



S.A.(MD)No.113 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 10.07.2024

PRONOUNCED ON: 19.10.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)No.113 of 2019

and

C.M.P.(MD)No.2945 of 2019

1.Veeramuyhu
2.Muthu
3.Sarvatheetham : Appellants/Appellants/Plaintiffs

Vs.

Jebamalai(died)

1.J.Andrews Issac Newton
2.J.Suthir
3.J.Leo Jerold Emerson
4.Shanthi
5.J.Justin Joseph Nelson : Respondents/Respondents/Defendants

PRAYER:- Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 03.04.2018, passed in A.S.No.27 of 2012 on the file of the Subordinate Court, Ramanathapuram, reversing the judgment and decree dated 21.02.2012 in



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O.S.No.81 of 2007, on the file of the District Munsif cum Judicial Magistrate Court, Thiruvadanai.

For Appellants : Mr.H.Lakshmi Shankar

For Respondents :Mr.S.Ramesh
for R.2 to R.5

: No appearance for R.1

JUDGMENT

The Second Appeal is directed against the judgment and decree passed in A.S.No.27 of 2012, dated 03.04.2018, on the file of the Subordinate Court, Ramanathapuram, reversing the judgment and decree passed in O.S.No.81 of 2007, on the file of the District Munsif cum Judicial Magistrate Court, Thiruvadanai, dated 21.02.2012.

2. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.

3. The plaintiff has filed a suit for recovery of possession in respect of two items of suit properties.



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4. The case of the plaintiff is that the first item of property belonged to him, vide assignment order dated 26.06.2002, that the plaintiff had constructed a terrace house and cow shed in the land assigned to him situated in S.No.12/25 and the plaintiff's wife had constructed a tiled shed and that they had been in possession and enjoyment of the suit properties, that they have also obtained electricity service connection and are paying the electricity consumption charges and also the property tax to their houses.

5. The defendants 4 to 9 are the legal heirs of the plaintiff, having some misunderstanding with their parents, were living separately. Meanwhile, the plaintiff's wife Pushparani had renal failure and hence, they had to take treatment at Madurai continuously and at that time, the defendants 1 to 3 have informed that they would reside in the suit properties and would maintain the same and that they would hand over the properties, whenever demanded by the plaintiff and his wife. Since the plaintiff's sons and daughters were not in terms with the plaintiff and his wife at that time, they have permitted the defendants 1 to 3 to reside in the suit properties and the plaintiff and his wife had executed a



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registered power of attorney deed in favour of the first defendant for maintaining the suit properties vide power of attorney deed dated 29.11.2006 and at the time of execution of power of attorney, the first defendant in order to meet out any disturbances from the defendants 4 to 9, had taken signatures in the blank stamp papers and white papers. The plaintiff's wife had taken treatment at Madurai and despite the same, she died intestate on 23.01.2007. Hence, the plaintiff demanded the defendants 1 to 3 to vacate the suit properties and hand over the vacant possession of the same to the plaintiff. But the defendants had evaded the same. Thereafter, the plaintiff came to know that the defendants 1 to 3 had created some documents utilising the signatures obtained by them in blank papers. Hence, the plaintiff sent a legal notice dated 29.03.2007 to the defendants 1 to 3 revoking the permission granted to them to reside in the properties and directed them to hand over the vacant possession. The plaintiff has then executed a deed on 09.12.2007 cancelling the power attorney deed dated 29.11.2006 executed in favour of the first defendant. The defendants 1 to 3 had sent a reply notice dated 26.09.2007 raising false and untenable contentions. Since the defendants had failed to hand over the possession of the suit properties, the plaintiff was constrained to file the above suit claiming vacant possession of the



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suit properties and hand over the first item of the suit properties to the plaintiff and the second item of the properties to the plaintiff and the defendants 4 to 9.

6. The defence of the defendants 1 to 3 is that the plaintiff and his wife had sold the suit properties in favour of the second defendant by receiving a sale consideration of Rs.3,00,000/- vide unregistered sale deed dated 30.11.2006, that they had handed over the possession of the suit properties and since then the second defendant had been in possession and enjoyment of the same, that the plaintiff and his wife had consented to change the property tax assessment in respect of the houses bearing Nos.71 and 72 in favour of the second defendant and they had also handed over the patta to the second defendant, that since there was prohibition in the assignment deeds for alienating the property for a period of 12 years, the plaintiff and his wife had informed the second defendant that they would execute the sale deed after the expiry of 12 years and that is why the sale deed dated 30.11.2006 would not be registered, that the plaintiff's allegations that the first defendant had taken signatures in the blank stamp papers and blank papers are false and incorrect, that the plaintiff and his wife had received Rs.3,00,000/- from



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the second defendant on 30.11.2006 and handed over the original assignment documents to the second defendant and that the cause of action alleged in the suit is false and hence, the suit is liable to be dismissed.

7. Pending suit, the District Collector, Ramanathapuram and the Tahsildar, Thiruvadanai were impleaded as the defendants 10 and 11 and they have filed written statement taking a stand that the plaintiff and his wife were working as teachers and by suppressing the same, they had obtained assignment patta fraudulently, that thereafter, they have sold the properties to the second defendant violating the conditions imposed in the assignment order, that though there was specific prohibition for alienating, encumbering, mortgaging, assigning the properties, the plaintiff and his wife violating the said material conditions alienated the properties and therefore, the assignments are liable to be cancelled and that the plaintiffs are not entitled to get the relief of recovery of possession and the suit is liable to be dismissed.

8. The learned trial Judge, upon considering the pleadings of both parties, has framed the following issues:



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- (1) Whether the plaintiff is entitled to get the relief of recovery of possession from the defendants?
- (2) Whether the Court has got pecuniary jurisdiction to try the suit?
- (3) Whether the plaintiff and his wife had sold the suit properties to the second defendant?
- (4) To what other reliefs, the plaintiff is entitled to?

9. During trial, the plaintiff has examined himself as P.W.1 and exhibited 12 documents as Exs.A.1 to A.12. The defendants 1 to 3 have examined the defendants 1 and 2 as D.W.1 and D.W.2 respectively and one V.S.Rajan as D.W.3 and exhibited 8 documents as Exs.B.1 to B.8. The defendants 4 to 9 had remained exparte. The defendants 10 and 11, after filing written statement had remained exparte. The learned trial Judge, upon considering the pleadings and the evidence both oral and documentary and on hearing the arguments of both sides, has passed a judgment and decree dated 21.02.2012, dismissing the suit with costs of the defendants 1 to 3.



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10. Aggrieved by the dismissal of the suit, the plaintiff has preferred an appeal and the same was pending in A.S.No.27 of 2012, on the file of the Subordinate Court, Ramanathapuram. Pending appeal, the sole plaintiff / appellant had died. As already pointed out, since the defendants 4 to 9, who are the legal heirs of the plaintiff and his wife were not on terms at the time of filing of the suit, they were impleaded as defendants and during the pendency of the appeal, since the appellant had died, the defendants 4 to 9 had transposed themselves as the appellants 2 to 6 and prosecuted the appeal.

11. The learned first appellate Judge, upon considering the materials available on record and on hearing the arguments of both sides, has passed the impugned judgment and decree dated 03.04.2018, allowing the appeal and thereby setting aside the judgment and decree passed by the trial Court and directed the defendants 1 to 3 to hand over the vacant possession of the suit properties to the appellants within a period of two months from the date of receipt of the judgment. Challenging the impugned judgment and decree, the defendants 1 to 3 have preferred the present Second Appeal.



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12. At the time of admitting the Second Appeal, the following Substantial Questions of Law came to be formulated:

“1. Whether the conclusion of the First Appellate Court that the unregistered sale deed dated 30.11.2006 is not capable of transferring title and hence the suit is liable to be decreed, is sustainable in law, when the document can be given effect to as an agreement to sell and the appellants entering into possession after on that basis, by paying the entire sale consideration cannot be termed as 'permissible occupation'?

2. Whether the First Appellate Court is justified in granting a decree for recovery of possession simpliciter in the absence of a relief for 'declaration of title', especially when the alienation nullifies the assignment in favour of the plaintiff and the appellants/defendants claim to be purchaser in possession, pursuant to an unregistered sale deed?

3. Whether the First Appellate Court is justified in ignoring the unregistered sale deed dated 30.11.2006 for all purposes including the position of estoppel against the plaintiff?”



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13. It is not in dispute that the Government has granted assignment patta in respect of items 1 and 2 of the suit properties in favour of the plaintiff and his wife Pushparani on 29.06.2002 and 29.12.2002 respectively. The case of the plaintiff is that himself and his wife had permitted the defendants 1 to 3 to use the suit properties in their absence, as they were at Madurai for taking treatment for the plaintiff's wife and that after the death of the plaintiff's wife, when the demand of the plaintiff to return the possession was not accepted after the issuance of notice revoking the permission granted earlier, filed the present suit for recovery of possession. But as already pointed out, the defence of the defendants 1 to 3 is that the plaintiff and his wife had sold both items of the suit properties in favour of the second defendant, vide sale deed dated 30.01.2006 and that since there was a prohibition in the assignment orders, the sale deed could not be registered and that the plaintiff, after the death of his wife, has taken an 'U' turn and claimed possession of the suit properties as if the defendants 1 to 3 have been in permissive occupation. The plaintiff has also taken a stand that at the time of giving permission to the defendants 1 to 3 to occupy the suit properties, they have executed a power of attorney deed on 29.11.2006 in favour of the first defendant to take care of the suit properties.

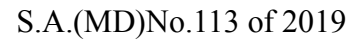


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14. It is pertinent to note that under Ex.A.12 – Power of Attorney deed, the first defendant was not only given power to maintain the suit properties and to initiate or defend the Court proceedings, but also given power to lease out the properties and to alienate or encumber the properties by executing the necessary documents therefor. When the plaintiff had taken a stand that they had permitted the defendants 1 to 3 to reside in the suit properties as a temporary arrangement during the treatment period of his wife, the plaintiff has not offered any reason or explanation for executing a power of attorney in favour of the first defendant, not only to maintain the properties, but also to alienate or encumber or leased out the suit properties.

15. As rightly pointed out by the learned Counsel for the defendants 1 to 3, the plaintiff in his plaint has specifically stated that the assignment orders were misplaced and hence, he was not in a position to produce the same along with the plaint. But the defendants 1 to 3 have taken a specific defence that at the time of executing the sale deed, the plaintiff and his wife have handed over the original assignment orders standing in their favour to the second defendant. When the plaintiff as



1 during cross-examination and since the same was accepted by him, the assignment orders came to be exhibited as Exs.B.1 and B.2 respectively. There is absolutely no explanation offered by the plaintiff for handing over the original assignment orders to the second defendant at the time of giving permission to occupy the suit properties during the treatment period.

16. As already pointed out, the plaintiff has specifically disputed the execution of the sale deed in favour of the second defendant. But according to him, at the time of executing the power of attorney deed, the first defendant had taken signatures in blank stamp papers and blank papers and the same came to be utilised for creating some documents. During cross-examination of P.W.1, when the signatures found in the sale deed were shown to him, he admitted his signatures as well as his wife's signatures and on that basis, their signatures came to be exhibited as Exs.B.3 and B.4 respectively.

17. P.W.1 would admit that he knew the witnesses V.S.Rajan and Sathiah and that they had alone subscribed their signatures as witnesses



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therein. The relevant portion of P.W.1's evidence is extracted hereunder for better appreciation:

“..... மருட்கூர் சுப்பையா மகன் வி.!.ராஜவை எனக்கு தெரியும். செல்லையாத்தவர் மகன் சாத்தையாவை தெரியும். நான் கையெழுத்து செய்து கொடுத்த ஁ப்பரில் சாட்சிகளாக கையெழுத்து செய்தது அவர்கள்தான். அவர்கள் கையெழுத்து செய்த விபரம் தெரியும். ை: ஆவணம் நானும் என் மனைவியும் முத்துவிற்கு எழுதிக்கொக்கப்பட்ட பதிவு செய்யப்படாத கிரய ஆவணம் என்று சொன்னால் சரியல்ல.”

But in subsequent cross-examination P.W.1 would say that

“தாவா சொத்துக்களை பொறுத்து நானும் என் மனைவியும் 30.11.2006ல் ரூ.3 லட்சத்திற்கு கிரையம் எழுதிக்கொடுத்திருக்கிறோம் என்றால் சரியல்ல. அந்த கிரையத்தின் அடிப்படையில் தாவா சொத்தில் பாகத்தை ஒப்படைத்து 1 முதல் 3 பிரதிவாதிகள் தாவா சொத்தில் றுந்து வருகிறார்கள். அந்த கிரைய ஆவணம் பதிவு செய்யப்படவில்லை.”

18. No doubt, since the sale deed dated 30.11.2006 was an unregistered document and the defendants 1 to 3 have not paid the stamp duty with penalty, the said document was not exhibited. Section 17(1)(b) of the Registration Act mandates that any document which has effect of



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creating and taking away the rights in respect of the immovable property must be registered and whereas Section 49 of the said Act imposes a bar on the admissibility of an unregistered document and proviso to the said Section provides two exceptions and the second exception provides the admissibility of an unregistered document for proving any collateral transactions. It is settled law that even an unregistered and unstamped document can be received as evidence to prove the collateral purpose, provided stamp duty with penalty is paid and at the same time, the said document cannot be admitted in evidence to prove the primary purpose, even if stamp duty with penalty is paid.

19. In the case on hand, as already pointed out, the disputed sale deed to the value of Rs.3,00,000/- was not at all registered and the defendants have not paid the required stamp duty with penalty and that thereby they have failed to exhibit the sale deed even for showing collateral purpose if any. But according to the defendants, as there was a prohibitory clause in the assignment deeds, that the assignees are not entitled to alienate or encumber the properties within a period of ten years since the assessment, the sale could not be registered and that the plaintiff and his wife have given an undertaking that they would register



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the sale deed after the expiry of the prohibition period.

20. No doubt, it is evident from Exs.B.1 and B.2 – assignment orders, that there is a specific term/clause prohibiting the assignee from alienating, gifting, mortgaging or leasing out the property within ten years from the date of assignment without the written permission from the Revenue Divisional Officer. As already pointed out, Exs.B.1 and B.2 – assignment orders came to be issued on 29.06.2002 and 29.12.2002. Even according to the plaintiff, he executed the Power Attorney deed on 29.11.2006 under Ex.A.12.

21. As already pointed out, it is the specific case of the plaintiff that they had handed over the possession to the defendants 1 to 3 permitting them to occupy the same till it was demanded by the plaintiff. Moreover, according to the defendants 1 to 3, the plaintiff and his wife have sold the properties on 30.11.2006 all within four years from the date of the assignment orders. Considering the above prohibitory clause in the assignment orders and also the evidence of P.W.1 with regard to the sale deed dated 30.11.2006 and other factual aspects above referred, this Court is of the view that the above would only probablise the



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defence put forth by the defendants 1 to 3. As rightly contended by the learned Counsel for the defendants 1 to 3, the factum that the possession of the suit property is with the defendants 1 to 3 and also the possession of the original assignment deed with the defendants 1 to 3 would only strengthen the defence canvassed by the defendants 1 to 3. As rightly contended by the learned Counsel for the defendants 1 to 3, even according to the plaintiff, they have executed a power of attorney for initiating or defending Court proceedings and by engaging Advocate, and in that fact situation, the plaintiff has not offered any reason or explanation as to why they had subscribed signatures in the white papers and in the blank stamp papers.

22. As already pointed out, the Government authorities in their written statement have taken a stand that the plaintiff and his wife, despite their employment as teachers, have obtained the assignment orders fraudulently for the lands which are meant for landless poor. But for the reasons best known to them, the Government authorities – defendants 10 and 11, at the time of trial, had remained exparte.



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23. The plaintiff, during his cross-examination would specifically admit that he worked as a Headmaster and got retired in the year 1999, that his wife was also working as a Teacher and got retired, that the plaintiff has been receiving pension at Rs.12,000/- per month and since his wife had died, he has been receiving family pension at Rs.3,000/-per month and that he had received monthly salary at Rs.15,000/- at the time of his retirement and whereas, his wife was getting Rs.7,000/- as monthly salary at that time.

24. P.W.1 would also admit that the land assignment will only be given to the landless poor and the relevant portion is extracted hereunder:

“வழக்குச்சொத்து எனக்கும் என் மனைவிக்கும் அரசிலிருந்து ஒப்படைப்பு செய்யப்பட்ட சொத்து. நிலஒப்படைப்பு என்பது நிலமற்ற ஏழைகளுக்கு ஒப்படைப்பது என்றால் சரிதான்.”

But, P.W.1 had taken taken “U” turn in his cross-examination and would say that since he has been residing in the suit house for the past 35 years, he had applied for assignment. Admittedly, the plaintiff has not raised any such averments in the plaint. He would admit

“ வழக்குரையில் ஏற்கெனவே நான் வீடு கட்டி குடியிருந்துவரும் வீட்டிற்கு



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அரசிலிருந்து மட்டா வழங்கும்படி உகட்டு அதன் அடிப்படையில் மட்டா வழங்கப்பட்டதாக சொல்லவில்லை என்றால் சரிதான். எனக்கு கொடுக்கப்பட்ட ஒப்படைப்பில் வீடு என்று சொல்லித்தான் கொடுத்தார்கள்.”

25. But as rightly pointed out by the learned Counsel for the defendants 1 to 3, in Exs.B.1 and B.2 – assignment orders, the very first condition would say that the assignee had to construct a house in the assigned land and to complete the construction within the stipulated period. Admittedly, Exs.B.1 and B.2 – assignment orders does not say that the assignment came to be issued recognizing long possession in the houses available in the suit properties. Moreove, as rightly contended by the learned Counsel for the defendants 1 to 3, there is another specific clause in the assignment orders ie., in case of violating the assignment conditions, the Government is entitled to take back the land at any time.

26. Considering the above, as rightly contended by the learned Counsel for the defendants 1 to 3, the plaintiff and his wife by suppressing their employment and their financial status, have applied and obtained assignment pattas fraudulently. Moreover, as already pointed



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out, they have also violated the main conditions of the assignment by parting with the possession of the suit properties to the defendants 1 to 3, even if it is taken as permissive occupation as claimed by the plaintiff or sale as claimed by the defendants 1 to 3

27. D.W.3, one of the witness to the sale deed dated 30.11.2006, would depose about the execution of the sale deed and the payment of the sale price and handing over the possession of the suit properties. Though D.W.3 was cross-examined, nothing was elicited by the plaintiff's side in his favour.

28. The learned Counsel for the defendants 1 to 3 would rely on the judgment of this Court in S.A.Nos.228 and 299 of 2010, dated 22.07.2019, wherein in a similar case, this Court has observed as follows:

“14. The specific contention of the defendant is that the suit property was delivered to him by late G.Ganasen, after executing Ex.B.1. As already observed, the defendant has filed several documents to show that he has been in possession of the suit property since 1986.

15. Both the courts below had concurrently held that since



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late G.Ganesan, who is the assignee of the property did not comply with the conditions imposed in Ex.A.1, the appellants/plaintiffs cannot claim exclusive title over the suit property merely based on Ex.A.1.

16.Admittedly the suit property is a village natham (Government land) and the assignee did not exercise his right over the suit property and this would amount to relinquishment of rights. The possession by the respondent/defendant is admitted by the appellants/plaintiffs and in fact the appellants/plaintiffs sought for a relief of recovery of possession from the respondent/defendant. Though the respondent/defendant cannot claim any title over the suit property based on Ex.B.1, the appellants/plaintiffs cannot seek for recovery of possession from the respondent/defendant, based on the assignment order Ex.A.1”

29. In that case also, the Courts below had held concurrently that since the assignee of the property did not comply with the conditions imposed in the assignment orders, the appellants/plaintiffs cannot claim exclusive title over the suit properties merely based on Ex.A.1 and further observed that though the respondent/defendant cannot claim any title over the suit property based on the unregistered sale deed, the appellants/plaintiffs cannot seek for recovery of possession from the



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respondent/defendant based on the assignment order – Ex.A.1.

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30. The learned Counsel for the defendants 1 to 3 would also rely on the Full Bench judgment of the Bombay High Court in ***Guddappa Chikkappa Kurbar Vs. Balaji Ramji Dange*** reported in ***AIR 1941 Bombay 274***. The Hon'ble Full Bench, after referring to various decisions, has summarised the legal issues as follows:

“14. As a result of this discussion the law on the subject can be summarized as follows:--

I. In all cases of unilateral or bilateral fraud which has not been successfully effected, either party can repudiate the fraudulent transaction and can recover or maintain his possession by proving his real title.

II. In cases where fraud is accomplished--

(1) where only one party acts fraudulently, he cannot be allowed, either as plaintiff or as defendant, to plead his fraud, on the principle that no man shall be heard to plead his own fraud;

(2) where both parties are equally fraudulent, the Courts will refuse to enforce the fraudulent transaction on the principles that where each party is equal in fault, the law favours him who is actually in possession, and will give



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relief to neither, and that a right of action cannot arise out of fraud, with the result that--

(a) where the plaintiff seeks relief on the allegation and on the basis of joint fraud, his suit will be dismissed; and

(b) where he seeks relief by suppressing the fraud, the defendant can plead and prove the common fraud to defeat the plaintiff's claim.

15. In the present case, the defendants having proved the successful fraud of both the parties, they are entitled to remain in possession and the plaintiff is not entitled to any relief. The appeal should, therefore, be allowed with costs throughout.”

31. The learned Counsel would also rely on the following decisions in support of his contentions:

(i) *AIR 1962 SC 370 (Immani Appa Rao and others Vs.*

***Gollapalli Ramalingamurthi and others)*:**

“Reported decisions bearing on this question show that consideration of this problem often gives rise to what may be described as a battle of legal maxims. The appellants emphasised that the doctrine which is preeminently applicable to the present case is ex dolo malo non oritur action or ex turpi causa non oritur actio. In other words, they



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contended that the right of action cannot arise out of fraud or out of transgression of law; and according to them it is necessary in such a case that possession should rest where it lies in pari delicto potior est conditio possidentis; where each party is equally in fraud the law favors him who is actually in possession, or where both parties are equally guilty the estate will lie where it falls. On the other hand, respondent 1 argues that the proper maxim to apply is nemo allegans suam turpitudinem audiendum est, whoever has first to plead turpitudinem should fail; that party fails who first has to allege fraud in which he participated. In other words, the principle invoked by respondent 1 is that a man cannot plead his own fraud. In deciding the question as to which maxim should govern the present case it is necessary to recall what Lord Wright, M.' R. observed about these maxims in Berg v. Sadler and Moore (1). Referring to the maxim ex turpi causa non oritur actio Lord Wright observed that "this maxim, though veiled in the dignity of learned language, is a statement of a principle of great importance; but like most maxims it is much too vague and much too general to admit of application without a careful consideration of the circumstances and of the various definite rules which have been laid down by the authorities". Therefore, in deciding the question raised in the present appeal it would be necessary for us to consider carefully the true scope and effect of the maxims pressed into service by the rival parties and to



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enquire which of the maxims would be relevant and applicable in the circumstances of the case. It is common-ground that the approach of the Court in determining the present dispute must be conditioned solely by considerations of public policy. Which principle would be more conducive to, and more consistent with, public interest, that is the crux of the matter. To put it differently having regard to the fact that both the parties before the Court are confederates in the fraud, which approach would be less injurious to public interest. Whichever approach is adopted one party would succeed and the other would fail, and so it is necessary to enquire as to which party's success would be less injurious to public interest. “

(ii) AIR 1933 Bombay 209 (Sabava Yellappa Vs. Yamanappa

Sabu):

“30. In the case of the sale-deed in the present case, which was for past and future cohabitation, Sabu could not have maintained a suit to recover back the property, as after the date of the sale-deed, there was illicit connection between Sabu and defendant No. 1, and the immoral object having been carried out, he would have been prevented from recovering back the property, and according to the decision in the case of Ayerst v. Jenkins (1873) L.R. 16 Eq. 275 his legal representative would also be barred. It is somewhat



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difficult to hold that the plaintiff, the adopted son, is in pari delicto with defendant No. 1, the mistress of Sabu. In this connection I would refer to the doubt expressed by Sir Lawrence Jenkins in the case of [Sidlingappa v. Hirasa](#) (1907) I.L.R. 31 Bom. 405: s.c. Bom L.R. 512 as follows (p. 412):-

Though we have dealt with the case as if both parties to this litigation had been equally culpable, it is to be noticed that it was the plaintiff's father and not the plaintiff, who joined the defendant in the fraud, and it is a question whether it can be said that the plaintiff and the defendant are in part delicto (Mathew v. Hanbury (1690) 2 Ves. 187, Muckleston v. Brown (1801) 6 Ves. 52, 68),

31. Assuming that the estoppel as laid down in the case of Ayerst v. Jenkins equally applies to the plaintiff, the adopted son, the plaintiff would be prevented from recovering the properties conveyed in the saledeed on the ground that the immoral object had been carried out by Sabu after the date of the sale-deed,"

(iii) AIR 1990 Allahabad 47 (Sultan Ahmad Vs. Rashid Ahmad and others):

"8. It is in this background that I have to examine this question posed by the learned Judge admitting the appeal that if the parties are in pari delicto in regard to the



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subject-matter of a suit the plaintiff cannot be granted any relief by the court.

9. The point involved is well settled by several decisions of this and other courts. I will, however, content myself by referring to one decision only of this court reported in [AIR 1936 All 401, Nawab Singh v. Daljit Singh](#). In this case a Division Bench of this court comprising the celebrated Chief Justice Sulaiman and Justice Bennet had occasion to examine this question in depth. After a learned analysis of the law, their Lordships held that once it is found that the parties are in pari delicto the court will not assist the party who enters into an illegal transaction and makes that transaction the basis of his claim, and in all cases where the plaintiff relies on a deed stated to be fraudulent, the defendant is entitled to give evidence as to the circumstances under which the document came into existence and when these circumstances include an allegation of fraud by both the plaintiff and the defendant, then it is the duty of the court to look into the matter, and if the court comes to the conclusion that the parties were acting in consort with a view to perpetrating fraud and did in fact perpetrate fraud, the court shall decline to assist either party as there is no difference in the degree of the guilt of the plaintiff and the defendant.

12. The same conclusion is reached by another process of reasoning quite apart from the dictum of pari delicto.



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There is a more fundamental principle attracted to the present case and that is that no one can be permitted to take advantage of his own fraud. In this case from the plaint averments and the evidence of the plaintiff himself the conclusion is inescapable that the transaction was fraudulent intended to take the property out of the reach of the creditors.”

(iv) (2020)19 SCC 57 (Nazir Mohamed Vs. J.Kamala and others):

“The Appellant-Defendant has asserted that the Appellant-Defendant is the owner of the suit property and has been in possession and in occupation of the suit premises as owner from the very inception. The High Court erred in law in proceeding to allow possession to the Respondent-Plaintiff on the ground that the Appellant-Defendant had not taken the defence of adverse possession, ignoring the well established principle that the Plaintiff’s claim to reliefs is to be decided on the strength of the Plaintiff’s case and not the weakness, if any, in the opponent’s case”

32. The above decisions are squarely applicable to the case on hand. No doubt, the defendants 1 to 3 after knowing the assignment



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deeds, had allegedly purchased the properties and as such they are also at fault. But as rightly contended by the learned Counsel for the defendants 1 to 3, the plaintiff alone is guilty of suppressing the material aspects and obtaining of assignment patta fraudulently and also guilty of suppressing material facts in the plaint.

33. The Hon'ble Supreme Court in ***S.P.Chengalvaraya Naidu (dead) by LRs Vs. Jagannath (dead) by LRs and others*** reported in ***AIR 1994 SC 853*** has specifically held that one who comes to the Court must come with clean hands and that a person, who's case is based on falsehood, has no right to approach the court and the relevant portion is extracted hereunder:

“7. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be



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pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax- evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court - process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, 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.

34. In the case on hand, as already pointed out, the plaintiff has approached this Court with unclean hands , who's case is based on falsehood. The learned trial Judge has rightly come to a decision that the plaintiff is not entitled to get the relief of recovery of possession. But the learned appellate Judge, without considering the suppression of material facts and obtaining of assignment pattas fraudulently and also the

violations of the assignment conditions, by simply observing that the defendants 1 to 3 cannot claim any right or title over the suit properties



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on the basis of the unregistered sale deed and by holding that the plaintiff and his wife had acquired title over the suit properties on the basis of the assignment, the plaintiff and his legal representatives are entitled to get the recovery of possession and as such, this Court has no hesitation to hold that the impugned judgment and decree passed by the appellate Court are liable to be set aside.

35. As already pointed out, since the defendants 1 to 3 were also parties for violating the assignment conditions and taking note of the conduct of the plaintiff in obtaining assignment and violating the assignment conditions, the Government authorities can very well take necessary action for getting back the properties. Considering the other facts and circumstances, this Court is of the view that the parties are to be directed to bear their own costs.

36. In the result, the Second Appeal is allowed and the judgment and decree dated 03.04.2018, passed in A.S.No.27 of 2012, on the file of the Subordinate Court, Ramanathapuram is set aside and the judgment



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and decree dated 21.02.2012, passed in O.S.No.81 of 2007, on the file of the District Munsif Court, Thiruvadanai are restored and the suit in O.S.No.81 of 2007 stands dismissed. Consequently, the connected Miscellaneous Petition is closed.

19.10.2024

NCC : Yes:No
Index : Yes : No
Internet : Yes : No

Note: The Registry is directed to mark a copy of this order to the District Collector, Ramanathapuram District.

SSL

To

1. The Subordinate Court, Ramanathapuram.
2. The District Munsif Court, Thiruvadanai.
3. The District Collector, Ramanathapuram District.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

S.A.(MD)No.113 of 2019

19.10.2024