Advocate for appellants (defendants in the suit) filed on

(c) The statements of appellants that they were 16.3.1992 consenting to the decree, recorded by the court on Stage IV

(a) Orders made directing decrees being drawn up in 30.3.1992 terms of the award

(b) Undated declaration by appellants confirming that 31.3.1992 they had agreed for decrees in favour of Furu Ram and Kalu Ram attested by an Executive Magistrate (with the endorsement "I know Naresh Kumar and Ramesh Kumar and they have signed in my presence made" by Sushil Sharma, advocate for respondents) The above narration will show that even according to the evidence produced by the respondents the entire arbitration was sham and nominal, that an alleged Panchayat had settled the dispute on 12.3.1992, that thereafter, Sushil Sharma, advocate for respondents and C.B. Sharma, an advocate who was made to act as an Arbitrator at the instance of respondents created a bunch of documents and obtained the signatures of the appellants and created proceedings for obtaining decrees in terms of the awards.

31. C. B. Sharma was an advocate engaged by respondents through their counsel Sushil Sharma, to make awards in their favour. On 12.3.1992, he is appointed as arbitrator. On 13.3.1992, he makes the awards and gives them to respondents. On 16.3.1992, he signs the written statements of defendants (appellants herein) in the proceedings under sections 14 and 17 of Arbitration Act, 1940 as their counsel. Though he is the third defendant in the said two suits (C.S. Nos.366 and 367 of 1992), he appears as the counsel for defendants 1 and 2 without their consent or knowledge. On 30.3.1992, he makes a statement on behalf of defendants 1 and 2 that they have no objection for decrees being made. We fail to understand how a counsel can do these things. His acts are fraudulent.

32. We may next refer to the inconsistencies and improbabilities in the evidence. According to respondents, the appellants had refused to execute the sale deed, for the price of Rs.14,22,000/- and demanded an increase in the price; that in the presence of a panchayat, an increase in price was agreed on 12.3.1992, and that the entire balance price of Rs.15,00,000/- was immediately paid in cash on 12.3.1992 in the presence of the panchayat.

While DW2 says that Rs.15,00,000/- was paid in cash in the presence of the Panchayat. DW-3 Sudhir Sharma states that the payment was made after the appellants made a statement before the court agreeing for a decree in terms of the awards, that is on 16.3.1992. Further, it is highly improbable that the respondents would have attended the Panchayat readily carrying Rs.15,00,000/- in cash and paid it immediately after the settlement. If the said evidence is accepted, the entire documentary evidence showing that two sums of Rs.800,00/- each were given as loans to appellants about four months prior to 12.3.1992 and the lands were given to respondents as appellants could not repay the same are proved to be false and fraudulent.

33. We may next refer to the stamp fraud committed by respondents.

According to the DW-1 to DW-4 under the agreement of sale dated 18.10.1991, the sale price agreed was Rs.14,22,000/-, that in the presence of a panchayat, there was a settlement and the price was increased to Rs.16,00,000 for 98 kanals 19 marlas of land, that the said price was paid half being the sale price in regard to an extent of 49 Kanals 10 marlas sold to Furu Ram and the remaining half being the sale price in regard to an extent of 49 Kanals 9 Marlas sold by appellants to Furu Ram and Kalu Ram. The respondents wanted to avoid payment of stamp duty and registration charges on the sale deeds. They were advised by their lawyer that they could get decrees from a civil court in terms of an arbitration award so that sale deeds need not be executed and stamp duty and registration charges need not be paid. It was decided by the respondents on the advice of their lawyer to get arbitration awards declaring them as owners and also get court decrees in terms of the awards. . On the same day (12.3.1992) their lawyer got reference agreements prepared through the arbitrator C.B. Sharma which were executed by the parties to get arbitration awards by consent. In short the agreements, arbitration awards and decrees were sham and nominal, the object of respondents being to evade the stamp duty and registration charges payable with respect to a sale deed, by obtaining decrees from the court in terms of the awards which declared their title.

34. Let us refer to another facet of such stamp fraud. There can be a reference to arbitration only if there is a dispute and there is an agreement to settle the dispute by arbitration. If the parties had

already settled the disputes before a panchayat for sale of half of the property to Furu Ram and another half to Kalu Ram for a consideration of Rs.8,00,000 plus Rs.8,00,000/-, and appellant had received the entire consideration, and delivered possession, there was no dispute between the parties, that could be referred to arbitration. The respondents, on the advice of their advocate Sudhir Sharma decided to have a nominal and sham arbitration proceedings and awards by C.B. Sharma and get decrees made in terms of the awards, only to avoid stamp duty and registration charges. The entire procedure was fraudulent because (i) there was no dispute between the parties; (ii) there was no reference of any dispute to arbitration; (iii) the reference agreements dated 12.3.1992 were prepared and executed in pursuance of a pre-existing arrangement to have a collusive awards; (iv) the arbitrator was not required to decide any dispute between the parties, nor was there any adjudication of the dispute by the arbitrator. DW-1 who claims to be the arbitrator clearly stated in his evidence, that the reference under the agreements dated 12.3.1992 was in regard to a dispute relating to loan of Rs.800,000/-

advanced to each appellant. Therefore, the statements in the two awards that the reference agreements dated 12.3.1992 were in regard to a dispute in regard to the failure to repay the two loans of Rs.800,000/- each and interest thereon; that the appellants admitted before the Arbitrator that they had borrowed Rs.8,00,000 from Furu Ram and Rs.8,00,000 from Kalu Ram; that the appellants did not have the means to repay the same and that instead of repaying the amount with interest, that they had therefore given to Furu Ram an extent of 49 Kanals 10 Marlas and to Kalu Ram, 49 Kanals 9 marlas of land; that Furu Ram and Kalu Ram confirmed that they had already taken the said lands in lieu of the amount due to them, are also false and at all events, sham averments to create two awards. The references to arbitration, the proceedings before the arbitrator, the awards of the arbitrator, and the proceedings in court to get decrees in terms of the awards, and the decrees in terms of the award were all thus sham and bogus, the sole fraudulent object being to avoid payment of stamp duty and registration charges.

35. The modus operandi adopted by the respondents to obtain title to lands without a conveyance and without incurring the stamp duty and registration charges due in respect of a conveyance by obtaining a sham and collusive arbitration awards when there was no dispute, and then obtaining a nominal decree in terms of the said awards would be a fraud committed upon the court and the state government by evading liability to pay the stamp duty and registration charges. The irregularities, illegalities, suppressions and misrepresentations which culminated in the orders dated 30.3.1992 in CS NOs.366 and 367 of 1992 directing that the awards dated 13.3.1992 be made decrees of the court, show that the decrees in terms of the awards were obtained fraudulently.

36. Normally, this Court would not interfere with a finding of fact relating to fraud and misrepresentation. But as material evidence produced by the defendants - respondents had been ignored and as the courts below failed to draw proper inferences therefrom and had ignored a cause of fraud, we are constrained to interfere with reference to a question of fact. The suits were decreed by the trial court on the ground that the decrees were null and void and all the reliefs sought were granted. When the decrees dated 30.3.1992 were held to be null and void, the question of plaintiffs challenging any other finding in the judgment did not arise. Therefore when the first appellate court and High Court held that the decree was not null and void, the plaintiffs-appellants were entitled to

urge all grounds to show that the entire transaction and arbitration proceedings were fraudulent and the decree was also a result of fraud. Be that as it may.

Re : Point (iii)

37. Chapter III of Registration Act, 1908 relates to registrable documents.

Section 17 enumerates the documents which are compulsorily registrable and the exceptions to the categories of documents which are compulsorily registrable. The relevant portions of the said sections are extracted below:

"17. Documents of which registration is compulsory (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877 or this Act came or comes into force, namely:-

xxx xxx xxx

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees, and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and (2) Nothing in clauses (b) and (c) of sub-section (1) applies to-

xxx xxx xxx

(vi) any decree or order of a court except a decree or order expressed to be made on a compromise, and comprising immovable property other than that which is the subject-matter of the suit or proceeding]."

38. A reading of these provisions make the following position clear (a) any non-testamentary document purporting or operating to create, declare any right, title or interest in any immoveable property of the value of more than Rs.100 is compulsorily registrable; (b) that an order or decree of a court is not compulsorily registrable even if it purports or operates to create, declare any right, title or interest in any immoveable property of the value of more than Rs.100; (c) that if the decree or order of the court is not rendered on merits, but expressed to be made on a compromise and comprises any immoveable property which was not the subject mater of the suit or proceeding, such order or decree is compulsorily registrable; and (d) that as clause (iv) of sub-section (2) of section 17 excludes decrees or orders of court, but does not exclude awards of arbitrator, any arbitration award

which purports or operates to create, declare any right, title or interest in any immoveable property of the value of more than Rs.100 is compulsorily registrable.

39. As noticed above, the reference agreements dated 12.3.1992 were not in regard to any agreement of sale or any dispute relating to immoveable property, or in regard to the lands in regard to which the award was made. It did not refer to the lands in question. No dispute regarding immoveable property was referred to arbitration or was the subject matter of the arbitration. The alleged subject matter of arbitration was non-payment of Rs.8,00,000 said to have been borrowed by each of the appellants. The arbitrator recorded an alleged statement by the borrowers (appellants) that they had received Rs.8,00,000 from Furu Ram and Rs.8,00,000/- from Kalu Ram; that they were not able to refund the same and therefore they had given lands measuring 49 Kanals 10 Marlas to Furu Ram and another 49 Kanals 9 Marlas to Kalu Ram; and that Furu Ram and Kalu Ram confirmed that they had obtained possession of the said land. The awards therefore declared that Furu Ram and Kalu Ram had become the absolute owners of the lands in question. Thus the awards are clearly documents which purport or operate to create and declare a right, title or interest in an immoveable property of the value of more than Rs.100 which was not the subject of the dispute or reference to arbitration. Therefore the awards were compulsorily registrable. If they were not registered, they could not be acted upon under section 49 of the Registration Act, 1908 nor could a decree be passed in terms of such unregistered awards. Unregistered awards which are compulsorily registrable under section 17(1)(b) could neither be admitted in evidence nor can decrees be passed in terms of the same.

40. In Ratan Lal Sharma vs. Purshottam Harit AIR 1974 SC 1066, this court held :

"So in express words it purports to create rights in immovable property worth above Rs.100/- in favour of the appellant. It would accordingly require registration under S.17, Registration Act. As it is unregistered, the Court could not look into it. If the court could not, as we hold, look into it, the Court not pronounce judgment in accordance with it. Sec. 17, Arbitration Act presupposes an award which can be validly looked into by the Court. The appellant cannot successfully invoke Section 17..... we are of opinion that the award requires registration and, not being registered is inadmissible in evidence for the purpose of pronouncing judgment in accordance with it."

In Lachhman Dass vs. Ram Lal - 1989 (3) SCC 99, this Court held :

"In the present case the award declared that half share of ownership of the appellant to the lands in question "shall now be owned" by the respondent in addition to his half share in the lands. On a proper construction of the award, it is thus clear that the award did create, declare or assign a right, title and interest in the immovable property. It is not merely a declaration of the pre-existing right but creation of new right of the parties. Since the award affected the immovable property over Rs.100 it was required to be registered.

An award affecting immovable property of the value of more than Rs.100 cannot be looked into by the court for pronouncement upon the award on the application under Section 14 of the Arbitration Act unless the award is registered.

As the court could not look into the award, there is no question of the court passing a decree in accordance with the award and that point can also be taken when the award is sought to be enforced as the rule of the court."

The courts below have not considered or decided this aspect at all.

Re: Question (iv)

41. If an award was not genuine, but was collusive and sham, the court will not and in fact can not make it a rule of the court. As noticed above, there should be a dispute, there should be an agreement to refer the dispute to arbitration, there should be reference to arbitration, there should be an adjudication or decision by the arbitrator after hearing parties, for a valid arbitration. If the parties had already settled their disputes and the arbitration award was only a ruse to avoid payment of stamp duty and registration with respect to a sale deed and declare a title in persons who did not have title earlier, then the entire proceedings is sham and bogus. In fact, C.B. Sharma was not really an arbitrator, nor the proceedings before him were arbitration proceedings and the awards were not really arbitration awards. If all these facts which have a bearing on the making of the award and the validity of the award are suppressed before the court and the court was misled into making decrees in terms of the awards, necessarily the proceedings are fraudulent and amounted to committing fraud on the court. In these circumstances the decree in CS Nos.366 and 367 of 1992 on the file of the Sr. Sub-Judge, Kurukshetra were invalid.

Conclusion

42. We, therefore allow these appeals, set aside the judgments of the first appellate court and High Court and restore the decrees of the trial court decreeing the suits filed by the appellants.

.....J. (R. V. Raveendran)J. (A.K. Patnaik) New Delhi;

August 18, 2011