Allahabad High Court
Smt. Garima Singh vs Sri Sanjai Singh And Ors. on 27 May, 1996
Equivalent citations: II (1996) DMC 422
Author: S Dikshit
Bench: S Dikshit
JUDGMENT Shobha Dikshit, J.

1. Petitioner has invoked the revisional/supervisory jurisdiction of this Court praying for quashing of Order dated 19.2.1996 passed by the learned Civil Judge (Senior Divisional), Sitapur, in Misc. Case No. 23 of 1996 by which an application moved by her under Section 151 of the Code of Civil Procedure for setting aside the ex parte decree of divorce dated 27.3.1995 allegedly obtained by the respondent/husband, a sitting Rajya Sabha Member, by means of a fraud upon the Court has been rejected as not maintainable. Petitioner's grievance is that her sacrosanct marriage with the respondent performed in the year 1973 as per Hindu customary rites and ceremonies at Allahabad has been dissolved by the impugned decree behind her back, thereby not only stripping her of her marital status but also the dignity and honour of a married Hindu wife. Petitioner alleges that a collusive suit for decree of divorce under Hindu Marriage Act was got filed by the respondent through an imposter impersonating the petitioner Smt. Garima Singh and thus fraudulently obtained the impugned decree of divorce dated 27.3.95.

2. Since fraud on the Court and serious irregularities in the conduct of the case have been alleged, therefore, it is necessary to narrate the facts as averred by the petitioner in the application under Section 151 of the Code of Civil Procedure in detail, the same are as follows:

3. Suit No. 78 of 1995 was instituted on 25.2.1995 by one Smt. Garima Singh, claiming to be the wife of Sri Sanjai Singh, the respondent herein, in the Court of Civil Judge (Senior Division), Sitapur, under Section 13 of the Hindu Marriage Act praying that by means of a decree of divorce, her marriage with Sri Sanjai Singh, respondent, resident of Lucknow be dissolved. It was averred in the suit that the petitioner was married to the respondent on 14.12.1973 as per Hindu rites and ceremonies at Allahabad and the parties last resided together till 2.4.1992 at Sitapur. Out of the said wedlock three children, now aged between 18 years to 12 years, were born. The sole ground on which the dissolution of marriage was sought was stated in para 4 of the said petition, "that with the passage of time, disputes due to difference of opinion even in petty matters arose between the parties to this petition and it has become quite impossible for them to live together." Complete desertion was stated to be with effect from 2.4.1992, i.e., the date since when the respondent/husband is residing at Lucknow. It was specifically averred in para 8 of this petition that there was no collusion between the parties The cause of action was said to have accrued on 2.4.1992 when husband and wife finally parted company at Sitapur to live separately. The territorial jurisdiction, therefore, was also claimed at Sitapur. The suit was valued for the purpose of pecuniary jurisdiction at Rs. 50,000/-.However, a fixed Court-fee of Rs. 37.50was affixed on the petition for divorce. Interestingly a photograph of young Smt. Garima Singh was affixed on the first page of the petition.

4. Suit was presented on 25.2.1995 through Counsel and summons were issued on the same day and 15.3.1995 was fixed for filing of written statement and 22.3.1995 for framing of issues. On 15.3.1995 written statement was not filed and neither party appeared before the Court as per proceedings recorded in the suit. On 22.3.1995 the suit was directed to proceed ex-parte in the absence of the respondent and decree of divorce was granted on 27.3.1995. Petitioner states that she never appeared before the Court as is also clear from the proceedings.

5. A written statement was filed in the said suit by the respondent re-iterating the ground of divorce taken in the petition, i.e., "with the passage of time, difference of opinion in petty matters has been arisen between the parties", collusion was denied and respondent also prayed for grant of decree of divorce. In other words, there was no opposition to the prayer of the petitioner to grant the decree of divorce.

6. Thereafter it is stated that a news item was published in the daily newspaper The Pioneer' on 23.4.1995 viz. "Sanjai Singh marries Amita." Reading the said news, the petitioner was shocked. She immediately contacted the respondent on telephone who accepted that a decree of divorce has been passed by a competent Court of Law. The respondent however did not disclose to the petitioner that the decree was passed by the Civil Judge at Sitapur. It is only on 25.7.1995 that the respondent while he was at Lucknow, on persistent queries being made by the petitioner and her father, disclosed that the decree for divorce was granted by the Court of Civil Judge at Sitapur and he married Amita Modi on 21.4.1995. It is only thereafter that the petitioner immediately rushed to Sitapur and engaged an Advocate who inspected the record which revealed that the aforesaid civil suit for divorce under Hindu Marriage Act was instituted in the name of Smt. Garima Singh, petitioner herein against the opposite party which was decided on 27.3.1995. Her Counsel who inspected the file took all the necessary details of the suit and the proceedings and informed tine petitioner accordingly.

7. The case of the petitioner is that she never filed any suit under Hindu Marriage Act seeking a decree of divorce, dissolving her marriage performed in the year 1973, that she never resided at Sitapur with respondent as was stated in the petition. Completely shocked and unnerved at what had happened in her life, the petitioner, a mother of three grown up children, sought legal advice and on the basis of the same she filed a Suit No. 271 of 1995 for cancellation of the decree of divorce at Sitapur itself. In this case the petitioner has denied that she had any differences with her husband, that she last resided at Sitapur, that she ever engaged any Counsel at Sitapur or that she ever knew an Advocate by the name of V.K. Singh practising at Sitapur, that she took any steps whatsoever in the said suit as she has no knowledge of how the suit proceeded when she never filed the same. She very specifically denied that she ever visited Sitapur in her life before the filing of the Suit No. 271 of 1995 and pleaded that a systematic fraud has been practiced not only against her by someone impersonating her but also on the Court of Civil Judge, Sitapur, and the decree, of divorce has thus obviously been obtained by the said imposter in the name of the petitioner in collusion and conspiracy with the respondent. She has specifically denied ever residing at the address thatwas given in the first suit, i.e., that of one Sri N.K. Singh. She claimed that she always lived either at Allahabad at her parental house or at Amethi, District Sultanpur, her matrimonial home or at Lucknow with the respondent who was a Rajya Sabha Member. On such averments in the suit, it has been pleaded by her that the Courts at Sitapur had no territorial jurisdiction to entertain the suit.

While disputing the valuation in the first suit, the subsequent suit has been valued at Rs. 50,000/- because the fictitious suit was so valued and she has prayed for the cancellation of the decree passed in the former suit. On these pleadings, the petitioner prayed for the setting aside of the decree passed in Suit No. 78 of 1995 obtained fraudulently by the husband. After filing the suit the petitioner was again advised by her lawyers that she could also invoke the inherent jurisdiction of the same Court which had passed the impugned decree under Section 151 of the Code of Civil Procedure on the ground that a decree obtained by fraud was a nullity and could therefore be set-aside. Petitioner accordingly moved an application under Section 151 of the Code of Civil Procedure before the same Court of Civil Judge (Senior Division) which was numbered as Misc. Case No. 23 of 1996, praying inter-alia for the setting aside of the ex-parte collusive and fraudulently obtained decree of divorce as well as the entire proceedings in Suit No. 78 of 1995. In this application all the attending circumstances which in the petitioner's opinion go to establish a case of fraud upon the Court are set out in great detail. According to her neither the petitioner nor the respondent appeared before the Court (as is revealed from the record of proceedings) and the Trial Court without adhering to the due procedure of law and the rules framed under the Hindu Marriage Act and the Family Courts' Act as also the provisions of Code of Civil Procedure passed the impugned decree in great haste. Violation of mandatory provisions of Section 23(2) of Hindu Marriage Actand Order 32 Rules 3 and 5 of the Code of Civil Procedure have been alleged. Since no effort was made by the learned Judge to assist the parties in arriving at a settlement/ reconciliation. According to her it is a suspicious circumstance that the suit was decreed within a month which is most unusual. It has also been stated by the petitioner that she never applied for the certified copy of the decree and everything has been done by some imposter impersonating Smt. Garima Singh. It was accordingly prayed in this application that the learned Court under its inherent powers be pleased to set aside/recall the orders dated 25.2.1995 by which the cognizance of the suit filed by some imposter was taken, the order dated 22.3.1995 by which the order to proceed ex-parte was passed and order dated 27.3.1995 by which the judgment and decree has been passed. This application was opposed by the respondent on the ground that the same is not maintainable and the only remedy available to the petitioner in me alleged facts and circumstances of the case is filing of a fresh suit, which has already been availed of by her, therefore, the application is liable to be rejected. Respondent chose not to file reply to this application on merits until the question of maintainability was decided. The learned Trial Court after hearing both the parties, rejected the said application on 19.2.1996 on the ground that it is not maintainable as such declined to consider the merits of the application. Aggrieved by the said rejection of the application, the petitioner has approached this Court by filing the present Civil Revision under Section 115 of the Code of Civil Procedure read with Article 227 of the Constitution of India with the prayer to set aside the impugned orders dated 12.2.1996 and 19.2.1996 passed by the learned First Additional Civil Judge (Senior Division), Sitapur, and while treating the application as maintainable allow it on merits also thereby quashing the entire proceedings of the Suit No. 78 of 1995 and restore it to its original number to proceed in accordance with law.

8. Respondent has entered appearance. An application raising preliminary objection has been filed by the respondent before this Court with the prayer that the preliminary issue that present petition under Section 115 of the Code of Civil Procedure is not maintainable before this Court be decided first. However, no reply on the merits of the case has been filed before this Court.

9. I have heard the learned Counsel for the parties at great length who have no objection if the present petition is decided finally at this stage subject to deciding preliminary objection first.

10. Mr. N.K. Seth, appearing for the petitioner, made elaborate arguments with great ability and all possible vehemance at his command to make out a case for interference by this Court either in its revisional jurisdiction or in the alternative in its supervisory jurisdiction for the reason that fraud has been committed against a Court of law. He further argued on the scope of inherent powers vested in every Court of law under Section 151 of the Code of Civil Procedure and contended that this power should be exercised without fail in discharge of judicial functions by Courts of law to meet the ends of justice. According to him a Court of law would be failing in its duty if it does not exercise the inherent powers vested in it to undo the alleged fraud and rectify its own mistakes/irregularities, if any, committed by it during the course of the proceedings, and the resultant miscarriage of justice to a party. Mr. Seth, in support of his aforesaid contentions, cited several authoritative pronouncements of the Apex Court of this Country as also of various High Courts which shall be referred to and discussed at a later stage in this judgment. In short, the main thrust of Mr. Seth's argument is that if the petitioner is able to establish pritna facie that fraud as alleged has been practised against the Court below as well as against the petitioner in order to obtain judgment then the same should not be permitted to perpetuate even for a minute and it should be undone by the same Courts or this Court in its supervisory jurisdiction at the earliest possible opportunity. Mr. Seth, quoting extensively from 'Texts of Hindu Law' on the concept of marriage, also made a passionate appeal to the judicial conscience of this Court on behalf of the petitioner to provide justice to an innocent woman for restoration of her marital status, dignity and honour which she has been enjoying since 1973. The aforesaid submissions shall be discussed in detail after the preliminary objections raised by the respondent are decided.

Preliminary Objections.

11. Mr. R.N. Trivedi, learned Senior Advocate, appearing for the respondent, made a frontal attack on the maintainability of the instant revision petition on the ground that the Forum for filing a revision is determined in accordance with the valuation of the suit in question. Under Section 115 of the Code of Civil Procedure a revision to High Court lies against the order of Trial Court only if the valuation of the suit was above rupees one lac now this limit has been raised to rupees five lacs, otherwise in suits for lesser valuation the revision would lie to the District Judge. He further submitted that Chapter IX Rule 7(h) of the High Court Rules, 1952, as amended, also requires that the valuation of the suit should be stated in the memorandum of revision for the purpose of determining jurisdiction and the Court fee. Since the suit is valued at rupees fifty thousand o and the valuation is also not mentioned in the memorandum of revision, Mr. Trivedi contended that the present revision, if at all maintainable against the impugned order, shall lie before the District Judge alone and not before this Court. He, therefore, urged that the present revision be rejected outright on this ground alone. He also pressed into service Section 15, Code of Civil Procedure, to support his contention that every suit has to be filed in the Court of the lowest grade competent to try it.

12. It was next contended that even assuming that the valuation is not relevant for suits which are filed under Section 13 of the Hindu Marriage Act as a fixed Court fee of Rs. 37.50p. is required to be

paid as per the Court Fees Act, even then every suit has to be filed before the District Court within the limit of those original civil jurisdiction parties to the marriage resided or last resided together. 'District Court' has been defined in Section 8(b) of the Hindu Marriage Act. To contend that the 'District Court' means Civil Court of Civil Judge alone, learned Counsel relied upon the provisions of Section 3 of Bengal, Agra and Assam Civil Courts Act, 1887 (in short Bengal Act) and the relevant notification issued by the State Government dated 22.9.79 and the High Court dated 6.5.1995 under the aforesaid Bengal Act and the Hindu Marriage Act respectively. It was argued by him that the Court of Civil Judge which is notified by the State Government as having jurisdiction in matters dealing with the Hindu Marriage Act is 'District Court' within the definition of Section 3(b) of Hindu Marriage Act, and therefore any appeal or revision would lie to the District Judge and not to High Court. In support of this contention he referred to two decisions, one of this Court in the case of Major Dalchand Singh Pratap v. Swarn Pratap, AIR 1965 All. 46, and the other of Bombay High Court in Gangadhar Rukhamji v. Manjulal Gangadhar, AIR 1960 Bombay 42.

13. Mr. R.N. Trivedi has also challenged the locus of the petitioner to maintain the present revision petition on the ground that there is no unity of identity between the revisionist and the plaintiff. He submitted that if the claim of the petitioner is that she was not a party to the suit and the suit was filed by some imposter men she could not in law make an application in the suit under Section 151 of Code of Civil Procedure. He also referred to the provisions of Order 1 Rule 10 of the Code of Civil Procedure to contend that there can be no substitution of the sole plaintiff by another plaintiff. He also urged that whatsoever could not be done under the provisions of Code of Civil Procedure cannot be permitted to be done indirectly either in exercise of inherent powers or the revisional powers of the Court. According to him the only remedy available to the petitioner under the law is to file a fresh suit for cancellation of the decree passed in the earlier suit and for this purpose Mr. R.N. Trivedi placed reliance on Section 9 of the Code of Civil Procedure and Section 34 of the Specific Relief Act. He also placed reliance on the decision in the case of Sisir Kumar Chandra v. Manorama Chandra, AIR 1972 Calcutta 283, wherein a suit filed for cancellation of a decree granting probate alleged to be invalid and fraudulent being obtained by consent was held to be maintainable.

14. It was next contended by the learned Counsel for the respondent that in case the present revision is held to be maintainable before this Court or if the view taken by this Court is that against the order passed by the Civil Judge appeal or revision would lie to the High Court in that event the respondent would lose a valuable right of appeal first before the District Judge and then to this Court, hence the same would violate Article 14 of the Constitution of India. In support of this contention the well known decision of the Apex Court in the case of A.R. Antulay v. R.S. Nayak, 1988 (2) SCC 602, was relied upon.

15. At this stage a question was posed to Mr. Trivedi by the Court as to what is the position with regard to family Courts ? Learned Counsel very fairly conceded that in whichever District of Uttar Pradesh a Family Court has been constituted under the Family Courts Act, 1984, the Principal Judges are District Judges/Additional District Judges and under Section 19 of this Act, appeal is provided to the High Court alone. Learned Counsel did not dispute the factual position prevailing within the State of Uttar Pradesh that in whichever District a Family Court has been set up the parties being aggrieved by the decision of the Principal Judge can prefer an appeal to she High Court

alone and not to the District Judge. Therefore, undisputedly two alternatives for filing petitions under Hindu Marriage Act and appeals arising therefrom have been provided within the State of Uttar Pradesh. Reference was also made to Section 21A of the Family Courts Act. However, this is an issue with which I am presently not concerned this case, but it is indeed surprising that this fact has not been noticed by the High Court and the State Government that the litigants under Hindu Marriage Act are in a state of uncertainty in this regard.

16. Summing up his arguments on this issue Mr. R.N. Trivedi submitted that Section 115 of the Code of Civil Procedure clearly provides for exclusive jurisdiction of the District Judge and the High Court and the same are mutually exclusive and are not dependent upon the choice of the parties. The jurisdiction according to him has to be determined as per operation of law being dependent upon the valuation of the suit and on no other consideration. In these circumstances he submitted that the present petition be rejected as not maintainable.

17. Mr. N.K. Seth repelled the maintainability argument vehemently and referred to the provisions of Hindu Marriage Act, Family Courts Act and the notifications referred to hereinabove. He contended that the 'District Court' includes any other Civil Court since order passed by a Civil Court or a District Court can only be challenged before the High Court and not the District Judge. He cited a decision of this Court Som Prakash Singh v. Dalpat Rai, 1986 AWC 396. Learned Counsel further contended that on an examination of the scheme of Family Courts Act the legislative intent dearly appears to be that all such appeals should lie to the High Court. In so far as the arguments in respect of pecuniary jurisdiction is concerned Mr. Seth submitted that the valuation fixed at rupees fifty thousand was at the behest of an imposter and the same cannot bind the petitioner. For the petitioner her marriage cannot be valued in terms of money. Mr. Seth contended that the argument raised by the respondent's Counsel that there should be unity of identity between the plaintiff and the revisionist can hold no water in the facts and circumstances of this case. The present case relates to decree of divorce being allegedly obtained by an imposter pretending to be the petitioner herein. The question of unity of identity in case of a decree of divorce is not relevant because once a decree of divorce is pronounced it serves as a judgment in ram binding not only the parties to tine decree but the public at large. Mr. N.K. Seth in support of this argument referred to a Constitution Bench decision of Hon'ble Supreme Court in the case of A.R. Antalay v. R.S. Nayak, 1988 (2) SCC 602, wherein Hon'ble Venkatachaliah, J. (as he then was) in his dissenting judgment spoke for the Court when he said : "But in certain cases, motions to set aside judgments are permitted where, for instance a judgment was rendered in ignorance of the fact that a necessary party had not been served at all, and was wrongly shown as served or in ignorance of the fact that a necessary party had died and the estate was not represented. Again, a judgment obtained by fraud could be subject to an action for setting it aside. Where such a judgment obtained by fraud tended to prejudice a non-party, as in the case of judgments in ram such as for divorce, or jactitation or probate etc. Even a person, not eo-nomine party to the proceedings, could seek a setting aside of the judgment."

18. Mr. Seth contended that even otherwise a stranger, adversely effected by the judgment or divorce, can invoke the inherent powers of a Court and referred to a decision of this Court reported in AIR 1982 Allahabad 23. To the stance taken by Mr. Trivedi that filing of second suit for cancellation of decree is the only remedy open to the petitioner, Mr. Seth submitted that the

respondent was estopped from adopting this defence before this Court in view of the objection taken by the respondent in his written statement to the maintainability of the suit No. 217 of 1995 filed by the petitioner for cancellation of the decree. The thrust of the respondent's arguments was that the present revision is not maintainable for the reasons recorded hereinabove whereas Mr. Seth took the position that the revision is maintainable. He however canvassed an alternative view (and one that I am inclined to accept for reasons recorded hereinafter) that this Court could convert a petition under Article 227 of the Constitution of India. In these circumstances, though I have noticed the rival contentions of both the parties, since both Counsel laid great emphasis on the same, but I do not propose to express my opinion on the issue of the maintainability of this petition under Section 115 of the Code of Civil Procedure because I am inclined to treat the instant petition as one under Article 227 of the Constitution of India in exercise of supervisory jurisdiction of this Court.

19. Scope of Article 227 of the Constitution of India. Mr. N.K. Seth argued that if this Court does not accept his contention that the revision in the present form is maintainable before this Court then it should treat this as a petition under Article 227 of the Constitution of India exercising its supervisory powers and quash all the orders passed by the Court below and restore the suit to its original number. According to the learned Counsel recourse to Article 227 would be justified on the extraordinary facts and circumstances of this case where it is manifest that fraud has been practised on the Court by the respondent in order to obtain judgment and decree in his favour.

20. In support of the aforesaid contention Mr. Seth referred to a Constitution Bench decision of Hon'ble Supreme Court, State of Gujarat v. Vakhatsingh ji Vajesinghji Vaghela, AIR 1968 SC 1481, where the dispute was regarding the claim of compensation and the High Court while entertaining special appeal had issued certain directions regarding mode of computation of the compensation; The decision of the High Court was challenged before the Hon'ble Supreme Court where an objection was raised that the decision of the Tribunal made under Section 12 of the Abolition Act was final and conclusive and the High Court had no jurisdiction to interfere with the same. Rejecting this contention Hon'ble Bachawat, J., speaking for the Constitution Bench held as follows : "Mr. Bindra submitted that Section 12 of the Abolition Act makes the decision of the Tribunal final and conclusive and the High Court had no jurisdiction to interfere with this decision, particularly in respect of solatium of 15 per centum and non-irregational bunds, tanks and wells. We are unable to accept this contention. Article 227 of the Constitution gives the High Court the power of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercised jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extended to keeping the Subordinate Tribunals within the limits of their authority and to seeking that they obey the law. It was the duty of the Revenue Tribunal to award compensation to the Taluqdars in accordance with the provisions of Sections 7 and 14 of the Act. The High Court had jurisdiction to revise the decision of the Tribunal on a misreading of the provisions of Sections 7 and 14 declined to do what was by those provisions of law incumbent on it to do. Tested in this light, it does not appear that the High Court exceeded its jurisdiction under Article 227 in revising the decision to the Tribunal in respect of the solatium and irrigational bunds, tanks and wells. Numerous cases were pending before the Revenue Tribunal in respect of compensation payable to the Taluqdars under the Bombay Taluqdari Tenure Abolition Act. To prevent miscarriage of justice it was necessary for the High Court to lay down general

principles on which compensation should be assessed so that the Tribunal may act within the limits of their authority. On finding that the Tribunal had misconceived its duties under Sections 7 and 14, the High Court could not only set aside its decision, but also direct it to make further inquiries after taking evidence. As pointed out in Hari Vishnu Kamath v. Syed Ahmed Ishaque, 1955-1 SCR 1104 at p. 1120, AIR 1955 SC 233 at pp 242-243, the High Court in the exercise of its supervisory jurisdiction under Article 227 cannot only annul the decision of the Tribunal but can also issue further direction in the matter."

21. In yet another case reported in 1977 (2) SCC 437, Trimbak Gangadhar Telang v. Ramchandra Ganesh Bhidre, Hon'ble Supreme Court though rejected the appeal under consideration on the facts of the case but all the same on this scope of Article 227 of the Constitution of India it held : "It is also well established that it is when an order of a Tribunal is violative of the fundamental basic principles of justice and fair play or where a patent or flagrant error in procedure or law has crept or where the order passed results in manifest injustice that a Court can justifiably intervene under Article 227 of the Constitution:"

22. A Division Bench of Delhi High Court faced with the situation where the plaintiff omitted to file a revision or review against the order passed by the High Court directing the plaintiff to value the suit at a specific amount held that even if the revision filed by the plaintiff is not maintainable before the High Court in order to correct the said direction under Section 115 of the Code of Civil Procedure it can interfere under Article 227 of the Constitution of India. The Division Bench, placing reliance on a Full Bench decision of its own High Court, held that it is settled law that ambit of the power under Article 227 is very wide to permit interference in cases where the ends of justice do require such a course and even in cases where an appeal lay but was not filed or appeal had become time barred the Court can interfere under the said jurisdiction.

23. Mr. Seth has referred to several decisions on the scope and power of the High Court under Article 227 of the Constitution of India but all the judgments referred at the Bar need not be discussed here. However, some of the cases referred are Shailendar Nath Neogy v. Purnendu Sen, AIR 1971 Calcutta 169; Ram Bahal Singh v. Chhotey Narain Singh, AIR 1975 Patna 241. In the supervisory jurisdiction under Article 227, if the Court comes across any order which is contrary to law, the Court has ample jurisdiction to quash the same suo muto); Calcutta Chemical Co. Ltd. v. D.K. Barman, AIR 1969 Patna 371.

Mr. R.N. Trivedi made a feable attempt to dispute the said legal position and referred to following decisions :

1982 ACJ 608, AIR 198 Madhya Pradesh 140.

24. Waryam Singh and Anr. v. Amarnath and Anr., reported in AIR 1954 SC 215. This case relates to rent dispute and the lower Court when failed to exercise its jurisdiction under Section 13(2)(i) of East Punjab Urban Rent Restriction Act as also the Appellate Authority, then the Judicial Commissioner Himachal Pradesh, exercised its jurisdiction under Article 227 of the Constitution of India and interfered in the matter by setting aside the orders of the Court below. This order was

challenged before the Hon'ble Supreme Court which declined to entertain the appeal and held that no doubt the power under Article 227 of the Constitution has to be exercised most sparingly and only in appropriate cases, in order to keep the Subordinate Courts within their bound but not for correcting mere errors. It further held that when the Courts act arbitrarily and refuse to exercise jurisdiction vested in them, then it is imperative for this Court to interfere under its supervisory jurisdiction. This case therefore does not support the respondent.

25. The next case referred to and relied on by the learned Counsel is Miss Maneck Gustedji Burjarji v. Sarfaraz Ali Nawab Ali Mirza, reported in 1977(1) SCC page 227. In this case, the Hon'ble Supreme Court after examining the facts of the case came to the conclusion that since undisputedly an appeal lay to the High court against the decree of the City Civil Court, therefore, the High Court ought not to have exercised its jurisdiction under Article 227 of the Constitution of India by entertaining a special civil application and it is on these grounds that it declined to interfere. However, Hon'ble Supreme Court has also observed that the principle to exercise or not to exercise the jurisdiction under Article 227 of the Constitution is not a right and inflexible one as there can be extraordinary circumstances when despite the existence of an alternative legal remedy, the High Court may interfere in favour of a party to see that justice is done to it. This case also does not support the argument cf the learned Counsel for the respondent. In fact, it supports the case of the petitioner as she claims existence of such extraordinary circumstances in the case before us where an imposter has pursuaded the Court to pass a decree.

26. In the case of Bhutnath Chaterjee v. State of West Bengal and Ors., reported in 1969(3) SCC 675, which was a matter relating to land acquisition and determination of quantum of compensation, Hon'ble Supreme Court held that High Court cold not entertain a petition under Article 227 of the Constitution against the order of the District Judge and determine a question of fact. In this case also, against the award of compensation by the District Court, an appeal lay to the High Court. Learned Counsel for the respondent also placed reliance on two decisions of the Apex Court in the case of Satyanarayan Laxminarayan Hedge and Ors. v. Mallikarjun Bhavanappa Tirumale reported in AIR 1960 SC 137, and Mohd. Yunus v. Mohd. Mustagim and Ors. reported in AIR 1984 SC 38 on the proposition of law that a mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227 of the Constitution of India. This jurisdiction according to Supreme Court is only to see that an inferior Court or Tribunal functions within the limit of its authority and not to correct an error apparent on the face of the record much less an error of law. Mr. Trivedi lastly referred to another decision of Hon'ble Supreme Court in the case of Babhutmal Raichand Oswal v. Laxmi Rai R. Tarte and Anr., reported in AIR 1975 SC 297, wherein it has been held that the power of supervision under Article 227 of the Constitution cannot be invoked to correct an error of fact which only a superior Court can do under its statutory power in a Court of law. The High Court under this supervisory power cannot convert itself into a Court of Appeal. I have minutely examined these cases and find that none of these decisions deal with the situation at hand. The question for determination before this Court is as to when a party approaches the High Court with the grievance that a Subordinate Court has been misled due to misrepresentation by a party or a fraud has been practised upon it or has not followed the procedure established by law thereby enabling a party to defraud it or has failed to exercise its inherent powers pursuant to which it has been persuaded to pass a decree which otherwise in law and the facts of the case it could not

have passed ban this Court remain a silent spectator and decline to exercise its supervisory power on the ground that an alternative remedy is available and permit perpetuation of a fraud upon the Court for a moment more than is necessary.

27. I have carefully perused these decisions, referred to by both the learned Counsel and am of the considered opinion that for all intent and purposes the scope of application under Section 115 of the Code, or Article 227 of the Constitution of India is not very different and as and when it comes to the notice of the High Court that any Subordinate Court or Tribunal has acted in violation of the fundamental principle of justice and fair play or where a patent, flagrant error in procedure or law has crept in or where the order passed has resulted in manifest injustice because of fraud played on the Court this Court can justifiably intervene under Article 227 of the Constitution of India. I, therefore, accept the contentions put forward by Mr. N.K. Seth and over-ruling the preliminary objection raised by Mr. Trivedi treat this as a petition under Article 227 of the Constitution of India and proceed to decide the same accordingly.

28. The question, therefore, which now arises is as to whether in the facts and circumstances of the present case there has been such patent error, manifest irregularity or fraud or failure to exercise jurisdiction vested in the Court below so as to justify the exercise of power under Article 227 of the Constitution of India by this Court.

29. Scope of inherent powers under Section 151 of Code of Civil Procedure. The main contention raised by the learned Counsel for the petitioner was that the learned Civil Judge failed to exercise the inherent powers vested in it under Section 151 of the Code of Civil Procedure, which reads as follows :

"151. Saving of inherent powers of Court: Nothing in this Code shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

30. It was submitted that the scope and extent of inherent powers under the Code is very wide and as and when the ends of justice require the Court to act, it has ample powers to entertain the application and pass appropriate orders. There are situations after situations when the Courts of law have to exercise such powers to ensure justice or to undo injustice. According to him, every Court has been vested with inherent powers to act exdebito justitiae to do that real and substantial justice for the administration of which alone it exists. To prevent abuse of the process of the Court is the duty of the Court itself and such powers are inherent to every Court in addition to and complimentary to the powers expressly conferred under the Courts. He, therefore, contended that once the Court comes to the conclusion that a prima facie case of fraud against the Court is made out by a party, then it is obliged to see that such fraud is undone and the injustice is removed forthwith. In cases where the fraud is committed against the Courts, the Courts in India have always taken the view that it is the inherent power of a Court to correct its own proceedings where it has been misled. He further contended that every Court has inherent powers to recall its order which had the effect of perpetuating an injustice.

31. Following decisions on this aspect of the matter have been considered by me :

As early as in the year 1910, Bombay High Court in Basangowda Hanmantgowda Patil and Ors. v. Churchigirigowda Yogengowda and Anr., reported in Volume 34, 1910 Indian Law Reports (Bom.), held as follows in regard to a decree passed on the basis of the alleged authority given to a lawyer by a party: "That the defendant says is that there was a suit against him, and that the suit was declared to have ended by reason of a decree passed with his consent. He never consented, and the result has been that there has been fraud committed upon the Court The Court was persuaded to sign a decree to which the defendant had never consented, and that upon the representation that he had consented to it. Therefore, once the Court is asked to go back upon its own procedure, it is not a question whether there is any section in the Civil Procedure Code to warrant the action of the Court amending its proceedings. It is an inherent power of every Court to correct its own proceedings where it has been misled. We must, therefore, discharge the rule with costs.

32. Lord Denning in a case dealing with fraud, Lazarus Estates Ltd. v. Beasley, reported in 1956 I.Q.B. 702, held as follows :

"No Court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.

33. A Division Bench of Patna High Court in the case of Sadho Saran Rai v. Anant Rai, reported in AIR 1923 Patna 483, held that the Court has inherent power to correct its own proceedings where it is satisfied that in passing a particular order it was misled by one of the parties. In this case a consent decree for partition was passed but when it was detected that some figures have been tampered with and the compromise actually filed was not the compromise which was signed, the High Court in the judgment which has been quoted with approval time and again held as follows:

"The question then arises whether the Court had power to set aside the compromise decree either in review or in the exercise of its inherent power. There is a long list of cases of the Calcutta High Court, of the Bombay High Court and of the Madras High Court in which it has been broadly laid down that a Court has inherent power to correct its own (sic) passing a particular order it was misled by one of the parties. It was Urged before us on behalf of the defendants-appellants that the only remedy is by suit and that once the decree has been signed there is no jurisdiction in the Court to set it aside on the ground of fraud. A distinction has been drawn in the cases of the Indian Courts between a fraud practised upon a party and a fraud practised upon the Court. It has been laid down that where the question is whether there was a consent in fact, there is power in the Court to investigate the matter in a properly constituted application and to set aside the decree if it is satisfied that a party never in fact consented to it but that the Court was induced to pass the decree on the fraudulent representation made to it that the party had consented to it, but that where there is a consent in fact, that is to say, where the parties have filed a compromise petition and they admit that they have filed it, but one of the parties alleges that his consent was procured by fraud, the Court cannot investigate the matter either in review or in the exercise of its inherent power, and that the only remedy of the party is to institute a suit to set aside the decree on the ground of fraud. In

other words, the factum of the consent can be investigated in summary proceedings, but the reality of the consent cannot be so investigated."

34. Learned Counsel for the petitioner thereafter referred to another decision of a Division Bench of Patna High Court in the case of Shiv Sagar Singh v. Sitaram Kumhar and Ors., reported in AIR 1952 Patna 48, which is also a case relating to fraud on Court there it has been held as follows:

"If fraud has been committed upon the party and as a result of that fraud the Court has been misled into passing certain orders which otherwise it would not have passed then it is a fraud upon the Court itself. In such a case, under its inherent powers, the Court is not only entitled to, but it must, set aside any order or orders which may have been passed by it upon a false representation. In that view of the matter, I must hold that the Court below had ample jurisdiction to set aside its order under Section 151 of the Code; and this position in law is settled beyond dispute as will appear from the cases of this Court in Sadho Saran Rai v. Anant Raj, 2 Pat. 731 and Chutur Prasad v. Mt. Bishuni Kuer, AIR 1943 Pat. 13."

35. In the case of Ram Chandra & Sons Sugar Mills v. Kanhaiya Lal, reported in AIR 1966 SC 1899, Hon'ble K. Subbarao, J., speaking for the Apex Court, again reiterated its view on the scope of inherent power of a Court under Section 151 of the Code of Civil Procedure in following words:

"Having regard to the said decisions, the scope of the inherent power of a Court under Section 151 of the Code may be defined thus : The inherent power of a Court is in addition to and complementary to the powers expressly conferred under the Code. But that power will not be exercised if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the Code. If there are express provisions exhaustively covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions. Whatever limitations are imposed by construction on the provisions of Section 151 of the Code, they do not control the undoubted power of the Court conferred under Section 151 of the Code to make a suitable order to prevent the abuse of the process of the Court."

36. A Full Bench of Allahabad High Court in the case of Abdul Rasheed v. Sitaramji Maharaj Virajman and Ors., AIR 1974 Allahabad, 275, while considering the order dismissing the execution application inadvertently in a routine manner without hearing the decree-holder issued specific directions to hear the application, it held that the learned Munsiff could under the provision of Section 151, CPC recall his order passed inadvertently and restore the execution application. The argument that the order passed by the Munsiff was appealable, therefore, the application under Section 151 of the Code of Civil Procedure would not be entertained was rejected and it was held :

"It was thus an error of the Court and it is axiomatic that no prejudice should be caused to a party on account of an error committed by the Court. Hence the remedy of appeal notwithstanding, the learned Munsiff could act ex debito justitiae in order to correct his own error."

37. In a somewhat similar circumstances relating to matrimonial dispute a learned Single Judge of Orissa High Court while considering the question as to whether a consent decree obtained by exercise of fraud, undue influence or coerion is liable to be recalled or set aside by the Court passing the decree in exercise of its inherent powers and whether the Trial Court was right in assuming jurisdiction under Section 151 of the Code of Civil Procedure by recalling its decree on the facts and the circumstances of the case, R.C. Patnaik, J. (as he then was) held, in the case of Smt. Puspalata Rout v. Damodar Rout reported in AIR 1987 Orissa 1, as follows:

"There is almost unanimity in views amongst High Courts in India that where fraud is practised on a party in contradiction to fraud practiced on Court, the remedy of the aggrieved party lies in filing a separate suit and not by invoking the inherent jurisdiction of the Court. There, however, fraud is practised upon the Court, the matter can be set right in exercise of powers under Section 151, CPC."

38. In a recent decision the Apex Court in the case of Dadu Dayal Mahasabha v. Sukhdeo Arya and Ors., reported in 1990 (1) SCC 189, where the plaint was permitted to be withdrawn on the basis of prayer purported to be made on behalf of the plaintiff held as follows :

"The main question which required consideration however is whether the Trial Court has jurisdiction to cancel the order permitting the withdrawal of the suit under its inherent power, if it is ultimately satisfied that Hari Narain Swami was not the secretary of the village Society and was, therefore, not entitled to withdraw the suit. The position is well established that the Court has 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. The principle was correctly discussed in the judgment in Sadho Saran Rat v. Anant Rai, AIR 1923 Patna 483, pointing out distinction in cases between fraud practised upon a Court and the fraud practised upon a party."

In another recent decision of the Hon'ble Supreme Court, in the case of S.P. Chengalvaraya Naidu (Dead) v. Jagannath (Dead) reported in 1994(1) SCC 1, Kuldip Singh, J. speaking for the Court said as follows :

"Fraud avoids all judicial acts, acclesiastical or temporal "observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of the law that a judgmentor decree obtained by playing fraud on the Court is a nullity and nonest in the eyes of law. Such a judmment/ decree-by the first Court or by the highest Court-has to be treated as a nullity by every Court, whether superior or inferior. It can be challenged in any Court even in collateral proceedings."

In this case, one party had obtained preliminary decree and when the same was sought to be made final, the other party raised an objection that since the same was obtained by fraud, therefore, the application be dismissed. This contention of the party was accepted by the trial Judge and he dismissed the application for grant of final decree. The other party respondents plaintiffs went in appeal before the High Court. The High Court, however, allowed the appeal and set aside the order of (sic) aggrieved party approached the Hon'ble Supreme Court. Hon'ble Supreme Court noticing the facts of the case observed as follows:

"The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the Court. The High Court, however, went haywire and made observation which are wholly perverse. We do not agree with the High Court that there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the Court-process a convenient lever to retain the illegal- gains indefinitely. We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation."

"The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the Court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the Court auction on behalf of the Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the Court. We do not agree with the observations of the High Court that the appellants defendants could have easily produced the certified registered copy of Ex. B15 and non-suited the plaintiff. A litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as the opposite party".

40. On a conspectus of case law it is quite evident that a Court or Tribunal has inherent powers to recall orders obtained by practising fraud on it. The Court never becomes functus officio because it retains the jurisdiction to recall such orders on the ground of fraud, misrepresentation and other similar grounds.

41. In the light of the aforesaid settled legal position, the question, therefore, arises as to what constitutes a fraud on the Court and whether in the facts and circumstances of this case, can it be said that a fraud has been practised on the Court and if so is it such a fraud as would require the exercise of inherent powers of the Court.

Case of merits

42. Learned Counsel for the petitioner in order to establish fraud upon the Court argued that the serious irregularities which are apparent in the conduct of proceedings in Suit No. 78 of 1995 constitute fraud upon the Court. He quoted the following instances indicative of the same in the application under Section 151, CPC.

1. The petition under Section 13 of the Hindu Marriage Act was not drafted on the instructions of the petitioner and she never signed and verified the same. The petitioner never engaged or authorised any lawyer or a lawyer by the name of Sri V.K. Singh who is alleged to have appeared in the said case before the Trial Court. The said Advocate has nowhere made an endorsement before the Trial Court that he identified the petitioner as required by the Rules of the High Court.

2. The unauthentic photograph of the petitioner of her young age has been affixed on the first page of the petition though it is not required under any rule of law.

3. Total non-compliance with the procedure and rules framed under General Rules (Civil) as indicated by the following Chart:

Date	Peshi Register of suit's clerk	Peshkar's register	Presiding Officer's register	Munsarim's register
25.2.95	Not shown	Not shown	Not shown	Shown
15.3.95	Not shown	Not shown	Not shown	Not shown
20.3.95	Not shown	Not shown	Not shown	Not shown
21.3.95	Not shown	Not shown	Not shown	Not shown
22.3.95	Not shown	Last case with different ink).	Not shown	Not shown

Note :

(i) Overwriting in respect of date of 22.3.95 in proceedings dated 25.2.95.

(ii) Oath Commissioner's Register do not bear any signatures of the Deponent (S.No. 4102

(iii) Neither notice inviting objections to the decree nor proforma proposed decree agai

4. The register of the Oath Commissioner does not bear the signatures of Smt. Garima Sin

5. There is non-compliance of Order V, Civil Procedure Code, regarding issuance of proce

6. No notice inviting objections to the decree or proforma proposed decree were invited

7. The written statement was not filed on the date fixed, i.e., 15.3.1995, though the written statement was ready and sworn on 14.3.1995. Inter- estingly as per record the process was filed on 14.3.1995 and the written statement was also sworn on the same day at Sitapur. The record does not reveal as to when and how it was filed. It is hard to believe that process was filed, notice was prepared and issued and served on the respondent at Lucknow, the written statement prepared and sworn on the same day.

8. The petitioner was not called upon to appear herself to depose to prove the averments made in the plaint even though she was said to be at Sitapur that day and the evidence on affidavit was accepted.

9. The provisions of Section 23(2) of the Hindu Marriage Act and order 32- A Rules (sic) and 35 of the Code of Civil Procedure were given a complete go-bye and no attempt whatsoever was made by the Presiding Officer to bring reconciliation between the parties which is the mandate of this special law.

10. Signature of Smt. Garima Singh on the petition, affidavits, Vakalat- nama are denied by her on the ground that she never signed these papers/ documents and also that the signatures made by someone else look very different from the naked eye itself.

11. The petition under Section 13 of the Hindu Marriage Act and the written statement filed by the respondent are in same language and appear to have been typed on the same typewriter.

43. Learned trial Judge considered this application after giving opportunity to the respondent to file a reply. Respondent however filed objections on main- tainability of the application alone and not on merits. The learned Judge after hearing the parties framed following questions for himself and seemingly an- swered them as well.

"XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX"

44. He, after hearing the parties, come to the conclusion that the application in question is not maintainable as most of the issues raised therein would require leading of evidence and since there is no such provision in law to permit leading of evidence while exercising inherent powers therefore the same cannot be adjudicated. Learned Judge also held that the only remedy.... which she has already done therefore she cannot be permitted to sail in two boats simultaneously. Finding itself unable to exercise the inherent powers, the learned Judge rejected the application as not maintainable vide his order dated 19.2.1996. Learned Counsel for the respondent defended this view and submitted that the impugned judgment does not suffer from any illegality or infirmity. In the alternative it was contended that if this contention is not accepted then the case be remanded for

consideration of the application under Section 151 of the Code of Civil Procedure on merits.

45. I have perused the impugned judgment dated 19.2.1996 and disagree with the reasoning given by the learned Judge. He has failed to appreciate the seriousness of the irregularities/illegalities committed by the Civil Judge while conducting Suit No. 78 of 1995. He failed to appreciate that the said Judge who decided the suit gave a complete go-bye to the procedure provided for conducting suits and specially matrimonial cases and decided the same without any application of mind and in great haste. The Civil Judge had failed to discharge its obligations to call upon the parties to effect reconciliation in accordance with law and the law settled by various pronouncements of the Court of law of this country. Even more surprisingly when the plaint revealed that there were three children from the marriage, two of whom were minors, the learned Civil Judge made no attempt to find out who shall have care and custody of these children and what provision, if any, has been made for their maintenance by the parties. Such ominous haste in disposing of a divorce petition should have caused grave concern to the learned Judge dealing with the application under Section 151, CPC and he could not have shut his eyes to atleast see the records. The learned Judge also failed to notice that decree of divorce granted in suit No. 78 of 1995 is wholly collusive. Divorces are not granted for the asking, but the parties are put to trial to prove that the ingredients for grant of the divorce as provided in Hindu Marriage Act do exist. In our society, where marriage is considered a sacrament, a union of two souls, a trust, it certainly cannot be dissolved and the trust be broken merely because of petty differences. There has to be something more to it. Of course, if the parties come to a mutual agreement that they cannot live together any more, then they can apply for consent decree of divorce under Section 13B of Hindu Marriage Act after fulfilling the pre-requisite for the same, otherwise it is the duty of the Court to ensure that collusive decree of divorce is not granted. In this case even if it is assumed that real Garima Singh filed the suit in question, the petition is clearly collusive and the decree has been granted without application of mind. Thus, I hold that all these aspects of the matter taken together, the glaring illegalities and irregularities committed during the conduct of the suit in question and the apparent collusion constitutes fraud being practised by the respondent on the Court in collusion with an imposter, therefore, when the same was brought to the notice of the lower Court and it remained unrebutted, inspite of opportunity being given to the respondent, which was not availed, the learned Judge was obliged under law to exercise its inherent powers and recall orders passed therein by restoring the suit to its original number.

46. I, therefore, have an hesitation in holding that the learned Judge failed to exercise the jurisdiction vested in him to correct/rectify proceeding before him which are alleged to have resulted in grave miscarriage of justice.

47. Collusion has been defined in the Oxford Companion of Law by David M. Walker (1980 Edition) page 244 as "Collusion - An agreement between two or more persons to act to the prejudice of a third party or for an improper purpose. Collusion in judicial proceedings is a secret agreement that one will sue to the other to obtain a judicial decision, where either the facts put forward as the foundation for the decision do not exist, or exist but were arranged for the purpose of obtaining the decision, the decision in such a case is a nullity ..."

48. To ensure that collusive divorce decrees are not obtained by willy litigants, the Court has to be ever vigilant. Section 20(1) read with Sub-section (1) of Section 23 of Hindu Marriage Act states that every petition presented under this Act shall, inter alia, state that there is no collusion between the petitioner and the party to the marriage and that the petition is not presented or prosecuted with the collusion of the respondent, obliges the learned Judge dealing with the case to verify whether in fact there is no collusion between the parties. In a case, such as the present one, where in para 5 of the petition and in the corresponding para 3 of the written statement, which are identically worded, revealed collusion between the parties, it became the duty of the Court to call upon the parties and verify this fact. Besides this, in a contested divorce petition, respondent raising no objection to the petition being allowed should have aroused suspicion as to why the parties did not present a petition under Section 13B of the Hindu Marriage Act.

49. At this juncture, it would be appropriate to discuss the nature of a matrimonial cause. As stated earlier in this judgment, a decree in a matrimonial cause cannot be equated with a decree in any other civil action. Decree of divorce is a judgment in ram, declaring the changed status of the parties to the world at large and acts as evidence of the same. If, therefore, Courts of law are used, to fraudulently or mischievously alter the status of a party, such Courts are well within their rights to exercise their inherent powers to undo such fraud or mischief at the earliest opportunity. I am supported in this view by the decision of the Orissa High Court reported in AIR 1987 Orissal. (supra) where it has been held as follows:

"While conferring right on the spouses to dissolve their marriage by a decree of divorce, the Legislature built into the provisions safeguards by way of Clause (bb) in Section 23(1). It only behoves the Court not to betray the anxiety and concern of the Legislature by disposal of matrimonial cause like any other civil action, for, as Section 41 of the Evidence Act Lays down, the final judgment in the matrimonial jurisdiction is a judgment in ram and is conclusive proof of the legal character which it confers, declares or taken away. Hence, where in a matrimonial case a decree has been passed in contravention of the mandatory provisions of the law, the ordinary principles do not apply."

50. The record of the case was also summoned by this Court on the request of the learned Counsel for the petitioner and was perused during the course of the hearing in the presence of the learned Counsel for both the parties. The averments contained in the application under Section 151, CPC as detailed hereinabove were found to be mostly correct. It is correct that summons were not duly issued and served; entries of filing of documents and proceedings were not made in the relevant registers as per rules; the service report was not filed as required and there is no compliance of rules of service as provided in CPC, High Court Rules; there is no explanation for the events of 14.3.1995. I would like to deal with this part in detail at the cost of repetition. It is evident from the record that the suit was presented and filed on 25.2.1995 through Counsel and summons were issued the same day fixing 15.3.1995 for written statement and 22.3.1995 for framing of issues. On 15.3.1995 according to the proceedings, written statement was not filed and none of the parties appeared. The case was thereafter called out on 22.3.1995 when though Counsel for the plaintiff was present, the defendant was not present. The record further revealed that first process was filed for issuance of summons on 25.2.1995 and again on 14.3.1995. On both the summons, the dates 15.3.1995 and

22.3.1995 have been mentioned. Except for postal receipt on the back of process dated 14.3.1995 there is no mention whether any summons were issued or not and whether the same were served or not. Without checking as to whether the service was complete or not or when the Counsel had put in appearance for the defendant, the learned trial Judge passed an order to proceed ex-parte. Written statement seems to have been filed on some other date. The trial Court Judge did not examine as to when the written statement was filed, as quite evidently it was not filed on 15.3.1995 which was the date fixed for that purpose. Therefore, if at all it was filed later on, it should have been accompanied by an application for condonation of delay. In the records, there is no such application. There is also no application for any interim relief or indicating urgency. As the suit was admittedly for dissolution of marriage, as such there was no overt reason not to atleast grant another opportunity to the defendant to appear or alternatively insist on the plaintiff appearing to depose as to the factual averments in her petition. The learned Judge instead of adopting a judicious/reasonable approach passed the order to proceed ex parte against the defendant on 22.3.1995 and fixed 27.3.1995 for ex parte evidence. On the said date, oral evidence of the plaintiff-petitioner was not taken; instead an affidavit sworn at Sitapur itself was accepted in evidence on the basis of an application moved by the Counsel which has not even been signed by the alleged plaintiff/petitioner. The record further revealed that the decree of divorce was passed in the space of three hearings only which are as follows :

"25.2.95 Presented by Sri B.K. Singh, Advocate. Perused the report of Munsarim.

ORDER Register. Issue summons against defendant fixing 15.3.1995 forW.S. and 22.3.1995 for issues.

35.3.1995 W.S. not filed.

ORDER Put up on the date fixed for issues.

22.3.95.

Case called out.

Plaintiff present through Counsel. Defendant absent. W.S. has been filed.

ORDER Let the suit be proceeded ex parte against defendant. Fixing 27.3.95 for ex parte evidence.

"XXX XXX XXX XXX XXX XXX
XXX XXX XXX XXX XXX XXX"

51. A reading of the judgement and order dated 27.3.1995 reveals total non- application

52. I have recorded earlier in this judgment but it bears repetition that divorce decrees are not grand

for the asking except under Section 13B of the Hindu Marriage Act. The petitioner has to make out a strong case for dissolution of marriage and once it was held that she had failed to do so there was no question of granting the decree. Such a judgment cannot be sustained in law. For a Judge to have granted a decree of divorce dissolving the marriage of individuals without actually even seeking the said individuals must surely be a unique incident in the history of Indian judiciary. Recognising the gravity of the situation, I have to quash the decree of divorce in question so that such a practice does not become a precedent.

53. Before parting with this judgment, I consider it my bounden duty to comment upon the conduct of the Judicial Officer Sri B.K. Srivastava, the then Civil Judge (Senior Division), Sitapur who conducted the suit in question. After perusing the record of the case, I have no doubt in my mind that the decree of divorce was granted by the said Judicial Officer in a most irregular and irresponsible manner, hastily and with total non-application of mind. I express my unhappiness that the Presiding Judge has not discharged his judicial functions with utmost impartiality, fairness of procedure and the care and caution expected from him. If judicial decisions of this kind are allowed to be sustained, it is bound to stake the confidence and faith of the people in impartial dispensation of justice by subordinate judiciary and dilute the sanctity of judicial pronouncements. Subordinate judiciary is the backbone of our judicial system, therefore, it is the duty of this Court in its supervisory jurisdiction to ensure that illegalities, ureasonableness, irrationality or procedural impropriety is not permitted to influence the adjudication of disputes between citizens and citizens/citizens and State I, therefore, direct the Registry of this Court to forward a copy of this judgment to the Registrar of this Court at the earliest for being placed before Hon'ble the Chief Justice immediately for issuing necessary directions to have an enquiry conducted into the matter by a Judicial Officer not below the rank of a District Judge.

Conclusion

54. After having come to the conclusion that this is a case of manifest fraud being played upon the Court and the Court below failed to exercise its inherent jurisdiction vested in it under Section 151, CPC, the question that arises is as to what relief should be granted. Repelling the argument of the respondent that the case should be remanded to the Trial Judge for deciding the application under Section 151, CPC on merits, learned Counsel for the petitioner placing reliance on several decisions of Hon'ble Supreme Court, to quote one Anita Laxmi Narayan Singh v. Laxmi Narain Singh, 1992 (2) SCC 562, II (1992) DMC 202, submitted that in the extraordinary and peculiar facts and circumstances of this case, High Court must set aside the decree of divorce also to do complete justice to the petitioner. He contended that whenever technicalities are pitted against substantial justice, it is the latter which must prevail. Hon'ble Supreme Court has also recently held in a case B.C. Chaturvedi v. Union of India, 1996 (6) SCC 750, that "Power to do complete justice inheres in every Court not to speak of a Court of plenary jurisdiction like a High Court".

55. On giving my anxious consideration to all the facts and circumstances of this case and the issues raised here and the legal position, I allow the writ petition and quash the judgment and order dated 19.2.1996 passed by the First Additional Civil Judge (Senior Division), Sitapur in Misc. Case No. 23 of 1996. I further allow the application under Section 151, CPC on merit partly and quash the

judgment and order dated 27.3.1995, as also the decree of divorce dated 5.4.1995 by which the marriage between one Garima Singh and respondent Sanjai Singh has been dissolved. The Suit No. 78 of 1995, Smt. Garima Singh v. Sanjai Singh is hereby restored to its original number with direction to trial Judge to proceed in accordance with law and pass fresh order/judgment. The District Judge, Sitapur is directed to nominate another Civil Judge except the one who has passed the impugned judgment and decree to decide the suit. I hereby direct the Registry of this Court to forward a copy of this judgment to the Registrar forthwith for being placed before Hon'ble Chief Justice for issuing appropriate directions for holding an enquiry as recommended hereinabove. The Registry of this Court is directed to register this case afresh as Writ.Petition under Article 227 of the Constitution of India. Costs easy.