RAM PRAKASH AGARWAL & ANR. A

v.

GOPI KRISHAN (DEAD THROUGH L.RS.) & ORS.

(Civil Appeal No. 2798 of 2013)

APRIL 11, 2013 B

[DR. B.S. CHAUHAN AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.]

Code of Civil Procedure, 1908: C

Or. IX r. 13 r/.w. s.151 – Land acquisition proceedings – Land in joint ownership of two persons, acquired – Reference u/s. 18 of Land Acquisition Act for enhancement of compensation by one of the owners – Without impleading the other owner as party – Grant of enhanced compensation by the Reference Court – Application by the other owner u/Or. IX r.13 r/w.s.151 – Maintainability of – Held: Application u/Or. IX r.13 not maintainable by a non-party to the proceedings – However, such relief can be given in exercise of inherent powers u/s. 151. if the order has been obtained by playing fraud upon the Court – But, the same is not maintainable if the fraud is committed upon the party – In such eventuality, the aggrieved party can seek remedy by filing independent suit – In the instant case, the Reference Court could not have permitted the application u/Or. IX, r.13 – It could not have permitted the application even in exercise of powers u/s. 151, because in the instant case, the fraud was played upon the party and not the Court – Land Acquisition Act, 1894. D E F

s.151 – Inherent powers of the Court – Nature and scope of – Discussed. G

Land Acquisition Act, 1894 – Reference Court – Jurisdiction of – A person aggrieved can maintain an application for reference u/ss. 18 or 30, but cannot make an

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A *application for impleadment or apportionment before the Reference Court.*

Respondent No.1 and predecessor-in-interest of the appellants were the joint owners of the land in question. The land was acquired under Land Acquisition Act. Respondent No.1 approached the authorities concerned to claim the compensation amount. In that case, predecessor-in-interest of the appellants was a party and after her death her legal heirs were brought on record. In the meantime, appellants filed a Reference u/s. 18 of the Acquisition Act, for enhancement of the compensation in respect of her half share. In that case, respondent No.1 was not made a party. The Tribunal held that the appellants were entitled to receive the compensation amount, including the enhanced amount. Respondent No.1, thereafter, filed an application under Order IX r. 13 r/w. s.151 CPC for the purpose of setting aside the ex-parte award. The Tribunal rejected the application. Respondent No.1 preferred writ petition, challenging the order of the Tribunal and the same was allowed by the High Court. Hence the present appeals.

The questions for consideration before the Court were whether an application under Or. IX r.13 CPC is maintainable by a person, who was not party to the suit and if such application is not maintainable, whether such relief can be granted in exercise of the inherent powers u/s. 151 CPC; and whether the provisions of CPC are applicable to the Land acquisition proceedings.

Allowing the appeal, the Court

HELD: 1. An application under Order IX Rule 13 CPC cannot be filed by a person who was not initially a party to the proceedings. In exceptional circumstances, the Court may exercise its inherent powers, apart from Order IX CPC to set aside an *ex parte* decree. An *ex-parte*

IX CPC to set aside an *ex parte* decree. An *ex-parte* decree passed due to the non-appearance of the counsel of a party, owing to the fact that the party was not at fault, can be set aside in an appeal preferred against it. So is the case, where the absence of a defendant is caused on account of a mistake of the Court. An application under Section 151 CPC will be maintainable, in the event that an *ex parte* order has been obtained by fraud upon the court or by collusion. The provisions of Order IX CPC may not be attracted, and in such a case, the Court may either restore the case, or set aside the *ex parte* order in the exercise of its inherent powers. [Paras 9 and 20(i)] [147-A; 140-C-E]

Smt. Santosh Chopra vs. Teja Singh and Anr. **AIR 1977 Del 110;** *Smt. Suraj Kumari vs. District Judge, Mirzapur and Ors.* **AIR 1991 All 75 – relied on.**

2. Section 151 CPC is not a substantive provision that confers the right to get any relief of any kind. It is a mere procedural provision which enables a party to have the proceedings of a pending suit conducted in a manner that is consistent with justice and equity. The court can do justice between the parties before it. Similarly, inherent powers cannot be used to re-open settled matters. The inherent powers of the Court must, to that extent, be regarded as abrogated by the Legislature. A provision barring the exercise of inherent power need not be express, it may even be implied. Inherent power cannot be used to restrain the execution of a decree at the instance of one who was not a party to suit. Such power is absolutely essential for securing the ends of justice, and to overcome the failure of justice. The Court under Section 151 CPC may adopt any procedure to do justice, unless the same is expressly prohibited. [Para 8] [139-B-D]

3. The consolidation of suits has not been provided

A **for under any of the provisions of CPC, unless there is a State amendment in this regard. Thus, the same can be done in exercise of the powers under Section 151 CPC, where a common question of fact and law arise therein, and the same must also not be a case of misjoinder of**
B **parties. The non-consolidation of two or more suits is likely to lead to a multiplicity of suits being filed, leaving the door open for conflicting decisions on the same issue, which may be common to the two or more suits that are sought to be consolidated. Non-consolidation**
C **may, therefore, prejudice a party, or result in the failure of justice. Inherent powers may be exercised *ex debito justitiae* in those cases, where there is no express provision in CPC. The said powers cannot be exercised in contravention of, or in conflict with, or upon ignoring**
D **express and specific provisions of the law. [Para 8] [139-E-H]**

B.V. Patankar and Ors. vs. C.G. Sastry **AIR 1961 SC 272: 1961 SCR 91**; *Ram Chandra Singh vs. Savitri Devi and Ors.* **AIR 2004 SC 4096**; *Jet Plywood Pvt. Ltd. vs. Madhukar*
E *Nowlakha* **AIR 2006 SC 1260: 2006 (2) SCR 761**; *State Bank of India vs. Ranjan Chemicals Ltd. and Anr.* **(2007) 1 SCC 97: 2006 (7) Suppl. SCR 145**; *State of Haryana and Ors. vs. Babu Singh* **(2008) 2 SCC 85**; *Durgesh Sharma vs. Jayshree* **AIR 2009 SC 285: 2008 (13) SCR 1056**; *Nahar*
F *Industrial Enterprises Ltd. vs. H.S.B.C. etc. etc.* **(2009) 8 SCC 646: 2009 (12) SCR 54**; *Rajendra Prasad Gupta vs. Prakash Chandra Mishra and Ors.* **AIR 2011 SC 1137: 2011 (1) SCR 321 – relied on.**

4.1. Where a Court employs a procedure to do
G **something that it never intended to do, and there is miscarriage of justice, or an abuse of the process of Court, the injustice so done must be remedied, in accordance with the principle of *actus curia neminem gravabit* - an act of the Court shall prejudice no person.**
H **[Para 9] [140-F-G]**

4.2. The inherent powers enshrined under Section 151 CPC can be exercised only where no remedy has been provided for in any other provision of the CPC. In the event that a party has obtained a decree or order by playing a fraud upon the court, or where an order has been passed by a mistake of the court, the court may be justified in rectifying such mistake, either by recalling the said order, or by passing any other appropriate order. However, inherent powers cannot be used in conflict of any other existing provision, or in case a remedy has been provided for by any other provision of the CPC. Moreover, in the event that a fraud has been played upon a party, the same may not be a case where inherent powers can be exercised. [Para 13] [143-C-E]

5. In the event that an order has been obtained from the Court by playing fraud upon it, it is always open to the Court to recall the said order on the application of the person aggrieved, and such power can also be exercised by the appellate court. But where the fraud has been committed upon a party, the court cannot investigate such a factual issue, and in such an eventuality, a party has the right to get the said judgment or order set aside, by filing an independent suit. [Paras 20(iii) and (iv)] [147-C-D]

6. In the instant case, the proceedings stood concluded so far as the court of first instance is concerned, and that the respondent was not the party before the said court. Permitting an application under Order IX Rule 13 CPC by a non-party, would amount to adding a party to the case, which is provided for under Order I Rule 10 CPC, or setting aside the *ex-parte* judgment and decree, i.e. seeking a declaration that the decree is null and void for any reason, which can be sought independently by such a party. In the instant case, as the fraud, if any, as alleged, has been committed upon a party, and not upon the court, the same is not a case

A **where Section 151 CPC could be resorted to by the court, to rectify a mistake, if any was made. [Para 16] [144-F-H; 145-A]**

May George vs. Special Tahsildar and Ors. **(2010) 13 SCC 98: 2010 (7) SCR 204 – relied on.**

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7. A person who has not made an application before the Land Acquisition Collector, for making a reference under Section 18 or 30 of the Land Acquisition Act cannot get himself impleaded directly before the Reference C **Court. A person aggrieved may maintain an application before the Land Acquisition Collector for reference under Section 18 or 30 of the Land Acquisition Act but cannot make an application for impleadment or apportionment before the Reference Court. [Paras 19 and 20(v)] [146-G;** D **147-E]**

Ajjam Linganna and Ors. vs. Land Acquisition Officer, RDO, Nizamabad and Ors. **(2002) 9 SCC 426;** *Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd. vs. Allahabad Vikas Pradhikaran and Anr.* **(2003) 5 SCC 561: 2003 (3) SCR 567;** *Parmatha Nath Malik Bahadur vs. Secretary of State* **AIR 1930 PC 64:** *Mohammed Hasnuddin vs. The State of Maharashtra* **AIR 1979 SC 404: 1979 (2) SCR 265;** *Kothamasu Kanakarathamma and Ors. vs. State of Andhra Pradesh and Ors.* **AIR 1965 SC304: 1964 SCR** E **294 – relied on.**

Dulhim Suga Kuer and Anr. vs. Deorani Kuer and Ors. **AIR 1952 Pat 72;** *Surajdeo vs. Board of Revenue U.P. Allahabad and Ors.***AIR 1982 All 23;** *Manohar Lal Chopra vs. Rai Bahadur Rao Raja Seth Hiralal* **AIR 1962 SC 527: 1962** G **Suppl. SCR 450;** *Indian Bank vs. M/s. Satyam Fibres (India) Pvt. Ltd.* **AIR 1996 SC 2592: 1996 (4) Suppl. SCR 464;** *Dadu Dayal Mahasabha vs. Sukhdev Arya and Anr.* **(1990) 1 SCC 189: 1989 (2) Suppl. SCR 233;** *Dr. G.H. Grant vs. State of Bihar* **AIR 1966 SC 237: 1965 SCR 576;** H *Shyamali Das vs. Illa Chowdhry and Ors.* **AIR 2007 SC 215:**

2006 (8) Suppl. SCR 310 – referred to.

Case Law Reference:

AIR 1977 Del 110	**relied on**	**Para 4**
AIR 1991 All 75	**relied on**	**Para 5**
AIR 1952 Pat 72	**referred to**	**Para 6**
AIR 1982 All 23	**referred to**	**Para 7**
1961 SCR 591	**relied on**	**Para 8**
2004 SC 4096	**relied on**	**Para 8**
2006 (2) SCR 761	**relied on**	**Para 8**
2006 (7) Suppl. SCR 145	**relied on**	**Para 8**
(2008) 2 SCC 85	**relied on**	**Para 8**
2008 (13) SCR 1056	**relied on**	**Para 8**
2009 (12) SCR 54	**relied on**	**Para 8**
2011 (1) SCR 321	**relied on**	**Para 8**
1962 Suppl. SCR 450	**referred to**	**Para 10**
1996 (4) Suppl. SCR 464	**referred to**	**Para 11**
1989 (2) Suppl. SCR 233	**referred to**	**Para 12**
2010 (7) SCR 204	**relied on**	**Para 17**
1965 SCR 576	**referred to**	**Para 17**
2006 (8) Suppl. SCR 310	**referred to**	**Para 18**
(2002) 9 SCC 426	**relied on**	**Para 19**
2003 (3) SCR 567	**relied on**	**Para 19**
AIR 1930 PC 64	**relied on**	**Para 19**
1979 (2) SCR 265	**relied on**	**Para 19**

A **1964 SCR 294 relied on Para 19**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2798 of 2013.

From the Judgment and Order dated 20.10.2011 of the
B High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Writ Petition No. 764 of 2002 (MS).

WITH

C.A. No. 2799 of 2013.

C Pradeep Kant, Rakesh Dwivedi, Deepak Goel, Vipin Kumar, E.C. Agrawala, Divyansu Sahay, Radhika Gautam, Tara Chandra Sharma, Neelam Sharma, Rupesh Kumar, Arvind Kumar, Laxmi Arvind, Poonam Prasad, Pradeep Kumar Mathur, T. Anamika for the appearing parties.

D The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. These appeals have been preferred against the impugned judgment and order, dated 20.10.2011, passed by the High Court of Allahabad, (Lucknow
E Bench) in Writ Petition No.764 of 2002 (MS), by way of which, the High Court has set aside the order of the trial court dated 20.2.2002 by which it had rejected the application under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC'), for
F setting aside the judgment and decree dated 22.5.2000 in Misc. Case No. 66 of 1999.

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

G A. The dispute pertains to the ownership of shop no.53/11 (old number) corresponding to its new number, i.e. 53/8, Nayayaganj, Kanpur Nagar. Janki Bibi (Ist) daughter of Har Dayal, was married to one Durga Prasad, son of Dina Nath. Radhey Shyam was the adopted son of Durga Prasad, whose
H son Shyam Sunder was married to Janki Bibi (2nd). Shyam

Sunder died in the year 1914. Thus, Radhey Shyam created a life interest in the property in favour of Janki Bibi (2nd), by way of an oral Will, which further provided that she would have the right to adopt a son only with the consent of Mohan Lal, the grand son of Har Dayal. Gopi Krishan, the great grand son of Mohan Lal, claims to have been adopted by Janki Bibi (2nd), with the consent of Mohan Lal, and as regards the same, a registered document was also prepared.

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

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

D. That the property bearing no.264/1-53 admeasuring 17 bighas, 2 biswas, 2 biswansi and 19 kachwansi to the extent of half share situated in village Suppa Rao, Pargana Tehsil, District Lucknow, was owned by Radhey Shyam. The aforesaid suit land was acquired by the State Government for Uttar Pradesh Avas Evam Vikas Parishad (hereinafter referred to as, the 'Parishad'), for the development of the Talkatora Road Scheme, Lucknow, vide notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as `the Act, 1894') dated 20.10.1962. The possession of the said land was taken on 30.12.1971, after completion of certain formalities.

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

C F. In the meanwhile, Madhuri Saran, predecessor in interest of the present appellants, filed a Reference under Section 18 of the Act, 1894 which was registered as Miscellaneous Case No.66 of 1999, for enhancement of compensation in respect of half share in the aforesaid suit land. D During the pendency of the aforesaid proceedings, Madhuri Saran died and his legal heirs were substituted. Gopi Krishan, respondent no.1 was not impleaded as a party. The Tribunal vide judgment and order dated 22.5.2000 held that the opposite parties were entitled to receive compensation (including E enhancement) relating to the aforesaid property. In pursuance of the said Reference award, the appellants applied for withdrawal of the enhanced compensation. When respondent no.1 learnt about the order dated 22.5.2000, he filed an application under Order IX Rule 13 read with Section 151 CPC, F for the purpose of setting aside the said award dated 22.5.2000. The Tribunal, vide order dated 20.2.2002, rejected the said application, on the ground that an application under Order IX Rule 13 can only be filed by a person who was a party to the proceedings in which such an order was passed, and G that such an application was not maintainable at the behest of a stranger.

G. Aggrieved, the respondents preferred a writ petition before the High Court, which has been allowed by the Court holding, that while an application under Order IX Rule 13 was H

not maintainable, the said award should have been set aside in exercise of its powers under Section 151 CPC, as the same was required to be done, in order to do substantial justice between the parties. Hence, these appeals.

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

4. In *Smt. Santosh Chopra v. Teja Singh & Anr.,* AIR 1977 Del 110, the Delhi High Court dealt with the issue with respect to whether a non-party/stranger has any *locus standi* to move an application under Order IX Rule 13 CPC, to get an *ex-parte* decree set aside, he would be adversely affected by such decree. In the said case, the Rent Controller had held, that it would be patently unjust to bar any remedy for such a landlord, since the applicant was the assignee of the rights of the previous landlord, therefore, he could apply for setting aside of the decree as such. The Delhi High Court came to the conclusion that the statutory provisions of Order IX Rule 13 CPC itself, refer to the defendant in an action, who alone can move an application under Order IX Rule 13 CPC. Therefore, a person who is not a party, despite the fact that he might be interested in the suit, is not entitled to move an application under the rule. In fact he had no *locus standi* to have the order set aside. Such an order could not be passed even under Section 151 CPC. In view thereof, the order passed by the Rent Controller was reversed.

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

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

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

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

contesting opposite parties in the disputed land as Sirdar were passed."

(Emphasis added)

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

The consolidation of suits has not been provided for under any of the provisions of the Code, unless there is a State amendment in this regard. Thus, the same can be done in exercise of the powers under Section 151 CPC, where a common question of fact and law arise therein, and the same must also not be a case of misjoinder of parties. The non-consolidation of two or more suits is likely to lead to a multiplicity of suits being filed, leaving the door open for conflicting decisions on the same issue, which may be common to the two or more suits that are sought to be consolidated. Non-consolidation may, therefore, prejudice a party, or result in the failure of justice. Inherent powers may be exercised *ex debito justitiae* in those cases, where there is no express provision in CPC. The said powers cannot be exercised in contravention of, or in conflict with, or upon ignoring express and specific provisions of the law. (See: *B.V. Patankar & Ors. v. C.G. Sastry,*

A AIR 1961 SC 272; *Ram Chandra Singh v. Savitri Devi & Ors.*, AIR 2004 SC 4096; *Jet Plywood Pvt. Ltd. v. Madhukar Nowlakha,* AIR 2006 SC 1260; *State Bank of India v. Ranjan Chemicals Ltd. & Anr.,* (2007) 1 SCC 97; *State of Haryana & Ors. v. Babu Singh,* (2008) 2 SCC 85; *Durgesh Sharma v.* B *Jayshree,* AIR 2009 SC 285; *Nahar Industrial Enterprises Ltd. v. H.S.B.C. etc. etc.,* (2009) 8 SCC 646; and *Rajendra Prasad Gupta v. Prakash Chandra Mishra & Ors.,* AIR 2011 SC 1137).

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

An *ex-parte* decree passed due to the non appearance of the counsel of a party, owing to the fact that the party was not at fault, can be set aside in an appeal preferred against it. D So is the case, where the absence of a defendant is caused on account of a mistake of the Court. An application under Section 151 CPC will be maintainable, in the event that an *ex parte* order has been obtained by fraud upon the court or by collusion. The provisions of Order IX CPC may not be attracted, E and in such a case the Court may either restore the case, or set aside the *ex parte* order in the exercise of its inherent powers.

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

10. In *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal,* AIR 1962 SC 527, this Court examined the issue with respect to whether, the court is competent to grant interim

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relief under Section 151 CPC, when the same cannot be granted under Order XXXIX Rules 1 & 2 CPC, and held : A

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

B C D E F G H

A *the provisions of Section 94 of the Code have their effect and not in taking away the right of the Court to exercise the inherent power."*

(Emphasis added)

B 11. In *Indian Bank v. M/s. Satyam Fibres (India) Pvt. Ltd.,* AIR 1996 SC 2592, this Court dealt with a similar case and observed, that fraud not only affects the solemnity, regularity and orderliness of the proceedings of the court, but that it also amounts to abuse of the process of court. The Court further C held, that "the judiciary in India also possesses inherent powers, specially under Section 151 CPC, to recall its judgment or order if the same has been obtained by **fraud upon the court**. In the case of fraud upon a party to the suit or proceedings, the court may direct the affected party to file a separate suit for D setting aside the decree obtained by fraud."

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

G *"If a party makes an application before the court for setting aside the decree on the ground that he did not give his consent, the court has the power and duty to* ***investigate the matter*** *and to set aside the decree if it is satisfied that the consent as a fact was lacking and* ***the*** H ***court was induced to pass the decree on a fraudulent***

representation *made to it that the party had actually consented to it. However, if the case of the party challenging the decree is that he was in fact a party to the compromise petition filed in the case but his consent has been procured by fraud,* ***the court cannot investigate*** *the matter in the exercise of its inherent power, and the only remedy to the party is to institute a suit".* (Emphasis added)

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

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

A appeal to recall the said order, the court heard such appeal on merits. However, the said application for recall was dismissed in default vide order dated 12.1.2009. A second application for recall was then filed, which was also dismissed in default vide order dated 15.3.2010. A third application was finally filed, and
B has been allowed vide impugned order.

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

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

F

16. In the instant case, we have to bear in mind that the proceedings stood concluded so far as the court of first instance is concerned, and that the respondent was not the party before the said court. Permitting an application under Order IX Rule 13 CPC by a non-party, would amount to adding
G a party to the case, which is provided for under Order I Rule 10 CPC, or setting aside the *ex-parte* judgment and decree, i.e. seeking a declaration that the decree is null and void for any reason, which can be sought independently by such a party. In the instant case, as the fraud, if any, as alleged, has been
H committed **upon a party,** and not upon the court, the same is

not a case where Section 151 CPC could be resorted to by the court, to rectify a mistake, if any was made. A

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

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

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

A The plea of the appellant therein, stating that the title dispute be directed to be decided by the Reference Court itself, since the appellant was not a person interested in the award, was rejected by this Court, observing that the Reference Court does not have the power to enter into an application under B Order I Rule 10 CPC.

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

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

D

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

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

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

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

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

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

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

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

(iv) Where the fraud has been committed upon a party, the court cannot investigate such a factual issue, and in such an eventuality, a party has the right to get the said judgment or order set aside, by filing an independent suit.

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

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

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

K.K.T. Appeals allowed.