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S.A.No.847 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 28.10.2024

PRONOUNCED ON: 18.12.2024

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

S.A.No.847 of 2014

Deva Kangadarane (Died)
represented by his Legal representative
Deva Marie Antoinete Solange

... Appellant

vs.

1.Marcelle Antoinette Satchidanandam
2.Nittia Alexandra Selva Julien
3.Sacravathy Charles (Minor)
4.Sandy Marie Shantalle Julien (Minor)
(Minor Respondents 3 and 4 were represented by
their mother and natural guardian, the first respondent)
5.Lakshmi Ammal
6.Mohammed Ibrahim
7.Abdul Wahed Sahib
8.Govindaswamy Gounder
9.Louis Gnanadickam
10.Dharmalinga Nattar
11.Janaki Ammal
12.Adikesavan
13.Adhilakshmi @ Chinnapappa

...Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 21.12.2010 made in A.S.No.35 of 2006 on the file of the Court of the II Additional District Judge, Puducherry, reversing the judgment and decree dated 28.08.1991 made in O.S.No.723 of 1985 on the file of the Court of the Principal Subordinate Judge, Puducherry.

For Appellant :Mr.T.P.Manoharan
Senior Counsel for Mr.T.M.Naveen
For R1 to R4 :Mr.K.N.Nataraj



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R5 to R13

:Given up

JUDGMENT

The Second Appeal has been filed as against the judgment and decree dated 21.12.2010 made in A.S.No.35 of 2006 by the learned II Additional District Judge, Puducherry, reversing the judgment and decree, dated 28.08.1991, made in O.S.No.723 of 1985 by the Principal Subordinate Judge, Puducherry. For the sake of convenience, the status of the parties is referred to as plaintiff and defendants, as per their rank in the suit.

FACTS LEADING UP TO THE APPEAL:

2. The plaintiff, Deva Kangadarane, had filed the suit in O.S.No.723 of 1985 before the Principal Subordinate Court, Puducherry, for a declaration that the judgment and decree in O.S.No.64 of 1970, dated 30.11.1974 obtained by the first defendant in the subject suit as null and void and for other reliefs.

3. According to the plaintiff, the original owner of the suit schedule property was one Subbaraya Chettiar son of Govinda Chettiar, who was in possession and enjoyment of the suit property. The said Subbaraya Chettiar had executed a testamentary deed in favour of his elder daughter, by name, Tanapakkiattammal, wife of Balakrishna Chettiar, dated 26.07.1913, which was registered on 01.09.1914. Subburaya Chettiar died leaving



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behind his two daughters, Tanapakkiattammal, the eldest daughter and Manickathammal, who is his second daughter.

4. After the demise of Tanapakkiattammal, her grandson, Devanatha Chettiar, born to her daughter, Logambal wife of Govindasamy Chettiar, succeeded to the property. Since then Devanatha Chettiar was the absolute owner of the property, who had continued with the possession and enjoyment of the testator as absolute owner.

5. Tanapakkiattammal had another son Varatharasu and his son Vairakannu. As far as the other daughter of Subbraya Chettiar, namely, Manickathammal, wife of Rengasamy Chettiar, is concerned, she had one son, namely, Kumarasamy Chettiar and the said Kumarasamy Chettiar had two sons by name, Somasundara Chettiar and Venugopala Chettiar. All of them did not have any right over the suit property, as the entire property was settled in the name of first daughter of Subbaraya Chettiar, namely, Tanapakkiattammal and they also executed a registered release deed in favour of Devanatha Chettiar.

6. The plaintiff contends that suppressing the above facts, Somasundara Chettiar and Venugopala Chettiar, who are descendents of the second daughter of Subbaraya Chettiar, Manickathammal, and Vairakannu, who is the grandson of Tanapakkiattammal, born to her son Varadarasu, have executed a sale deed in favour of the 12th defendant in the suit, namely, Dharmalinga Nattar, by way of a registered sale deed, dated 23.09.1963. In the above sale deed, only a portion of the suit schedule property was executed and the remaining portion was sold by Vairakannu to the 12th defendant. Both these sale deeds were executed in favour of the 12th defendant and the said 12th defendant, in turn, had



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sold the suit properties in favour of the 1st defendant, namely, Julient Sachidanandam by way of a registered sale deed, dated 22.02.1968.

7. The plaintiff contends that Somasundara Chettiar, Venugopala Chettiar, and Vairakannu did not have any right or title or claim over the suit schedule property. The sale deeds, which were executed by them, dated 23.09.1963 and 18.01.1964 in favour of the 12th defendant, Dharmalinga Nagar, without having any right, do not bind the plaintiff. As the 12th defendant has purchased the property from persons, who did not have any right over the property and who, therefore, cannot have a better title, the sale deed executed by the said 12th Defendant in favour of the first defendant, namely, Julient Sachidanandam, has according to the plaintiff, become “*automatically invalid, void and unenforceable*”. The plaintiff contends that the sale deeds, dated 23.09.1963, 18.01.1964 and 22.02.1968 are not true, valid and binding on the deceased Devanatha Chettiar, the father of the plaintiff.

8. Devanatha Chettiar, father of plaintiff filed a suit in O.S.No.29 of 1968 before the I Additional Subordinate Court, Pondicherry, against Somasundara Chettiar, Venugopala Chettiar, Dharmalinga Nattar and Julient Sachidanandam for a declaration to set aside the sale deeds as null and void and not binding the plaintiff. The plaintiff further contends that knowing the entire history of the suit schedule property, the first defendant, Julient Sachidanandam had purchased the suit property from the 12th defendant. After the demise of Devanatha Chettiar, the plaintiff continued the proceedings in O.S.No.29

of 1968 being his son and legal heir.

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9. Since Devanatha Chettiar had died on 25.05.1969 leaving behind the plaintiff, as a sole legal heir, who had succeeded his estate and taking advantage of the fact that the plaintiff, who had settled in France, the 1st defendant, Julient Sachidanandam, had instituted a separate suit in O.S.No.64 of 1970 in collusion with the 12th defendant, for a declaration that he is in possession of the property. Interestingly, in O.S.No.64 of 1970, the plaintiff herein was arrayed as the 8th defendant, but by giving a wrong address and by showing a wrong relationship and a fraudulent decree was obtained behind the back of the present plaintiff.

10. According to the plaintiff, he has given power to one Ranganathan son of El-lappa Nattar by way of a registered document appointing him as a power agent on 13.07.1975. The plaintiff after returning from France in the year 1984 in the month of July, came to know that his power agent Ranaganathan was not handling any of the issue properly and therefore, he cancelled the power in the name of Ranganathan, by way of a cancellation deed, dated 18.07.1984, which was registered as Doc.No.327 and it was also intimated to his power agent by way of an Advocate Notice, dated 30.07.1984.

11. The plaintiff contends that no summons were served on him, while he was in France and the address shown in the suit and the name shown in the suit as 8th defendant were all wrong. By playing fraud and by not serving notice to the 8th defendant, who is the present plaintiff, a decree was obtained behind him back on 30.11.1974 in O.S.No.64 of 1970.



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12. The plaintiff came to know about the suit, which ended against him in O.S.No.64 of 1970, where, he was not even served with the suit summons and the name was not properly given in the cause title and he had applied for a copy of judgment and decree on 02.08.1984 and that he received it on 03.08.1984 and had filed the present suit in O.S.No.723 of 1985 before the II Additional District Court at Puducherry for a declaration that the judgment and decree, dated 30.11.1974, obtained by the first defendant, Julient Sachidanandam fraudulently in O.S.No.64 of 1970 on the file of the Additional District Court, Pondicherry, as null and void. As the first defendant, Julient Sachidanandam had died on 12.09.1981 leaving behind his legal heirs, they were arrayed as defendants 2 to 5 in the subject suit and the defendants 4 and 5 being minors, were represented by their natural guardian, i.e., the mother, who was arrayed as the second defendant in the suit.

13. The defendants 2 to 5 filed their written statement and contended that the judgment in O.S.No.64 of 1970 has been confirmed in A.S.No.628 of 1976 and contended that the subject suit was hit by *res judicata*. The other contention raised by the defendants 2 to 5 was that the suit is barred by limitation. The defendants further contended that as the suit was filed by pleading 'fraud', the subject suit had to be valued for declaration and cannot be construed as one for cancellation of decree and therefore, the Court fee paid by the plaintiff in the present suit is insufficient and even on that ground, the suit has to be dismissed.



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14. The defendants 2 to 5 denied all other contentions with regard to the right of the plaintiff. The defendants 2 to 5 contended that they have absolute right over the suit property, since they are the descendents of Subaraya Chettiar and his second daughter, Manickathammal and her sons, Venugopala Chettiar and Somasundara Chettiar. Though a suit was filed by the plaintiff's father in O.S.No.29 of 1968 as against the registration of three sale deeds, the defendants 2 to 5 contended that the suit in O.S.No.29 of 1968 was dismissed as abated, as the said suit was not prosecuted after the death of the plaintiff's father.

15. As against the judgment and decree in O.S.No.64 of 1970, few respondents, who has been made as defendants, who are third party to the suit, filed an appeal in A.S.No.628 of 1976. In the above appeal suit, the judgment rendered in O.S.No.64 of 1970 was confirmed by recording that originally the property was held by Devanatha Chettiar and thereafter, the suit was not contested further by the plaintiff and because of the abatement in O.S.No.29 of 1968, the suit was dismissed as abated and the said factum was considered in A.S.No.628 of 1976 and this Court had confirmed the decree and judgment passed in O.S.No.64 of 1970. The defendants 2 to 5 contended that the judgments and decrees in O.S.No.64 of 1970 and O.S.No.29 of 1968 have become final and the present plaintiff did not have any case to prosecute further.

16. The trial Court after taking note of the plaint and the written statements filed by the plaintiff as well as the defendants 2 to 5, respectively, had framed the following

issues for consideration:

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“1. Whether this suit is properly valued and correct Court fee is paid?

2. Whether this suit is barred by limitation?

3. Whether the plaintiff is properly represented by his power Agent Marius Porron view of non attestation of the power deed, filed in this case and if not whether the suit is maintainable as such?

4. Whether the previous power agent of the plaintiff colluded fraudulently with the deceased Julient Sachidandam and allowed a decree in O.S.No.64/70 to be passed?

5. Whether the suit summons in O.S.No.44/(64)/70 was not binding on the plaintiff herein, as one vitiated by fraud of the plaintiff's power agent Ranganathan and the deceased Julient Sachidanandam?

6. Whether the plaintiff is entitled for a declaration that the judgment and decree dated 30.11.74 in O.S.No.64/70 on the file of the Additional Sub Judge, Pondicherry is null and void?

7. To what reliefs the plaintiff is entitled?”

17. On the side of the plaintiff, the plaintiff examined himself as PW-1 and examined one P.Arokiasamy as PW-2 and marked Ex-A1 to Ex-A51. On the side of the defendants, the second and third defendants were examined as DW-1 and DW-2 and marked Ex-B1 to Ex-B5.

18. The trial Court while tracing the title in respect of the subject property had narrated that the Subbaraya Chettiar's property was inherited by Tanapackiattammal, the first daughter of Subbaraya Chettiar by way of a testamentary deed and thereafter, after the demise of Tanapackiattammal, the said property was bequeathed by her daughter, Logambal and after the demise of the said Logambal, the same was inherited by her son Devanatha Chettiar and the said Devanatha Chettiar was in absolute title and enjoyment



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said property was settled by way of testamentary document by her father, Subbaraya Chettiar.

19. The trial Court further observed that the said Tanapackiattammal had another son Varadharasu and his son Vairakannu and the sons of Manickathammal, namely, Venugopala Chettiar and Somasundara Chettiar had not inherited the property, as Tanapackiattammal has settled the property in favour of her daughter, Logambal and thereafter, it was inherited by Devanatha Chettiar and thereafter, by the present plaintiff.

20. The trial Court while tracing the right of the suit schedule property had come to a conclusion that Devanatha Chettiar alone had inherited the property from Subbaraya Chettiar. Venugopala Chettiar and Somasundara Chettiar having no right over the suit schedule property had fraudulently sold a portion of the land in favour of the 12th defendant and the remaining portion of land was sold by the Vairakannu son of Varadarasu, another son of Tanapackiattammal, who had executed the remaining portion to the 12th defendant. The trial Court held that the sale deed, dated 23.09.1963 and the other sale deed, dated 18.01.1964, executed by Venugopala Chettiar, Somasundara Chettiar and Vairakannu in favour of the 12th defendant from whom the 1st defendant had purchased it by way of a registered sale deed on 22.02.1968 has no legal force and valid. The trial Court also observed that the sale deed, dated 22.02.1968, executed by 12th defendant in favour of the 1st defendant is void and unenforceable.

21. Devanatha Chettiar had instituted a suit challenging the execution of the sale deeds, dated 18.01.1964, 22.02.1968 and 23.09.1963 in O.S.No.29 of 1968 on the file of

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the I Additional Subordinate Court, Pondicherry. After the demise of Devanatha Chettiar, the present plaintiff continued the suit, as being his legal heir. The 1st defendant, Julient Sachidanandam, having knowledge about the aforesaid sale deeds and the rights of the present plaintiff, had purchased the property knowingly that the properties, which are the subject matter of the suit from the 12th defendant, who has no legal right or enforceable right.

22. The trial Court had noted that in the suit filed by the 1st defendant, Julient Sachidanandam in O.S.No.64 of 1970, the plaintiff was arrayed as 8th defendant and his name was mentioned as Deva Ramachandran alias Gangadara Thambia. The trial Court also noted the fact of wrong and improper name of the 8th defendant in O.S.No.64 of 1970 and the wrong address, which was exhibited in Ex-A37, and Ex-A41, which reveal that summons were not served on the 8th defendant.

23. In O.S.No.64 of 1970, the Court had recorded that defendants 1, 3 and 8 were called absent and set *ex parte*. Ex-A17, which is the certified copy of the judgment in O.S.No.64 of 1970, would clearly show that one C.Jegadheesan, Advocate had appeared for all the defendants and the Court proceeded, as if summons were served on the 8th defendant and held that as per the sale deed, which was marked in that suit in O.S.No.64 of 1970, the defendants 1 to 6, who were claiming right under the 8th defendant are unlawfully occupying the suit property and decreed the suit in favour of the plaintiff, Julient Sachidanandam.



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24. The trial Court also considered that the suit filed by Devanatha Chettiar in O.S.No.29 of 1968, where Dharmalinga Nattar, who was arrayed as 12th defendant in the present suit had got impleaded himself as 7th defendant in O.S.No.64 of 1970 and after the death of Devanatha Chettiar, the suit was dismissed as abated. By the abatement of the suit in O.S.No.29 of 1968, the issue has come to an end, as none has proceeded further.

25. The trial Court had come to the conclusion that the plaintiff's power agent Ranganathan, who had represented the plaintiff in the suit, was in collusion with the 1st and 12th defendants, who became a mute spectator to all the proceedings and remained silent and his silence went against the plaintiff's interest. The judgment and decree in O.S.No.64 of 1970, which was marked as Ex-A17 and Ex-A18 would clearly show that the plaintiff's representative, ie., the power agent, Ranganathan, had colluded with the 1st defendant and 12th defendant. The power agent, Ranganathan knew and was aware that the plaintiff was in France having a permanent address and a long period of stay, clearly showing that the plaintiff's power agent was in collusion with the 1st and 12th defendants.

26. In that suit in O.S.No.64 of 1970, no suit summons was served on the 8th defendant, the present plaintiff and the name and address of the 8th defendant was incorrect and the judgment in O.S.No.64 of 1970 would clearly shows that the summons were not served on the plaintiff herein, who was arrayed as the 8th defendant, but proceeded, as if summons were served and the judgment was delivered, as if it was argued on behalf of



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all the defendants. The trial Court concluded that by playing absolute fraud and collusion, the judgment and decree in O.S.No.64 of 1970 was obtained.

27. The trial Court had elaborately discussed Section 44 of Indian Evidence Act with regard to the collusion and Section 40 of the Indian Evidence Act with regard to obtaining decree by playing fraud and Section 41 of the Evidence Act with regard to jurisdiction. The trial Court also came to the conclusion that the plaintiff was not aware of the proceedings in O.S.No.64 of 1970 and once he came to know about the judgment and decree, he filed an application to get a certified copy of the judgment and decree in O.S.No.64 of 1970, which were marked as Ex-A28 and Ex-A29, which would clearly show that the plaintiff had no knowledge about the suit in O.S.No.64 of 1970. By referring to Article 59 of Indian Limitation Act, the trial Court held that the limitation would commence only from the date of knowledge and therefore, there is no delay, since the plaintiff had come to knowledge of the institution of the suit in O.S.No.64 of 1970, much later, which was supported by Ex-A28 and Ex-A29. The trial Court has also taken note of the judgment in A.S.No.628 of 1976 against the judgment in O.S.No.64 of 1970.

28. The trial Court had concluded that once it was established that the judgment in O.S.No.64 of 1970 was obtained by playing fraud and the judgment in A.S.No.628 of 1976, where the appellants who were allegedly the tenants under the 8th defendant, the present plaintiff, are none but set-up persons and therefore, the judgment in A.S.No.628 of 1976 was only with regard to the facts in O.S.No.64 of 1970 and does not travel beyond. The trial Court also noted that O.S.No.29 of 1968 instituted by the plaintiff's father



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got abated, since the present plaintiff's power agent, Ranganathan had in collusion and remained silent and did not prosecute the said suit in the place of the present plaintiff, who was arrayed as second plaintiff in that suit.

29. Finally, the suit was decreed impeaching the judgment and decree, dated 30.11.1974, passed in O.S.No.64 of 1970 on the file of the I Additional Subordinate Court, Pondicherry, as null and void with cost to be paid by defendants 1 to 6 and 12. Challenging the judgment in O.S.No.723 of 1985, an appeal was filed which was originally numbered as A.S.No.113 of 1992 and the same was renumbered as A.S.No.35 of 2006 in view of amendment of Pondicherry Civil Court Act on pecuniary jurisdiction, which came into effect from 01.11.2005.

30. The first appellate Court had reversed the judgment passed by the trial Court on the following reasons:

30.1. The trial Court had noted that O.S.No.29 of 1968 came to an end, since the original plaintiff died and after his demise, the suit was not prosecuted by his legal heir and that the said suit proceedings, therefore, abated by recording the death of the original plaintiff. The first appellate Court further noted that the judgment and decree in A.S.No.628 of 1976 had attained finality and further observed that the sale deed executed by Somasundara Chettiar, Venugopala Chettiar and Vairkannu in favour of Dharmalinga Nattar was held invalid by the trial court and therefore consequently, decreed the suit. The said judgment and decree was challenged by 9 to 11 defendants in

A.S.No.628 of 1976 before this Court, which was dismissed.

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30.2. The first appellate court further observed that the fact remains that the present plaintiff was arrayed as 2nd plaintiff in O.S.No.28 of 1968, who had appointed one Ranganathan as his power agent who had remained silent. The first appellate Court had taken note that the judgment in O.S.No.64 of 1970 has been confirmed in A.S.No.628 of 1976 before this Court, which was filed and challenged by the defendants 9 to 11, who claimed authority under the 8th defendant, who was none other than the present plaintiff in the suit.

30.3. The first appellate Court while referring to Ex-A17, the certified copy of the judgment and decree marked by the plaintiff in O.S.No.64 of 1970, where the present plaintiff has been arrayed as 8th defendant, had come to the conclusion that one Advocate by name, C.Jegadeesan, appeared on behalf of all the defendants in O.S.No.64 of 1970 and therefore concluded that an Advocate having represented all the Defendants in the suit, which was decreed and confirmed in A.S.No.628 of 1976 by this Court, the judgment and decree rendered by the trial Court was held to be set aside. The first appellate also recorded that the plaintiff's power agent, Ranganathan was not even impleaded as party and he was not even examined as witness to prove that the said Ranganathan had worked against the plaintiff, in collusion with the Defendants 1 and 12.

31. Aggrieved by the judgment and decree passed in A.S.No.35 of 2006, dated 21.12.2010, the plaintiff had filed the present appeal.

SUBMISSIONS BY THE RESPECTIVE PARTIES:



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32. The learned Senior Counsel appearing for the appellant/plaintiff submitted that the judgment and decree passed by the trial Court is based on the oral and documentary evidence marked on the side of the plaintiff. The learned Senior Counsel further submitted that Subbaraya Chettiar had executed a testamentary deed in favour of his daughter, Tanapackiattammal, which was marked as Ex-A7, by bequeathing the entire property in her favour. After the execution of the testamentary deed, Ex-A7, which stood in the name of Tanapackiattammal, the first daughter of Subbaraya Chettiar, the entire right and ownership has been transferred to the said Tanapackiattammal. The learned Senior Counsel contended that Subbaraya Chettiar had another daughter, by name, Manickathammal wife of Rangasamy Chettiar, who had a son, by name, Kumarasamy Chettiar, who had two sons, namely, Somasundara Chettiar and Venugopla Chettiar. They did not have any right or claim over the property, as Subbaraya Chettiar had given effect all the properties in favour of his elder daughter, Tanapackiattammal.

33. The learned Senior Counsel further submitted that after the demise of Tanapackiattammal, who was in absolute enjoyment and possession and right over the suit property, the suit property was inherited by her daughter, Logambal and after the demise of Logambal, the same was inherited by Devanatha Chettiar. The learned Senior Counsel also submitted that Tanapackiattammal had one son by name, Varadarasu and he had one son, namely, Vairakannu. Varadarasu and his son Vairakannu did not inherit the property of Tanapackiattammal.



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34. In a nutshell, the learned Senior Counsel emphasised that the flow of title from Subbaraya Chettiar dwelled upon Tanapackiattammal, thereafter, it was inherited by Logambal, thereafter, by her son, Devanatha Chettiar and after Devanatha Chettiar, it was inherited by the present plaintiff in the suit and viz-a-viz., the other daughter, Manickathammal and her son Kumarasamy Chettiar and his sons, Somasundara Chettiar and Venugopala Chettiar did not have any right or title over the suit schedule property, which was the absolute property of Subbaraya Chettiar.

35. The learned Senior Counsel stated that the release deeds, which were marked as Ex-A25, Ex-A26 and Ex-A30 would clearly indicate that the plaintiff's father alone is the owner of the property and therefore, the title of the said property was confirmed by Vairakannu. The learned Senior Counsel further submitted that Ex-A10 is a release deed, which was executed by Venugopala Chettiar on 19.03.1962 confirming that the suit schedule property is the property belonged to the plaintiff's father and the plaintiff's father was in possession and enjoyment of the said property for the past 40 years and the release deed made it clear that the said Venugopala Chettiar had no right or title over the same.

36. The learned Senior Counsel further submitted that in view of Ex-A10, Ex-A25, Ex-A26 and Ex-A30, Venugopala Chettiar and Vairkannu had made it clear that they did not have any right over the property. However, the sale deed was executed by Venugopala Chettiar and his brother, Somasundara Chettiar in favour of 12th defendant in the suit, namely, Dharmalinga Nattar, on 23.09.1963 without delivering the actual pos-

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session of the property. The learned Senior Counsel further argued that the sale deeds, which were executed in favour of the 12th defendant, who in turn, had executed a sale deed in favour of the 1st defendant in the suit, Julient Sachidanandam, were without delivering physical possession.

37. The learned Senior Counsel had referred to the suits in O.S.No.89 of 1964 and O.S.No.64 of 1970.

O.S.No. 89 of 1964:-

37.1. The said suit was initiated by the plaintiff's father, Devanatha Chettiar challenging the sale deeds executed by Venugopala Chettiar, Somasundara Chettiar, Dharmalinga Nattar and Julient Sachidanandam. The 4th and 5th defendants in the suit are minors sons of the first defendant, who has been represented by the second defendant being the mother and natural guardian. The suit was filed for a declaration to set aside the three sale deeds executed on 23.09.1963, 18.01.1964 and 22.02.1968 as null and void, which were executed by Venugopala Chettiar, Somasundara Chettiar, Dharmalinga Nattar and Julient Sachidanandam.

37.2. In view of the amendment in Civil Procedure Code with regard to Union Territory of Puducherry, the said suit was transferred and re-numbered as O.S.No.29 of 1968 on the file of the I Additional Subordinate Court, Pondicherry. During the pendency of the above suit, the plaintiff, Devanatha Chettiar had died on 25.05.1969 and thereafter, the present plaintiff being his legal heir, who had settled in France, got impleaded himself as second plaintiff.

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37.3.The present plaintiff had appointed one Ranganathan as his power agent to look after his estates and the litigations vide registered document in Ex-A19. However, the said Ranganathan had worked behind the interest of the present plaintiff. Though the present plaintiff was impleaded as a second plaintiff, because of the collusion of his power agent, Ranganathan, after the death of the original plaintiff, who instituted the suit in O.S.No.29 of 1968, the said suit was dismissed as abated on 28.08.1969.

O.S.No.64 of 1970:-

37.4. The said suit was filed by the first defendant in the present suit for recovery of possession as against the 11 defendants, in which the present plaintiff was made as the 8th defendant by giving his name wrongly as Deva Ramachandra @ Gangadara Thambia and in the description, it is stated that he is the illegitimate son of Devanatha Chettiar and the address for communication was stated as “R.I.M.A.CCS. Services, effectifs (56), Vennes, France.”

38.The learned Senior Counsel stated that Ex-A23, the copy of the plaint would show that the plaintiff, Julient Sachidanandam, willfully and wantonly had given a wrong name and wrong address, so that the summons could not be served or even if the summons are served, it would be only a service of summons not to the actual person, but a fictitious service.

39.The learned Senior Counsel lamented that while the plaintiff, Julient Sachidanandam had filed a suit in O.S.No.64 of 1970, in O.S.No.29 of 1968 filed by the plaintiff's father, Devanatha Chettiar, the plaintiff in O.S.No.64 of 1970 along with



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Venugopala Chettiar (first defendant), Somasundara Chettiar (second defendant), Dharmalinga Nattar (third defendant) and Julient Sachidanandam (fourth defendant) were made as parties in O.S.No.29 of 1968.

40.The learned Senior, therefore, further contended that the plaintiff in O.S.No.64 of 1970, Julient Sachidanandam having knowledge about the suit in O.S.No.29 of 1968 which was filed to set aside the sale deeds, dated 23.09.1963, 18.01.1964 and 22.02.1968, had filed the suit in O.S.No.64 of 1970 and had taken a stand that the suit was dismissed as abated due to the death of the plaintiff's father, namely, Devanatha Chettiar. The trial Court in O.S.No.64 of 1970 had considered the contention of the plaintiff, Julient Sachidanandam, that the 8th defendant/ plaintiff in the present suit, was an illegitimate son and is, therefore, neither entitled nor has any interest in the suit schedule property.

41. The learned Senior Counsel further contended that even assuming for a moment that the 8th defendant, who is the plaintiff in the present suit, whose name and address were wrongly given, and whose status was mentioned as an illegitimate son, the other defendants in the above suit, who are all third parties, and who have no right or nexus to the suit, were made as parties only to create a smokescreen, as if the plaintiff therein, Julient Sachidandam's, property was being illegally and unlawfully encroached by the defendants in the suit in O.S.No.64 of 1970. The judgment in O.S.No.64 of 1970 had given a finding that the 7th defendant in the suit in O.S.No.64 of 1970 is a *bona fide* purchaser, ie., Dharmalinga Nattar.

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42. The learned Senior Counsel had also brought to the knowledge of this Court that the plaintiff was not aware of the finality of the proceedings in O.S.No.29 of 1968, which was dismissed as abated by recording the death of the plaintiff's father, who instituted the suit, in which the present plaintiff was also made as second plaintiff. As the power agent of the plaintiff, who had colluded with the defendants, remained mute spectator without showing any interest in the above civil proceedings and allowed O.S.No.29 of 1968 to be dismissed by recording the death of the plaintiff's father, Devanatha Chettiar.

43. The learned Senior Counsel further submitted that the plaintiff in the present suit had filed I.A.Nos.1431 to 1435 of 1972 to restore the suit in O.S.No.29 of 1968 contending that he is the legal heir of his father and having right over the property and was also the second plaintiff in the above suit in O.S.No.29 of 1968 and had given reasons that Ex-A47 and Ex-A48, the judgment and decree for abatement has to be restored failing which, it would cause irreparable loss and his valuable right could not be retrieved.

44. The learned Senior Counsel also submitted that by narrating the nature of suit and the finality which was attained in O.S.No.29 of 1968 and O.S.No.64 of 1970, the present suit was filed for a declaration that the judgment and decree, dated 30.11.1974 in O.S.No.64 of 1970 was obtained by fraud. In view of the fraud committed by the defendants in the present suit, the trial Court decreed the suit in favour of the plaintiff. Aggrieved by the said judgment, an appeal was filed which was numbered as A.S.No.35 of

2006 by the II Additional District Court, Puducherry.

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45. The learned Senior Counsel further contended that the reasons given by the first appellate Court that there was no fraud played in O.S.No.64 of 1970 and the suit was considered as *res judicata* in view of O.S.No.29 of 1968 are not in consonance with the order passed by the trial Court in O.S.No.723 of 1985. The learned Senior Counsel for the appellants had relied upon the order passed by this Court, dated 05.08.2016, in C.R.P.No.1403 of 2015. The above Civil Revision Petition was filed by the wife of the present plaintiff challenging the order passed in E.P.No.80 of 2012 in O.S.No.64 of 1970, wherein, this Court has as follows:

6. On a perusal of the dates mentioned above, it could be seen that the period of limitation of 12 years for executing the decree had expired on 30.11.1986. However, an Appeal in A.S.No.628 of 1976 was filed as against the judgment and decree passed in O.S.No.64 of 1970, which was ultimately dismissed by this Court on 07.01.1980. If three and a half years is added (i.e.) the period during which the First Appeal was pending before this Court, the period of limitation would have extended upto June 1989. The suit in O.S.No.723 of 1985 was decreed by the trial Court, setting aside the judgment and decree passed in O.S.No.64 of 1970 on 28.08.1991. Therefore, when the decree in O.S.No.64 of 1970 was set aside in O.S.No.723 of 1985 on 28.08.1991, the period of limitation for executing the decree in O.S.No.64 of 1970 had lapsed. The decree granted in O.S.No.723 of 1985 was set aside by the Additional Subordinate Court, Puducherry on 21.12.2010 and the 2nd Execution Petition was filed by the Decree Holders on 26.08.2011.

7. When the period of limitation had lapsed as early as in the year 1989, the filing of the 2nd Execution Petition in the year 2011 is clearly barred by limitation. The period of 12 years for executing the decree had expired in the year 1989 itself. Therefore, the Execution Petition filed by the Decree Holders in E.P.No.80 of 2012 is barred by limitation.

8. In these circumstances, the order passed by the Additional Subordinate Court, Puducherry in E.P.No.80 of 2012 in O.S.No.64 of 1970 is liable to be set aside. Accordingly, the same is set aside.



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The Civil Revision Petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.”

46. In view of the findings rendered in the above Civil Revision Petition with regard to the execution petition pursuant to the judgment in O.S.No.64 of 1970, where a fraud has been played in the main suit itself, the learned Senior Counsel prayed to allow the above Second Appeal.

47. In support of his contention, the learned Senior Counsel relied on the following judgments:

- i. **Sabitri Dei and others vs Sarat Chandra Rout and others, (1996) 3 SCC 301.**
- ii. **Hope Palantations Limited and Taluk Land Board, Deermade and another, (1999) 5 SCC 590.**
- iii. **Shiv Kumar Tiwari and others vs Jagat Narain Rai and others, (2001) 10 SCC 11:**

“6. There is no controversy that the Institution had only one sanctioned post of Lecturer in Mathematics as on date and if the workload and sanctioned strength really required more than one they should have moved the competent authorities in accordance with law and obtained proper sanction for more than one. The learned Single Judge in the High Court has adverted to certain facts, stated to be on the basis of records, that the competent authority has not only been according approval of the appellant on temporary basis, academic yearwise, but the management had been calling for applications and the appellant had been applying every time and it is only in 1973 when his period was about to expire, the appellant moved the civil court for relief taking altogether a different stand. Though the appellant should have known there could not have been any appointment for any period or duration without the approval of the competent authority and the relief sought for involved a decision on the exercise of powers already made and to be made thereafter by such authorities, the appellant did not care to implead the Department in the suit or even the first respondent in the pending suit when he



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came to be appointed, as admitted in para 2 of the written submissions of the management, “In the meanwhile, Respondent 1, Shri Jagat Narain Rai, had been appointed by a regular selection process by an order dated 6-9-1973 after obtaining the approval of the Department he was appointed regularly” and also as conceded in para 3 of written submissions on behalf of the appellant

“... at the same time it cannot also be disputed that the respondent Shri Jagat Narain Rai has also worked as a Mathematics Lecturer with effect from 6-9-1973. It is also undisputed that there is only one sanctioned post of Mathematics Lecturer against which two persons have been working with full workload.”

The least said about the manner of consideration and disposal given in the judgment of the civil court in Suit No. 108 of 1973 is better. Such a judgment could not be pressed into service to the detriment of the rights of the first respondent and it requires no serious exercise to place on record the position of law that the judgment/decreed/order of courts or any other authority binds only the parties to it, or their privies when it concerns the rights of parties and such proceedings purport to adjudicate also rights of contesting parties by means of an adversarial process. Even assuming that the communication of the Deputy Director proceeded to accept its binding nature — it could not have been legitimately made to the detriment and prejudice of the first respondent and it is futile for the appellant or the management to base any right on that alone. The plea that the Department or the first respondent should have filed an appeal, though not parties to the suit, at any rate, does not lie in the mouth of either the appellant or the management to be taken. Though it would have been open to them to file an appeal with the leave of the court, there is no duty or obligation cast on them so to do on pain of distress when in law they could also legitimately ignore, as not affecting them. The judgment of the civil court in Suit No. 108 of 1973 has no value or merit for asserting any claim or right against the first respondent or the officers of the Education Department.

i. Dwarka Prasad Agarwal and others, (2003) 6 SCC 230.



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“38. There is another aspect of the matter which must also be taken notice of. A party cannot be made to suffer adversely either indirectly or directly by reason of an order passed by any court of law which is not binding on him. The very basis upon which a judicial process can be resorted to is reasonableness and fairness in a trial. Under our Constitution as also the international treaties and conventions, the right to get a fair trial is a basic fundamental/human right. Any procedure which comes in the way of a party in getting a fair trial would be violative of Article 14 of the Constitution of India. Right to a fair trial by an independent and impartial Tribunal is part of Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 [See Clark (Procurator Fiscal, Kirkcaldy) v. Kelly [(2003) 1 All ER 1106 (PC)]]. Furthermore, even if the petitioner herein had filed a writ petition before the High Court in terms of Article 226 of the Constitution of India, the same would not have been entertained as the impugned order had been passed consequent to and in furtherance of the purported consent order passed by the High Court. Ordinarily, the High Court would not have issued a writ of certiorari for quashing its own order. Even in that view of the matter it is apposite that this petition under Article 32 should be entertained.”

i. Refique Bibi (Dead) and others and Sayed Waliuddin (Dead) and others, (2004) 1 SCC 287.

“8.A distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable by the executing court; the remedy of a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a superior court failing which he must obey the command of the decree. A decree passed by a court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings.”

i. Jai Narain Parasrampur and others vs Pushpa Devi Saraf and others, (2006) 7 SCC 756.

“Withdrawal of suit—effect of

52. One of the Judges of the High Court in the impugned judgment opined that in view of the fact that the appellant had withdrawn the suit questioning the said award and the decree sub-



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sequent to passing of the judgment and decree of the trial court, they became disentitled to raise the said question. In so opining, the High Court committed a manifest error. The appellant had contended that the said award and the consequent decree passed by the Delhi High Court was a fraudulent and collusive one. The appellants having obtained a decree, it was not necessary for them to obtain another decree. They might not have been able to file another suit, but the same would not mean that they were not entitled to question the validity or otherwise of the said award in the suit for specific performance of contract. If a judgment or decree is vitiated by fraud, the same would be a nullity. In such an event, Section 44 of the Evidence Act would be attracted. As a plea of fraud can be raised even in a collateral proceeding and the trial court having recorded a specific finding that the jurisdiction of the Delhi Court was created artificially by including a Delhi property, in respect whereof there was no dispute, the said decree must be held to have been obtained by Sarafs by concealment of material facts and by a collusive and fraudulent exercise.

.....

55. It is now well settled that fraud vitiates every solemn act. Any order or decree obtained by practising fraud is a nullity. [See (1) *Ram Chandra Singh v. Savitri Devi* [(2003) 8 SCC 319] followed in (2) *Vice Chairman, Kendriya Vidyalaya Sangathan v. Girdharilal Yadav* [(2004) 6 SCC 325 : 2005 SCC (L&S) 785] ; (3) *State of A.P. v. T. Suryachandra Rao* [(2005) 6 SCC 149] ; (4) *Ishwar Dutt v. Land Acquisition Collector* [(2005) 7 SCC 190] ; (5) *Lillykutty v. Scrutiny Committee, SC & ST* [(2005) 8 SCC 283] ; (6) *Chief Engineer, M.SEB. v. Suresh Raghunath Bhokare* [(2005) 10 SCC 465 : 2005 SCC (L&S) 765] ; (7) *Satya v. Teja Singh* [(1975) 1 SCC 120 : 1975 SCC (Cri) 50] ; (8) *Mahboob Sahab v. Syed Ismail* [(1995) 3 SCC 693] ; and (9) *Asharfi Lal v. Koili* [(1995) 4 SCC 163] .”

- i. **M.Venkataramana Hebbar and others vs M.Rajagopal Hebbar and others, (2007) 6 SCC 401.**

“12.The contract between the parties, moreover was a contingent contract. It was to have its effect only on payment of the said sum of Rs 15,000 to the plaintiff and the other respondents by Defendants 1 to 3. It has been noticed hereinbefore by us that as of fact, it was found that no such payment had been made.



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Even there had been no denial of the assertions made by the appellant in their written statement in that behalf. The said averments would, therefore, be deemed to be admitted. Order 8 Rule 3 and Order 8 Rule 5 of the Civil Procedure Code read thus:

“3. Denial to be specific.—It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

5. Specific denial.—(1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

Provided that the court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

(2) Where the defendant has not filed a pleading, it shall be lawful for the court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.”

13. Thus, if a plea which was relevant for the purpose of maintaining a suit had not been specifically traversed, the court was entitled to draw an inference that the same had been admitted. A fact admitted in terms of Section 58 of the Evidence Act need not be proved.”

i. Kalabharathi Advertising vs Hemant Vimalnath Narichania and others, (2010) 9 SCC 437.

“20.The aforesaid judgments are passed on the application of legal maxim subalto fundamento, cadit opus, which means in case a foundation is removed, the superstructure falls.”



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i. **Om Prakash Verma and others vs State of Andhra Pradesh and others, (2010) 13 SCC 158.**

*76. In **Forward Construction Co. v. Prabhat Mandal [(1986) 1 SCC 100]** this Court held that an adjudication is conclusive and binding not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided. The following portion of the judgment is relevant which reads as under : (SCC p. 112, para 20)*

“20. So far as the first reason is concerned, the High Court in our opinion was not right in holding that the earlier judgment would not operate as res judicata as one of the grounds taken in the present petition was conspicuous by its absence in the earlier petition. Explanation IV to Section 11 CPC provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject-matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided.”

.....

78. As rightly observed by the High Court, what is of utmost relevance is the final judgment of the superior court and not the reasons in support of that decision. Apart from the legal position and the effect of allowing of the appeals and dismissing the writ petitions by this Court, the contention with regard to the land being agricultural land was raised in the writ petitions which were the subject-matter of the appeals filed in this Court. In these proceedings, the State categorically took the stand that the lands are



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not agricultural. It was brought to our notice that the present appellants as respondents in the earlier round did not urge this plea before this Court and no such arguments were advanced before this Court. In view of the same, the appellants are not entitled to raise any such contention now. The effect of allowing the said appeals is that WPs Nos. 18385 of 1993 and 238 of 1994 stood dismissed.”

i. Rajasthan State Board Transport corporation and another vs Rajrang Lal, (2014) 4 SCC 693.

“19. With all respect, we do not agree with such a conclusion reached by the High Court, as second appeal, in exceptional circumstances, can be entertained on pure questions of fact. There is no prohibiting for the High Court to entertain the second appeal even on question of fact where factual findings are found to be perverse.”

i. Mourougaessa Modealiar vs Agulandammalle (died) and others, (1995) 1 LW (JS) 72.

“By which of his functions, whether thee be assumed or be attributed to him as a monopoly by the law, the notary occupies a place of great dignity and honour in French life. The disinterested counsellor of the parties, the protector of the interest of the inexperienced and legally incapable, the trusted sharer of the innermost secrets of the family and often the peacemaker in its disputes, he has a high legal and moral responsibility which generations of notaries have faithfully discharges”

Having regard to the powers and duties of a notary contained in the portions extracted above and the high status afforded to him by law, we certainly think that the consultation Deivanayagam Pillai had with the Notary before purchasing the suit property and having the sale deed drawn up by him, will manifestly indicate good faith on his part. As a lay man, he has sought the counsel and advice of a man well vested in law and who was under an obligation to give correct and honest advice in respect of the subject matter of consultation. We are, therefore, clearly of the opinion that the trial Judge was fully justified in holding that Deivanayagam Pillai had purchased the suit property in good faith and therefore, it was for the plaintiff to prove that the sale was not actuated by good faith. We are unable to sustain the view of the appellate judge that the consultation Deivanayagam Pillai had with the Notary was of no consequence for determining the question whether the sale had



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been entered into in good faith. On this finding alone, the appeal deserves to be allowed."

i. K.Durai Thriunavukkarasu vs Devathal and others, 2004 (2) CTC 732.

"6.The above conclusions of the Courts below based on the concrete documentary evidence establishing the fact about the re-union of respondents 1 and 2 with the third respondent, only go to show that the very basis of the claim of respondents 1 and 2 for maintenance as against the third respondent and his father, no longer survive. In other words, by virtue of the establishment of the above factors of the re-union of respondents 1 and 2 with the third respondent, the very basis of the decree granted in O.S. 459/84 ceases to exist and as a sequel to it, the very decree should be held to have lost its value for enforcement.

7. In fact, the learned counsel for the petitioner relied upon the Division Bench Judgment of this Court reported in Vasantam Venkakyya v. Vasantam Raghavamma, A.I.R. (29) 1942 Mad. 1 wherein His Lordship Justice Leach in his usual inimitable language has stated the legal position in a most lucid manner which is to the following effect:

" The respondent mainly relies on the provisions of the Civil Procedure Code. She points to the fact that under that Code a decree remains in force unless it has been satisfied or adjusted and the satisfaction or the adjustment has been recorded. The present case is not concerned with a manner of procedure or the adjustment or satisfaction of a decree. The question is whether the Court is to disregard a sound principle of law and enforce a decree the basis of which has by the action of the parties themselves been demolished. By returning to her husband the respondent became disentitled to claim maintenance against him. The decree which she had obtained must, it seems to me, be regarded in the circumstances as having become ineffective. By going back to her husband the wife restores the position to what it was when they were married. It seems to me that the rule stated in (1887) 18 Q B D 778 must be given effect to her if justice is to be done. For these reasons I would allow the appeal and dismiss the application for execution. This will not prevent the respondent from obtaining a fresh decree if she left her husband on the second occasion as the result of his ill treatment of



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her, but this is not question which can be considered in this case. There will be no order as to costs here or below.” (Emphasis added)

i. R.Sulochana Devi vs D.M.Sujatha and other, (2004) 5 CTC 108 SC.

“24. We see merit in the submission of Mr Iyer that an order made in violation of natural justice is void. Mr T.L.V. Iyer in support of his above contention relied on the judgment of this Court in Krishan Lal v. State of J&K [(1994) 4 SCC 422 : 1994 SCC (L&S) 885 : (1994) 27 ATC 590] to the effect that an order passed in violation of the principles of natural justice renders an order invalid. Likewise, an order made without hearing the party affected is also bad in law. In the instant case, the order made in violation of natural justice is void.

i. Gnanasoundary @ Gnanasoundaram and others vs Vaithianatha Sivacharyar, 2009-2-L.W.0773.

19. Under the French regime, Notaires are not mere notaries as understood in the rest of India under the Notaires Act. But, French Notaires are French law graduates having the power of justice of peace and their office is a sanctified and responsible one, as French law attaches much importance to them and they were responsible for drafting the sale deeds in accordance with law and they were expected to get themselves satisfied about the recitals recorded by them on the instigation of parties in the deeds. With this background, it is just and necessary to analyse the French deeds here. Wherefore, it is obvious that the recitals in Ex. A26 cannot simply be slighted or discarded as mere unilateral versions of the executants of the mortgage deed. The clauses found in Ex. A26 would exemplify that the ancestors of Pattu Gurukkal, the propositus of the plaintiffs here acquired title over the suit property and they exercised right of ownership over it and on the strength of the same, Pattu Gurukkal and his relative mortgaged the suit property as evidenced by Ex. A26. In these circumstances, it is really strange to hear from the defendant certain statements as though his own ancestors are not the owners of the suit property and that some third party is the owner.”

48. *Per contra*, the learned Counsel appearing for the respondents 1 to 4 conten-

ded that in view of the judgment made O.S.No.29 of 1968, which was dismissed as

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abated and the appeal suit challenging the judgment and decree in O.S.No.64 of 1970, dated 30.11.1974 was confirmed by this Court in A.S.No.628 of 1976, this Courts lacks jurisdiction, since the judgment in O.S.No.64 of 1970 had been upheld by this Court.

49. The second submission made by the learned Counsel for the respondents 1 to 4 is that O.S.No.29 of 1968 was dismissed as abated and the same was not challenged by the appellants/plaintiffs. The decrees in O.S.No.29 of 1968 and O.S.No.64 of 1970 operate as *res judicata* and in view of the same, the appellants cannot now claim that they have a right over the property. The learned Counsel further contended that even assuming for a moment that suit summons was not served on the plaintiff, the judgment in O.S.No.64 of 1970, as confirmed in A.S.No.628 of 1976, becoming final, the said argument of non-service of suit summons will be of no avail to the Appellant.

50. Another contention raised by the learned Counsel for the respondents 1 to 4 is that the plaintiff himself has filed a suit for recovery of possession. When the suit was filed for recovery of possession, the learned Counsel for the respondents 1 to 4 distinguished the prayer made in O.S.No.64 of 1970 and O.S.No.29 of 1968. He contended that since the parties are one and the same, the present suit in O.S.No.723 of 1985 is hit by *res judicata*.

51. The learned Counsel further contended that once the judgment is delivered and the appellate Court has confirmed the said judgment, then the finding rendered by the trial Court in O.S.No.64 of 1970 has attained finality irrespective who had challenged the judgment. The learned Counsel vehemently contended that it does not matter



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who had filed the appeal, and what matters is only the judgment and decree passed in the appeal. Learned counsel further submitted that once the High Court in A.S.No.628 of 1976 had confirmed the judgment passed in O.S.No.64 of 1970, dated 30.11.1974, this Court lacks jurisdiction to entertain the appeal for the very same cause of action.

52. On the substantial questions of law, the learned Counsel for the respondents 1 to 4 relied upon the following judgments:

- i. **Hero Vinoth (Minor) vs Seshammal, AIR 2006 SC 2234.**
- ii. **Kondiba Dagadu Kadam vs Savitribai Sopan Gujar and others, AIR 1999 SC 2213.**
- iii. **Narayanan Rajendran and another vs Lekshmy Sarojini and others, (2009) 5 SCC 264;**
- iv. **Santosh Hazari vs Purushottam Tiwary (Dead) and by LR's, (2001) 3 SCC 179;**
- v. **State of Maharashtra vs Ramdas Shrinivas Nayak and another, (1982) 2 SCC 463;**

53. With regard to argument on limitation, the learned Counsel for the respondents 1 to 4 relied upon the following judgments:

- i. **Mahabir Singh vs Subbash and others, 2008 (1) CTC 173;**
- ii. **In re Marappa Goundar, AIR 1959 Madras 26.**

54. The learned Counsel for the respondents 1 to 4 further submitted that judicial discretion shall be done judiciously, relying upon the judgment of the Hon'ble Supreme Court reported in **2008 (5) CTC 663** between **Pandik Jalam Patil (D) by LR's vs Ex-e.Eng.Jalgaon Medium Project and another.**



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55. The learned Counsel for the respondents 1 to 4 further relied upon the judgment of the Hon'ble Supreme Court reported in **2008 (2) CTC 686** between **Sunil Poddar and others vs Union Bank of India**;

56. The learned Counsel for the respondents 1 to 4 further relied upon the judgments of the Hon'ble Supreme Court reported in (1) **AIR 1994 J&K 12** between **Harbans Lal and others vs Charanjit Singh and others**; and (2) **(1994) 1 SCC 1** between **S.P.Chengalvaraya Naidu (Dead) by LRs vs Jagannath (Dead) By LRs and others**; However, on perusal of this judgments, this Court is of the view that these judgments would not applicable to the present case.

57. The learned Counsel for the respondents 1 to 4 further relied on the following judgments in regard to principles of *res judicata*:

- i. **Daryao and others vs State of Uttar Pradesh and another, AIR 1961 SC 1457;**
- ii. **M/s.International Woollen Mills vs M/s.Standard Wools (UK) Limited, (2001) 5 SCC 265;**
- iii. **Narayana Prabhu Venkateswara Prabhu vs Narayana Prabhu Krishna Prabhu (Dead) by LRs., (1977) 2 SCC 181;**
- iv. **K.K.Swaminathan vs Srinivasagam, 2003 (4) CTC 347;**
- v. **Gulabchand Chhotalal Parikh vs State of Gujarat, AIR 1965 SC 1153;**
- vi. **Satyadhayan Ghosal and others vs Smt.Deorjin Debi and another, AIR 1960 SC 941.**

DISCUSSION AND FINDINGS:

58. While it was contended on behalf of the learned counsel for the Respondents 1 to 4 that the present appeal did not involve any substantial questions of law seeking the

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interference of this Court under Section 100 of the Code of Civil Procedure, 1908, rely-



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ing on the decisions of the Hon'ble Supreme Court, inter alia, in ***Hero Vinoth (Minor)***' (referred supra) and ***Santosh Hazari*** (referred supra), the question of when a High Court, sitting on an appeal under Section 100, can interfere is settled.

59. The Hon'ble Supreme Court, in ***Chandrabhan (Deceased) through LR.s & Ors. v. Saraswati & Ors.***, 2022 SCC OnLine SC 1273, after also discussing the above referred decisions cited by the counsel for the Respondents 1-4, summarised the principles on what a substantial question of law is, and when the interference of a High Court is called for in an appeal under Section 100. The relevant portions are as follows:

“31. The proper test for determining whether a question of law raised in the case is substantial would be, whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so, whether it is either an open question in the sense that it is not finally settled by this Court. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or the question raised is palpably absurd, the question would not be a substantial question of law.

32. To be 'substantial', a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law “involving in the case” there must be first, a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case or not, the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages



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and impelling necessity of avoiding prolongation in the life of any lis. (See *Santosh Hazari v. Purushottam Tiwari*⁷).

33. The principles relating to Section 100 of the CPC relevant for this case may be summarised thus:

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents and involves a debatable legal issue. **A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.**

(iii) The general rule is that the High Court will not interfere with findings of facts arrived at by the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to “decision based on no evidence”, it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.” (emphasis applied)

60. Needless to say, that in exceptional circumstances, even findings of fact can

be interfered with by the High Court, as held by the Hon’ble Supreme Court in **Ra-**

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SCC 693, relying on its decision in **Union of India v. Ibrahim Uddin, (2012) 8 SCC 148:**

“19. With all respect, we do not agree with such a conclusion reached by the High Court, as second appeal, in exceptional circumstances, can be entertained on pure questions of fact. There is no prohibition for the High Court to entertain the second appeal even on question of fact where factual findings are found to be perverse.”

61. Therefore, it is important to see if the grounds and questions of law raised by the Appellant in the present pass the above muster, inviting interference of this Court, which would also, in turn, depend on whether the first appellate court has applied the settled principles of law correctly to the facts of the present dispute and if its findings on fact are perverse.

62. This Court vide order, dated 06.08.2024, had admitted the Second Appeal on the following substantial questions of law:

“1. Whether the judgment and decree obtained by the deceased first defendant in O.S.No.64 of 1970 behind the back of the appellant herein are binding on him and if so, whether the same have to be challenged by the appellant?

2. Whether the judgment and decree passed in O.S.No.29 of 1968 marked as Exs.A47 and A48 will be binding on the deceased first defendant herein, his LR's and others declaring sale deed dated 23.09.1963, 18.01.1964 and 22.02.1968 as null and void and would not nullify and invalidate the earlier judgment and decree passed in O.S.No.64 of 1970 dated 30.11.1974 obtained by the deceased first defendant / first respondent?”



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63. The present dispute originally emanated from O.S.No.29 of 1968. The factum remains that O.S.No.29 of 1968 was filed by Devanatha Chettiar, the plaintiff's father, which was originally numbered as O.S.No.89 of 1964 and due to the amendment made in Code of Civil Procedure with regard to Union Territory of Puduchery, the said case was transferred and renumbered as O.S.No.29 of 1968. The plaintiff in O.S.No.29 of 1968 had challenged the sale deeds, dated 23.09.1963, 18.01.1964 and 22.02.1968, where the defendants in that suit were Dharmalinga Nattar, Venugopala Chettiar, Somasundara Chettiar and Julient Sachidanandam and others. The said suit was dismissed as abated, since the plaintiff, Devanatha Chettiar, had died.

64. In the interregnum, the plaintiff, Deva Kangadarane got impleaded in the above suit, as second plaintiff. The present plaintiff had appointed one Ranganathan, as his power agent to look after his estates and the legal issues. His appointment of power agent was marked as Ex-A19 dated 13.07.1975 and the cancellation of said power in favour of Ranganathan was marked as Ex-A20, dated 18.07.1984 and thereafter, the plaintiff had issued a legal notice to his power agent, Ranganathan, which was marked as Ex-A21, dated 30.07.1984 would clearly show that the power agent of the plaintiff had acted against the interest of the plaintiff and remained silent as a mute spectator, where a collusive suit was filed by the Julient Sachidanandam in O.S.No.64 of 1970.

65. In the suit instituted in O.S.No.64 of 1970, the present plaintiff's name was wrongly quoted in the suit with a wrong description including the nature of his legal status, as that of an 'illegitimate son', and the wrong address at France, which would

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clearly show the fraudulent intention of Julient Sachidanandam, the plaintiff in O.S.No.64 of 1970. When Julient Sachidanandam was aware that the present plaintiff's father, Devanatha Chettiar himself had filed a suit in O.S.No.29 of 1968 to declare the sale deeds executed by Venugopala Chettiar, Somasundara Chettiar and Vairakannu, as null and void, wherein, Julient Sachidanandam was arrayed as a defendant, the suit in O.S.No.64 of 1970 has been filed by making the present plaintiff as defendant by giving a false description with regard to his name and address.

66. It is seen from Ex-A37, that the original address of the 8th defendant in O.S.No.64 of 1970 was purposely and intentionally furnished incorrectly by the plaintiff, Julient Sachidanandam and the fact that Ex-A41, the copy of the notes paper in O.S.No.64 of 1970, clearly shows that an order was passed on 27.07.1970 to take fresh summons to defendants 3, 4 and 8, the 8th defendant is the present plaintiff, and the case was adjourned to 17.08.1970 for taking steps. On 13.10.1970, the trial Court in O.S.No.64 of 1970, had recorded that the 8th defendant was called absent and set *ex parte*. However, in the judgment in O.S.No.64 of 1970, which was marked as Ex-A17, the trial Court had held that an Advocate, by name, C.Jegadeesan, had appeared for all the defendants including the unserved 8th defendant, who is the present plaintiff.

67. The above mistake seems to be an error apparent on the face of record, and irrespective of whether it is wilful, wanton or out of ignorance, it cannot come to the aid of the respondents herein in any manner. It is therefore not clear as to how the trial court

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recorded the service of suit summons on the Plaintiff in the subject suit, when it is apparent from the documents that Julient Sachidanandam had specifically mentioned the name and address of the Plaintiff herein incorrectly. Therefore, the factum of the Plaintiff in the subject suit being set ex-parte in O.S.No.64 of 1970 cannot come to the aid of the Defendants herein. The Plaintiff in O.S.No.64 of 1970 has also not been able to prove otherwise.

68. In the present case, the Appellant/Plaintiff has been able to prove the intention of the said Juliet Sachidanandam to play a fraud upon the court, which is clear from the above facts regarding non-service of suit summons in O.S.No. 64 of 1970 on the Plaintiff herein, along with the fact that tracing of title in respect of the subject property is very clearly in favour of the Plaintiff herein, as explained herein below.

69. When Subbaraya Chettiar had executed a testamentary deed in favour of Tanapackiattammal, who is his elder daughter, which was marked as Ex-A7, dated 26.07.1913, which was registered on 01.09.1914, the said testamentary document was neither challenged nor tested by any of the parties in O.S.No.64 of 1970 or any written statement in O.S.No.29 of 1968 had been filed denying the same. In view of the testamentary document, Ex-A7, the title was clearly inherited by Tanapackiattammal. The said Tanapackiattammal had thereafter, given the said property in the name of Logambal and thereafter, it was inherited by Devanatha Chettiar.

70. When the flow of title is very clear and when Ex-A7 was not put to under challenge, even assuming for a moment that Manickathammal, who was the second

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daughter of Subbaraya Chettiar or her son Kumarasamy Chettiar or Kumarasamy Chettiar's son, Venugopla Chettiar and Somasundara Chettiar cannot have a right or claim over the suit schedule property. Similarly, Tanapackiattammal's son Varadarasu and his son Vairakannu have no right or authority over the property, which was dealt under Ex-A7. In the absence of any right over the property, which is the subject matter in O.S.No.29 of 1968 and O.S.No.64 of 1970, any claim or counter claim made by the defendants cannot have any legal footing and it is apparent from the documents on record that the Defendants have not even shown a semblance of a right or title.

71. Further, the appellants in A.S.No.628 of 1976 are third parties to the present suit and even in that suit, only the said Julient Sachidanandam was made as a sole respondent, whereas, the other contesting defendants including the present plaintiff, who was wrongly arrayed as the 8th defendant was not made as party in A.S.No.628 of 1976. When a fraud was played at the inception in O.S.No.64 of 1970 and third parties, who had no right or authority being made as a defendants in the suit, had challenged the same before this Court in A.S.No.628 of 1976, in which the present plaintiff, who was arrayed as the 8th defendant, was not made as a party, then the judgment rendered in A.S.No.628 of 1976 is not binding on the plaintiff herein. Apart from the fact, when the judgment itself was obtained by playing fraud, and in collusion of the power agent of the present plaintiff, which was crystal clearly demonstrated by the act of Ranganathan, the power agent of the plaintiff, then the judgment in O.S.No.64 of 1970 is absolutely a judgment obtained by playing fraud and in view of the same, the present suit instituted, which was



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decreed by the trial Court by impeaching the judgment and decree dated 30.11.1974 passed in O.S.No.64 of 1970 on the file of the Additional Subordinate Court, Pondicherry, as null and void, should not have been reversed by the first appellate court.

72. It is to be noted that the grid of the family members knowing that they have no right, claim or authority over the property, had wilfully executing the sale deeds in favour of third person and the third person, who is none other than Julient Sachidanandm, filed a suit by suppressing the truth and facts in O.S.No.64 of 1970 would only demonstrate his lust for money and for property, which had driven the present appellant/plaintiff, who is the wife of the plaintiff to suffer a legal battle, since 1964 to 2024.

73. The appellant's husband was the plaintiff in O.S.No.29 of 1968 had died. His father, who was the plaintiff in O.S.No.29 of 1968, namely, Devanatha Chettiar had died and despite of his death, the true persons have claiming right by way of a testamentary deed, which was marked as Ex-A7, which was never ever challenged by any of the rival claimants.

74. The Hon'ble Supreme Court in **Ramesh Kumar v. Furu Ram**, (2011) 8 SCC 613, held as follows:

“16. ... Fraud can be of different forms and different hues. It is difficult to define it with precision, as the shape of each fraud depends upon the fertile imagination and cleverness of who conceives and perpetrates the fraud. Its ingredients are an intention to deceive, use of unfair means, deliberate concealment of material facts, or abuse of position of confidence. “Fraud” is “knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his detriment”. “Fraud” is also defined as a concealment or false representation through a statement or conduct that injures another who relies on it in acting (vide Black's

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Law Dictionary). Any conduct involving deceit resulting in injury, loss or damage to someone is fraud.”

75. It is also a settled proposition that ‘Fraud vitiates every solemn act’. The judgment of the Hon’ble Supreme Court in **S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1**, starts with the following paragraph:

“Fraud avoids all judicial acts, ecclesiastical or temporal” observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decreed — 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.

76. With regard to the arguments advanced and the judgments relied upon by the learned Counsel appearing for the respondents 1 to 4 in respect of the applicability of *res judicata*, there can absolutely be no quarrel that the principle of *res judicata* will apply only when the parties and the subject matter are one and the same, thereby rendering the parties to the suit or to proceedings incapable of filing of a subsequent suit for the very same prayer. But it is to be noted that the relief sought in O.S.No.29 of 1968 is different from that sought in O.S.No.64 of 1970. In O.S.No.29 of 1968, the relief sought is to set aside the sale deeds executed by Somasundara Chettiar, Venugopala Chettiar and Vairakannu vide document, dated 23.09.1963, 18.01.1964 and 22.02.1968 as null and void, which is different from the prayer made in O.S.No.64 of 1970 for recovery of posses-

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sion. Even in that suit, the present plaintiff was arrayed as 8th defendant with a wrong name, wrong address and with a wrong description as illegitimate son of Devanatha Chettiar.

77. Apart from the present plaintiff, there are other nine persons, who are arrayed as defendants, who are not parties to the suit in O.S.No.29 of 1968 and in the present suit. When the plaintiff had specifically averred that his power agent Ranganathan had acted against his interest and allowed the suit in O.S.No.29 of 1968 to get abated by recording the death of Devanatha Chettiar and where the present plaintiff was also made as a second plaintiff would demonstrate that the present plaintiff's power agent Ranganathan had acted against the interest of the present plaintiff.

78. As rightly contended by the learned senior counsel for the Appellant, the principle of res judicata is not attracted in the present case. In **Sabitri Dei and others vs Sarat Chandra Rout and others**, (1996) 3 SCC 301, the Hon'ble Supreme Court held as follows:

*“6.... Once a decree is held to be a nullity, the principle of constructive res judicata will have no application and its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right even at the stage of execution or in any collateral proceeding. This question no longer remains res integra and has been so held in the case of **Sushil Kumar Mehta v. Gobind Ram Bohra** [(1990) 1 SCC 193] to which one of us (brother Ramaswamy, J.) was a member. It has been held in the aforesaid case:*

“Thus it is settled law that normally a decree passed by a court of competent jurisdiction, after adjudication on merits of the rights of the parties, operates as res judicata in a subsequent suit or proceedings and binds the parties or the persons claiming right, title or interest from the parties. Its validity should be



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assailed only in an appeal or revision as the case may be. In subsequent proceedings its validity cannot be questioned. A decree passed by a court without jurisdiction over the subject-matter or on other grounds which goes to the root of its exercise or jurisdiction, lacks inherent jurisdiction. It is a coram non judice. A decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the authority of the court to pass a decree which cannot be cured by consent or waiver of the party. If the court has jurisdiction but there is defect in its exercise which does not go to the root of its authority, such a defect like pecuniary or territorial could be waived by the party. They could be corrected by way of appropriate plea at its inception or in appellate or revisional forums, provided law permits. The doctrine of res judicata under Section 11 CPC is founded on public policy. An issue of fact or law or mixed question of fact and law, which are in issue in an earlier suit or might and ought to be raised between the same parties or persons claiming under them and was adjudicated or allowed uncontested becomes final and binds the parties or persons claiming under them. Thus the decision of a competent court over the matter in issue may operate as res judicata in subsequent suit or proceedings or in other proceedings between the same parties and those claiming under them. But the question relating to the interpretation of a statute touching the jurisdiction of a court unrelated to questions of fact or law or mixed questions does not operate as res judicata even between the parties or persons claiming under them. The reason is obvious; a pure question of law unrelated to facts which are the basis or foundation of a right, cannot be deemed to be a matter in issue. The principle of res judicata is a facet of procedure but not of substantive law. The decision on an issue of law founded on fact in issue would operate as res judicata. But when the law has since the earlier decision been altered by a competent authority or when the earlier decision declares a transaction to be valid despite prohibition by law it does not operate as res judicata. Thus a question of jurisdiction of a court or of a procedure or a pure question of law unrelated to the right of the parties founded purely on question of fact in the previous suit, is not res judicata in the subsequent suit. A question relating to jurisdiction of a court or interpretation of provisions



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of a statute cannot be deemed to have been finally determined by an erroneous decision of a court. Therefore, the doctrine of res judicata does not apply to a case of decree of nullity. If the court inherently lacks jurisdiction consent cannot confer jurisdiction. Where certain statutory rights in a welfare legislation are created, the doctrine of waiver also does not apply to a case of decree where the court inherently lacks jurisdiction.”

79. Further, in **Hope Palantations Limited and Taluk Land Board, Deermade and another, (1999) 5 SCC 590**, it was held as follows:

26. It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstrably wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are “cause of action estoppel” and “issue estoppel”. These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the Code of Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice.”



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80. In view of the above facts, the principle of *res judicata* will not apply to the present case. In view of the same, the judgments referred to by the Respondents 1 to 4 supra regarding *res judicata* are not relevant to the present case.

81. With regard to the limitation, as per Article 69 of the Limitation Act, the plaintiff had gained knowledge only on 03.08.1984. The plaintiff had narrated in his plaint explaining the date of knowledge of the judgment and decree and immediately, he has filed the present suit. There is no doubt in the mind of the Court to suspect the genuineness or *bona fide* expressed by the present plaintiff by narrating the fact that no summons were served on him, while he was in France and even he was aware of all these proceedings, when he came to India and after getting the certified copy of the judgment and decree in O.S.No.64 of 1970, which were marked as Ex-A17 and Ex-A18. Hence, the suit is clearly not barred by limitation and hence, the judgments relied upon (stated supra) by the learned Counsel for the respondents 1 to 4 are also not applicable to the present case.

82. With regard to the attainment of finality as against O.S.No.64 of 1970 in A.S.No.628 of 1976, it is not in dispute that if the judgment had reached the finality in the procedure known to law, then the same cannot be questioned. This 50 years of legal battle would only go to show an ill intention in order to protract and deprive any form of relief. To revisit what the Hon'ble Supreme Court remarked in ***S.P.Chengalvaraya Naidu***:

<https://www.mhc.tn.gov.in/judis> “5. ... 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 lit-



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igants. 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. ... We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

83.In view of the above discussions, this Court feels no impediment in allowing the Second Appeal. The substantial questions of law are answered in favour of the appellant/plaintiff.

84. In view of the same, the Second Appeal is allowed and the judgment and decree passed in A.S.No.35 of 2006, dated 21.12.2010 on the file of the II Additional District Court at Puducherry is hereby set aside and consequently, the judgment and decree rendered in O.S.No.723 of 1985, dated 28.08.1991 by the Principal Subordinate Judge, Puducherry, is confirmed. No costs.

18.12.2024

Internet :Yes/No
Index :Yes/No
NCC :Yes/No
cmr

To

- 1.The II Additional District Judge, Puducherry.
- 2.The Principal Subordinate Judge, Puducherry.



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N.SENTHILKUMAR, J.

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Pre-Delivery Judgment made in
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18.12.2024