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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 28.11.2016

Coram:

The Hon'ble Mr. Justice M.SUNDAR

C.S.No.1012 of 2007

Smt.G.Veda

.... Plaintiff

-VS-

Mrs.M.Manoranjitham

... Respondent

Suit filed under Order IV Rule 1 of O.S.Rules r/w. Order VII Rule 1 of C.P.C., praying for a declaration that the plaintiff is the absolute owner of the suit property and to declare that the judgement and decree dated 01.09.2004, passed in O.S.No.7226 of 1986, on the file of the VIII Assistant City Civil Court, Chennai, is not valid and not binding on the plaintiff and grant a consequential injunction to restrain the defendant or their men or the person claiming through her from interfering with possession and enjoyment of the suit property and to award costs and to pass such or other orders.

For Plaintiff : Mr.V.Manohar

For Defendant : Mr. Kanmani Annamalai

J U D G M E N T

The suit has been filed by the plaintiff seeking a declaration that the plaintiff is the absolute owner of the suit property and a declaration that the judgement and decree dated 01.09.2004, passed in O.S.No.7226 of 1986, on the file of the VIII Assistant City Civil Court, Chennai, is not valid and not binding on the plaintiff and also a consequential injunction restraining the defendant or their men or the person claiming through her for interfering with plaintiff's possession and enjoyment of the suit property and to award costs and such other reliefs.

2. The brief facts of the case of the plaintiff runs as follows:

The suit property measuring 2400 sq.ft. bearing Plot No.31, with the building thereon situate in S.No.238/4, 237 part and 239 part, bearing T.S.No.15, Block No.3, in Corporation Division No.77, in Amaravathi Nagar, Arumbakkam, morefully

described in the suit schedule, absolutely belongs to the plaintiff by virtue of the sale deed, dated 03.08.1989 registered as Document No.3165 of 1989 in the SRO, Kodambakkam, Chennai. It is the case of the plaintiff that from the date of purchase of the suit property, the plaintiff is in possession and enjoyment of the same in her own capacity and made further constructions on the plot by getting due permission from the local authority. According to the plaintiff, the defendant, being a local resident is very much aware that the property is in occupation and enjoyment of the plaintiff by making her own developments.

2.1. The plaintiff submits that on 27.09.2007, with the claim of the ownership over the Plot No.31, without making the claim on the superstructure, the defendant, descended on the suit property. Thus, the issue went to the local police. There, the defendant disclosed about filing of some case and an unenforceable sale deed in respect of the suit plot behind the back of the plaintiff. The said sale deed was stated to have been executed by the City Civil Court without participation of any of the prior owners of the property. Since there was no order or

decree against the plaintiff or against the suit property, the defendant and the police realized that the said document could not be acted upon without any direction from the Court.

2.2. According to the plaintiff, the vendor of the plaintiff, who was duly recognized by the Government vide G.O.Ms No.1154, Revenue Department, dated 28.06.1983, under the Urban Land Ceiling Act, 1978, by giving clearance to the sale of the specific plots to the respective members of the Thirumalai Fine Arts & Housing Welfare Society, the said Society bought the lands measuring 6 acres and 4 cents in various survey numbers from one J.Janakiram Naidu and his family consisting of five members.

2.3. According to the plaintiff, the suit in O.S.No.722 of 1986 filed by the defendant against one C.V.Arangesa Mudaliar and six others goes to show that there was a Power of Attorney said to have been executed in favour of C.V.Arangesa Mudaliar by the family members of late Janakiram Naidu giving authority to him in respect of the Plot No.31, to transact and enter into an

agreement of sale in his individual capacity. However, the fact remains that the entire land, in the various survey numbers were sold to Thirumalai Fine Arts & Housing Welfare Society and the said C.V.Arangesa Mudaliar, has no individual right to deal with the property. Further according to the plaintiff, when the defendant had not at all claimed to be a member of the said society, her name having not shown in the list submitted to the Government for exemption, she cannot have any right to transact qua the suit property. Further, the plaintiff submits that when the defendant's suit was numbered in 1986 (O.S.No.7228 of 1986), the vendor of the plaintiff Smt.Vimala had become the owner, having bought the plot as early as on 05.08.1983 itself. Thus, the defendant had omitted to include Smt.Vimala, as a party to the proceedings with clear knowledge. In fact, a perusal of the court records show that the first defendant, who initially participated in the proceedings, has filed the written statement setting out the sale of the plot in favour of Smt.Vimala with the particulars of the document. Thus, according to the plaintiff, the defendant having purposely evaded to make the purchaser as party to the suit, the suit itself is vitiated.

2.4. According to the plaintiff in the aforesaid circumstances the judgement dated 01.09.2004 in O.S.No.7228 of 1986 has no binding on the plaintiff in any respect. As the defendant is trying to make unlawful gain over the issue by inviting unwanted elements to help her, the plaintiff is put to great hardship and prejudice would be caused, if the situation is allowed to continue further. Therefore, the plaintiff is in dire necessity to get an appropriate declaration from this Court.

3. The defence raised in the written statement is as follows :

It is the case of the defendant that the suit property originally belonged to one J.Janakiraman Naidu, J.Amaravthy Ammal, J.Kanagaraj and J.Sundar Raj and the power of attorney was executed by the said Janakiraman Naidu and others in favour of one C.V.Arangesa Mudaliar, who plotted the extent of 6.04 acres into house sites and started entering into sale agreements with various intending purchasers. The defendant submits that on 16.07.1989, the defendant entered into a sale

agreement with the said C.V.Arangesa Mudaliar, measuring an extent of 2400sq.ft. comprised in S.No.237 of Arumbakkam village, for the total sum of Rs.9250/-. A sum of Rs.2001/- was received as advance and the time for completion of sale process was fixed at six months. When the defendant insisted for the execution of the sale deed, the power of attorney holder, on the guise of getting necessary clearance from the urban land ceiling authorities, had periodically extended the execution of the sale deed. After all the steps taken by the defendant including the legal notice went in vain, the defendant was forced to file a suit for the specific performance, on 08.11.1984, before the City Civil Court, Chennai which was numbered as O.S.No.7228 of 1986. The suit was duly contested on merits and came to be decreed as prayed for, directing the defendant to deposit the balance sale price of Rs.7249/- within the month and accordingly, the defendant had deposited the balance amount to the credit of O.S.No.7228 of 1986. The defendant further submits that even after such deposit, since there was no response from C.V.Arangesa Mudaliar, the defendant had filed E.P.No.1868 of 2005, on the file of the X Assistant City Civil Judge, Chennai and

on 21.09.2006, the Execution Court had executed the necessary sale deed in favour of the defendant, which came to be registered as Document No.4812 of 2006, on the file of the Sub Registrar, Kodambakkam, Chennai on 07.12.2006. After the execution and registration of the sale deed, the defendant applied for necessary mutation of revenue records which is pending. At this stage, the defendant received summons in the present suit filed by the plaintiff seeking for declaratory reliefs.

4. The defendant further submits that a perusal of the records in the Urban Land Ceiling proceedings goes to show that the exemption granted by the Government in G.O.Ms.No.1154, Revenue Department, dated 28.06.1983, in respect of the land in question, granting exemption to the owners to sell the land to the Thirumalai Fine Arts & Housing Welfare Society was by imposing certain conditions. One of the conditions imposed was that the allottees should not dispose off or sell or lease or mortgage with possession to any person, within ten years from the date of allotment. Therefore, according to the defendant, as per the above provision, the vendor of the plaintiff cannot sell or

lease or mortgage the property, within ten years from the date of allotment and hence, the sale deed dated 03.08.1989 is null and void and does not convey any right, interest or title to the plaintiff.

5. Based on the pleadings, after hearing both sides, the issues that were framed are as follows:

"1. Whether the plaintiff is entitled to a decree of declaration that she is the absolute owner of the suit property ?

2. Whether the plaintiff is entitled to a judgement and decree declaring that the judgement and decree dated 01.09.2004 in O.S.No.7228 of 1986 on the file of VIII Assistant Court, Chennai is not valid and not binding on her?

3. Whether the plaintiff entitled to a decree of permanent injunction to restrain the defendant or her men or agents from interfering with the plaintiff's peaceful possession and enjoyment of the plaint schedule property ?

4. Relief and cost. "

6. Issue No.2 is whether the judgement and decree dated 01.09.2004 in O.S.No.7228 of 1986, on the file of VIII Assistant Judge, City Civil Court, Chennai is not valid and not

binding on the plaintiff. This judgement has been marked as Ex.P6 in the instant suit. Answer to this issue is pivotal to the instant suit, as answer to this issue will determine the answer to issue no.1, which deals with whether the plaintiff is entitled to a declaratory decree which in turn will lead to the answer to issue no.3 which deals with entitlement of the plaintiff for a permanent injunction.

7. With regard to the judgement passed by VIII Assistant City Civil Court, Chennai, dated 01.09.2004, passed in O.S.No.7228 of 1986 which has been marked as Ex.P6 in the instant suit, the same is herewith referred to as 'impugned decree' in this judgement for the sake of brevity, convenience and clarity. The impugned decree has been passed in favour of the defendant in the instant suit. There are seven defendants in the impugned decree, the impugned decree has been passed only against the first defendant, one C.V.Arangesa Mudaliar, who is not a party to the instant suit. The impugned decree has been passed on a plaint, praying for specific performance of an agreement to sell the instant suit property. The impugned

decree proceeds on the basis that C.V.Arangesa Mudaliar is the Power of Attorney agent of the intended vendor and the defendant herein is the intended vendee. This agreement of sale is dated 16.07.1980. Interestingly there have been about 11 extensions of time, qua in the agreement to sell and the same is valid till 19.04.1983. The suit was laid primarily on the basis that the Power of Attorney agent of the intended vendor, is delaying execution of sale deed. Very curiously in the impugned decree, the first defendant C.V.Arangesa Mudaliar, filed a written statement in which, he pleads that the suit plot was sold to a member of Thirumalai Fine Arts & Housing Welfare Society which is essentially for the employees of the State Road Transport Corporation. More interestingly in the written statement filed by the fourth defendant, which has been adopted by the second and fifth defendant, it has been averred that the first defendant C.V.Arangesa Mudaliar is not the registered Power of Attorney holder of defendants 2 to 5. It has been averred that the first defendant is only an agreement holder of defendants 2, 3, 4 and 6. They purchased the lands of the defendants as per separate agreement of sale. Most pertinently, in the said written

statement, defendants 4, 2 and 5 pleaded as follows:

“ As such this defendants are nothing to do with the plaintiff. As the Plaintiff name is not found in the list of persons given to Urban Land Ceiling Authority, she is not entitled to purchase any land from the 1st defendant.”

8. Pausing here for a moment, it would be useful to examine a short history of the suit property. The suit property is a one ground housing plot bearing Plot No.31, admeasuring 2400sq.ft. One Janakiraman Naidu and his family owned large extent of land in the said Arumbakkam area; pursuant to the land ceiling proceedings 6.04 acres of lands were acquired from the said Janakiraman and his family. The said Transport Corporation employees approached the Government with a request to allot the acquired 6.04 acres of land to its society i.e., Thirumalai Fine Arts Housing & Welfare Society. Thereafter, pursuant to Government orders vide Ex.D6, which is dated 27.07.1983, the said Janakiraman and his family sold to the said Housing Society an extent of 1.19 acres in which the suit property is situated. The said Society is said to have allotted the suit property plot to

one D.Vimala. After she put up superstructure as per the terms of allotment, the suit plot was conveyed to her by the Society vide sale deed dated 05.08.1983 registered as document No.2133 of 1983 which is marked as Ex.P1. Thereafter, the mutation of Revenue records have taken place and the copy of Town Survey Register Extract marked in the name of D.Vimala, has been marked as Ex.P2. Subsequently, the said D.Vimala has sold the suit property to the plaintiff by way of sale deed, dated 03.08.1989 which has been marked as Ex.P3. Corporation Property Tax book in the name of the plaintiff has been marked as Ex.P4 and the Water Tax card has been marked as Ex.P5. Thereafter, vide Ex.P8 dated 30.09.1989, Ex.P9, dated 20.02.1997, the plaintiff has mortgage the suit plot in favour of Abiramapuram Finance Limited and subsequently discharged the same. Therefore, the plaintiff has dealt with the suit plot in her own right as absolute owner. To buttress this further copy of the Encumbrance Certificate also has been marked as Ex.P10.

9. In the interregnum, the defendant herein has filed the suit pertaining to the impugned decree on 08.11.1984 on the

basis of a sale agreement dated 16.07.1980 with one C.V.Arangesa Mudaliar. The sale agreement has been marked as Ex.D2.

10. After tracing on the history of the suit plot qua, the rival claims to the same by the plaintiff and defendant in the instant suit, a perusal of the impugned decree and the proceedings leading to the same, reveals that the defendant herein was aware of the sale in favour of the plaintiff and was dealing with the property but had not chosen to implead her as one of the defendants to the plaint, in the impugned decree. This is evident from the deposition of the defendant who was examined as D.W.1 in the instant suit. The most clinching part of the deposition in this regard reads as follows:

"Q: Despite such knowledge about the purchase of the property by one Smt.Viamla in the year 1983 and putting up the construction, what is the reason behind in not taking any steps as against the persons?

A: I have nothing to do with the said persons.

It is true that the said Vimala had

purchased the property and constructed the building only in the suit subject matter property. The said facts are known to me even when I conducted the earlier case O.S.No.7228 of 1986.”

11. Moreover, C.V.Arangesa Mudaliar, who was said to be a Power of Attorney agent was disowned by the alleged principals in the impugned decree as stated above. Further, the defendant herein appears to be aware of the Urban and Land Ceiling Proceedings. Atleast she certainly says that her husband is aware and the deposition of D.W.1 in this regard reads as follows:

Q: Since you have produced Ex.D1 is the Proceedings issued by the Government in respect of the Urban Land Ceiling exempting the land from the purview of enactment, hence you are aware of the proceedings and that is why you have produced such a document before the court?

A: I do not know why the said document was produced but my husband knows about the document.

12. Besides all these, the said C.V.Arangesa Mudaliar,

who is a fulcrum of the transaction as far as the impugned decree is concerned, was not examined in the legal proceedings culminating in the impugned decree. Furthermore, it appears that the defendant herein or her husband, who has deposed as D.W.2 have not dealt with C.V.Arangesa Mudaliar directly. However, even if they have dealt with C.V.Arangesa Mudaliar, when he has not entered into the witness box, there is considerable doubt about whether the alleged agreement of sale deed dated 16.07.1980 (Ex.D2) was executed by C.V.Arangesa Mudaliar at all. As rightly pointed out by the learned counsel for the plaintiff in the instant suit, the signature of the said C.V.Arangesa Mudaliar, varies considerably even to a naked eye.

13. On the side of the defendant, it was argued that the alienee as set out in the written statement in the impugned decree is one Mrs.Nirmala, and not Mrs.D.Vimala, the plaintiff's vendor. Whether it was Mrs.Nirmala or D.Vimala, nothing prevented the defendant herein from impleading her (alienee) as party to their specific performance suit. The husband of the defendant herein Mr.G.Mathialagan who was examined as D.W.2,

in his deposition has clearly stated that he was residing in Arumbakkam during the period when the case culminated in the impugned decree. He has deposed that the suit property is an adjacent road property adjacent to the road where he resided at that point of time. Deposition of D.W.1, in this regard runs as follows:

“ I was residing in Arumbakkam during the period when the case in O.S.No.7228 of 1986 was filed. The suit property was adjacent road property where we resided at that point of time. I deny the suggestion that whatever happened in the next street property is much known to me. I do not know the construction commenced at the suit property buy purchase of the same by another person. I do not know the said original construction was altered to multistorey building subsequently.

Q: Then you prepared to say that you have not visited the property for the consecutive 23 years of the period in which your case in O.S.No.7228/1986 was processed?

A: It is incorrect to state that I do not want to go there for any reason but I have other work to do hence, I have not visited the property.”

14. Therefore, it is clear that there would have been no spec of doubt in the mind of the defendant herein, while filing the suit in O.S.No.7228 of 1986 (leading to the impugned decree), that the suit plot was in possession of the plaintiff herein and the defendant would have been even aware that the superstructure has been put up by the plaintiff where the plaintiff is residing.

15. To top all this, the spouse of the defendant herein Mr.G.Mathialagan, who deposed as D.W.2, states that he is well aware with conveyance of documents. D.W.1, deposed that the suit, which culminated in the impugned decree, was contested by her spouse.

16. In the above stated circumstances, this Court cannot but hold that the non impleading of the plaintiff herein in the impugned decree, not even impleading the said Mrs.Nirmala in the impugned decree, inspite of having knowledge about the

Urban Land Ceiling Proceeding as well as the knowledge about their possession and dealing with the property as absolute owner, is fatal to the impugned decree.

17. Learned counsel for the defendant herein also argued that the alienation of the suit property by D.Vimala in favour of the plaintiff herein is in violation of the conditions of assignment of the Government. On a demurrer, even if it was correct, that does not cloth the defendant herein with any legitimacy, qua, impugned decree. If at all there is a violation, it is for the Government to look into it which again may at best lead to proceedings like resumption by the Government, but that certainly does not cloth the defendant herein with any legal .. qua the impugned decree.

18. Defendant also contended that the plaintiff ought to have filed a regular first appeal and not a separate suit.

19. Per Contra to buttress his submission in assailing the

impugned decree, learned counsel for plaintiff relied on the following citations:

In Kishan Lal Barwa vs. Sharda Saharan & another (Allahabad High Court) it is held as :

6. In execution of the decree, aforesaid, the defendant-petitioner filed objection under section 47 CPC, wherein apart from raising other issues, it was also stated that the basis of decree in favour of the plaintiff-respondent was the sale deed executed by Ripudman Kumar Saharan, on the basis of power of attorney executed by Ashok Kumar on 25.10.1984 in his favour, which has been found to be a forged document, as such, the decree itself has been obtained by playing fraud, and therefore, is nullity and inexecutable. The plaintiff-respondent filed an objection against it. The executing court found that the decree of prohibitory injunction had been passed after contest in favour of the decree holder, after returning a finding on issue no.1 that the plaintiff-respondent is the owner in possession over the suit property, and therefore, the executing court cannot go behind the decree. Consequently, the objection under section 47 CPC has been rejected. Aggrieved against it, a revision was preferred, which has also been dismissed by the revisional court with the finding that the issue of ownership of the plaintiff-respondent since had been adjudicated and determined in original suit, thereafter, it is not open for the executing court to examine the questions, which are being urged in objection under section 47 CPC. It has been further held that once the plaintiff-respondent had been held to be owner in possession of the suit property and the execution has been filed, it is not open for the executing court to reconsider all such questions, which had attained finality with the passing of the decree itself, and in such circumstances, the revisional court refused to interfere with the orders passed by the executing court. It is aggrieved by these two orders that the present writ petition has been filed by the defendant-petitioner. .

20. In O.S.A.No.211 to 214 of 2007 in S.V. Subramaniam vs. M/s.Cypress Semiconductor Technology Indian P.Ltd., the Division Bench of this Court has held as;

22. It is thus settled proposition of law that a judgement, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgement, decree or order by the first court or by the final court has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision with or even in collateral proceedings.

21. In Civil Appeal No.5398 of 2008 in Raju Ramsing Vasave vs. Mahesh Deorao Bhivapurkar & Others, the Hon'ble Supreme Court has held as follows:

25. So far as the second principle, noticed by us, is concerned, there is no dearth of authority.

Fraud vitiates all solemn acts. When an order has been obtained by practicing fraud on the court, it would be a nullity.

In Ganapatbhai Mahijibhai Solanki vs. State of Gujarat and Others [(2008) 3 SCC 556] this Court held :

“ It is now a well settled Principle that fraud vitiates all solemn acts. If an order is obtained by reason of commission of fraud, even the principles of natural justice are not required to be complied with for setting aside the same.”

It was further observed :

“ In Vijendradas and Anr. Vs. M. Subramanian and Ors., this Court held :

21. When a fraud is practiced on a court, the same is rendered a nullity. In a case of nullity, even the principles of natural justice are not required to be complied with. [Kendriya Vidyalaya Sangathan and Ors. V. Ajay Kumar Das and Ors. & A. Umarani vs. Registrar, Cooperative Societies and Ors.]

22. Once it is held that by reason of commission of a fraud, a decree is

rendered to be void rendering all subsequent proceedings taken pursuant thereto also nullity, in our opinion, it would be wholly inequitable to confer a benefit on a party, who is a beneficiary thereunder..."

In *K.D. Sharma v. Steel Authority of India Ltd. And ors.* [2008 (10) SCALE 227] this Court opined :

"16. Reference was also made to a recent decision of this Court in *A.V. Papayya Sastry and Ors. Vs. Govt. of A.P. and Ors.* (2007) 4 SCC 221. Considering English and Indian cases, one of us (C.K.Thakker, J.) stated :

It is thus settled proposition of law that a judgement, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgement, decree or order – by the First Court or by the Final Court – has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.

17. The Court defined fraud as an act of deliberate deception with the design of securing something by taking unfair advantage of another. In fraud one gains at the loss and cost of another. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam."

22. In *A.V. Papayya Sastry v. Govt. of A.P.*, (2007) 4 SCC

221, it has been held as :

"In *Indian Bank v. Satyam Fibres (India) (P) Ltd.*, referring to *Lazarus Estates* and *Smith v. East Elloe Rural Distt. Council* this Court stated:

"22. The judiciary in India also possesses inherent power, specially under Section 151 CPC, to recall its judgment or order if it is obtained by fraud on court. In the case of fraud on a party to the suit or proceedings, the court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. *This power is*

necessary for the orderly administration of the court's business."

In *United India Insurance Co. Ltd. v. Rajendra Singh*⁶ by practising fraud upon the Insurance Company, the claimant obtained an award of compensation from the Motor Accident Claims Tribunal. On coming to know of fraud, the Insurance Company applied for recalling of the award. The Tribunal, however, dismissed the petition on the ground that it had no power to review its own award. The High Court confirmed the order. The Company approached this Court.

23. Counsel for the plaintiff relied on a judgment of the Hon'ble Apex Court in Crl.A.No.1356 of 2004 (Union of India & Ors.vs. Ramesh Gandhi), wherein it has been held thus :

24. Coming to the question as to what amounts for securing a judgment by playing fraud in the Court- In Chengal Varaya Naidu (supra), this Court categorically held that the non-disclosure of all the necessary facts tantamounts to playing fraud on the Courts. At para 6 of the said judgment, it was held as follows:

".....If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

24. In the case in *S.P. Chengalvaraya Naidu v. Jagannath*, reported in (1994) 1 SCC 1, it has been held as follows:

4. The High Court reversed the findings of the trial court on the following reasonings:

"Let us assume for the purpose of argument that this document, Ex. B-15, was of the latter category and the plaintiff, the benamidar, had  4 completely divested himself of all rights of every description. Even so, it cannot be held that his failure to disclose the execution of Ex. B-15 would amount to collateral or extrinsic fraud. The utmost that can be said in favour of the defendants is that a plaintiff who had no title (at the time when the suit was filed) to the properties, has falsely asserted title and

one of the questions that would arise either expressly or by necessary implication is whether the plaintiff had a subsisting title to the properties. It was up to the defendants, to plead and establish by gathering all the necessary materials, oral and documentary, that the plaintiff had no title to the suit properties. It is their duty to obtain an encumbrance certificate and find out whether the plaintiff had still a subsisting title at the time of the suit. The plaintiff did not prevent the defendants, did not use any contrivance, nor any trick nor any deceit by which the defendants were prevented from raising proper pleas and adducing the necessary evidence. The parties were fighting at arm's length and it is the duty of each to traverse or question the allegations made by the other and to adduce all available evidence regarding the basis of the plaintiff's claim or the defence of the defendants and the truth or falsehood concerning the same. A party litigant cannot be indifferent, and negligent in his duty to place the materials in support of his contention and afterwards seek to show that the case of his opponent was false. The position would be entirely different if a party litigant could establish that in a prior litigation his opponent prevented him by an independent, collateral wrongful act such as keeping his witnesses in wrongful or secret confinement, stealing his documents to prevent him from adducing any evidence, conducting his case by tricks and misrepresentation resulting in his misleading of the Court. Here, nothing of the kind had happened and the contesting defendants could have easily produced a certified registration copy of Ex. B-15 and non-suited the plaintiff; and, it is absurd for them to take advantage of or make a point of their own acts of omission or negligence or carelessness in the conduct of their own defence."

The High Court further held as under:

"From this decision it follows that except proceedings for probate and other proceedings where a duty is cast upon a party litigant to disclose all the facts, in all other cases, there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence. It would cut at the root of the fundamental principle of law of finality of litigation enunciated in the maxim 'interest reipublicae ut sit finis litium' if it should be held that a judgment obtained by a plaintiff in a false case, false to his knowledge, could be set aside on the ground of fraud, in a subsequent litigation."

Finally, the High Court held as under:

"The principle of this decision governs the instant case. At the worst the plaintiff is guilty of fraud in having falsely alleged, at the time when  5 he filed the suit for partition, he had subsisting interest in the property though he had already executed Ex. B-15. Even so, that would not amount to extrinsic fraud because that is

a matter which could well have been traversed and established to be false by the appellant by adducing the necessary evidence. The preliminary decree in the partition suit necessarily involves an adjudication though impliedly that the plaintiff has a subsisting interest in the property."

5. 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 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.

6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the

documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

25. In Special Leave Petition (civil) 8479 of 1999 in UNITED INDIA INSURANCE CO. LTD. Vs. RAJENDRA SINGH & ORS it has been held (borrowing from S.P.Chengalvaraya's case) as:

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/decree- by the first court or by the highest court- has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

26. In Civil Appeal No.1723 of 2008 in Smt. Badami (Decsed) by her L.R. Vs. Bhali, the Hon'ble Supreme court has held as follows:

24. Yet in another decision [Hamza Haji v. State of Kerala & Anr.](#)[20] it has been held that no court will allow itself to be used as an instrument of fraud and no court, by way of rule of evidence and procedure, can allow its eyes to be closed to the fact it is being used as an instrument of fraud. The basic principle is that a party who secures the judgment by taking recourse to fraud should not be enabled to enjoy the fruits thereof.

25. It would not be an exaggeration but on the contrary an understatement if it is said that all facets of fraud get attracted to the case at hand. A rustic and illiterate woman is taken to court by a relation on the plea of creation of a lease deed and magically in a hurried manner the plaint is presented, written statement is drafted and filed, statement is recorded and a decree is passed within three days. On a perusal of the decree it is manifest that there is no reference of any kind of family arrangement and there is total non-application of mind. It only mentions there is consent in the written statement and hence, suit has to be decreed. Be it noted, it was a suit for permanent injunction. There was an allegation that the respondent was interfering with the possession of the plaintiff. What could have transpired that the defendant would go with the plaintiff and accede to all the reliefs. It not only gives rise to a doubt but on a first look one can feel that there is some kind of foul play. However, the learned trial Judge who decreed the first suit on 27.11.1973 did not look at these aspects. When the second suit was filed in 1984 for title and the third suit was filed for possession thereafter, the courts below had routinely followed the principles relating to consent decree and did not dwell deep to find out how the fraud was manifestly writ large. It was too obvious to ignore. The courts below have gone by the concept that there was no adequate material to establish that there was fraud, though it was telltale. That apart, the foundation was the family arrangement. We have already held that it was not bona fide, but, unfortunately the courts below as well as the High Court have held that it is a common phenomenon that the people in certain areas give their property to their close relations. We have already indicated that by giving the entire property and putting him in possession she would have been absolutely landless and would have been in

penury. It is unimaginable that a person would divest herself of one's own property in entirety in lieu of nothing. No iota of evidence has been brought on record that Bhali, the respondent herein, had given anything to Badami in the arrangement. It is easily perceivable that the rustic woman was also not old. Though the decree was passed in 1973 wherein it was alleged that the defendant was already in possession, she lived up to 1992 and expired after 19 years. It is a matter of record that the possession was not taken over and inference has been drawn that possibly there was an implied agreement that the decree would be given effect to after her death. All these reasonings are absolutely non-plausible and common sense does not even remotely give consent to them. It is fraudulent all the way. The whole thing was buttressed on the edifice of fraud and it needs no special emphasis to state that what is pyramided on fraud is bound to decay. In this regard we may profitably quote a statement by a great thinker:

“Fraud generally lights a candle for justice to get a look at it; and rogue's pen indites the warrant for his own arrest.”

27. In Crl.Mis.No.M.25856 of 2008 in Sher.Mohd.Khan vs. Madan

Lal and another it has been held as :

[In A.V. Papayya Sastry and others vs. Govt. of A.P. and others,](#) (2007) 4 Supreme Court Cases 221, it was held in paras 21 and 22 as follows:-

"21. Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed:

"Fraud avoids all judicial acts, ecclesiastical or temporal."

22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non-est in the eye of the law. Such a judgment, decree or order-by the first court or by the final court-has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings."

Proceeding to define fraud, in paras 25 and 26 it is held:-

"25. It has been said:fraud and justice never dwell together (fraus et jus nunquam cohabitant), or fraud and deceit ought to benefit none (fraus et colus nemini patrocinari debent).

26. Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of "finality of litigation" cannot be stretched to the extent of an absurdity that it can be utilized as an engine of oppression by dishonest and fraudulent litigants."

In Kendriya Vidyalaya Sangathan vs. Ajay Kumar Das, (2002) 4 SCC 503, the Hon'ble Supreme Court has proceeded to hold that when a fraud is practiced on a Court, the order so obtained is rendered a nullity. In a case of nullity, even the principles of natural justice are not required to be complied with.

Further in United India Insurance Co. Ltd. vs. Rajendra Singh, (2000) 3 SCC 581, the Hon'ble Supreme Court proceeded to

hold in para 16 that the remedy to move for recalling the order on the basis of the newly-discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No Court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.

On the basis of the above judgments of the Hon'ble Supreme Court, it can be concluded that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non-est in the eyes of law, which has to be treated as such by every Court, superior or inferior and can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings. An act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage, which could be on the basis of misrepresentation, would amount to fraud. In such situations, the most solemn proceedings stand vitiated as they are actuated by fraud which is an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. Once it is established that the order was obtained by a successful party by practicing or playing fraud, it stands vitiated and is non-existent and non-est and cannot be allowed to stand as the same is violative of the fundamental principle of law. Once it is held that by reason of commission of a fraud, a judgment, decree or order has been obtained, the same is rendered to be void vitiating all subsequent proceedings taken pursuant thereto as they would also be a nullity. In these circumstances, it would be wholly inequitable to confer a benefit on a party who is a beneficiary thereunder and the same cannot be allowed to continue and exist. A person, who approaches the Court with a claim which is based on falsehood, has no right to approach the Court and can be summarily thrown out at any stage of litigation as the misrepresentation, which would affect the very basis of the claim, would lead to doubt the bona-fide of a person and he cannot be permitted to pollute the stream of justice, which has to be kept pure, serene and undefiled. Thus, it becomes the duty of the Court to take steps to preserve its purity by taking remedial steps and not sit and look helplessly.

28. For the various reasons stated out supra, i.e., the defendant herein, for not impleading the plaintiff or the alienee Nirmala as contended that they were aware of the same and also aware of the plaintiff's possession, as the defendant and her spouse lived in the next street, clearly vitiates the impugned decree. A careful analysis of case laws would reveal that there is no dirth of case law supporting the preposition that a separate suit with the prayer assailing the impugned decree and praying it is not binding on the plaintiff is maintainable in cases of this nature.

29. Therefore, owing to all that have been stated supra, in terms of pleadings, exhibits and deposition, issue no.2 is answered in favour of the plaintiff herein and against the defendant herein holding that the plaintiff is entitled to a declaration that the judgement and decree dated 01.09.2004 in O.S.No.7228 of 1986, on the file of VIII Assistant City Civil Court, Chennai (Impugned decree) is not valid and is not binding on the plaintiff herein.

30. Issue Nos.1 and 3 : Answer to issue no.2 paves

the way for answering issue nos. 1 and 3. On the impugned decree Ex.P6 being held to be not valid and not binding on the plaintiff, we need to examine if the plaintiff has demonstrated that she is the owner of the suit plot. The plaintiff has purchased the suit plot under Ex.P3, dated 03.08.1989 from Mrs.D.Vimala. Prior to the said purchase, Town Survey Register extract stands in the name of D.Viamala. This is marked as Ex.P2. Post purchase on 03.08.1989, copy of Corporation Property Tax Book and Water Tax Card which have been marked as Exs.P4 and P5 stand in the name of the plaintiff. A mortgage deed dated 13.09.1990, marked as Ex.P8 would demonstrate that plaintiff has mortgaged the property in favour of Abiramapuram Fund Limited. Deed of discharge of mortgage dated 20.02.1997 which has been marked as Ex.P9 would show that mortgage has been discharged. The mortgage and subsequent discharge of the mortgage of the suit plot by the plaintiff in favour of Abirampuram Fund Limited in conjunction with the Encumbrance Certificate, Ex.P10, would go to show that the plaintiff has clearly dealt with the suit plot and the superstructure thereon on her own. Plaintiff's possession and occupation and the fact that she

lives there with her family is not in dispute.

31. As stated supra, the defendant and her spouse were fully aware that the plaintiff is in possession and that the plaintiff has put up superstructure and further structures on the suit plot. In fact, it is not even disputed by the defendant herein that the plaintiff is residing in the suit plot. Therefore, the plaintiff has established and satisfied this Court with regard to determining the answer for declaration that she is the absolute owner of the suit property. A perusal of the pleadings and the evidence that have lead to the filing of the instant suit would show that the defendant has attempted to interfere with the peaceful possession and enjoyment of the plaintiff plot (suit plot) of the plaintiff. Therefore, issue nos.1 and 3 are also answered in favour of the plaintiff against the defendant. The plaintiff is entitled to a declaration that she is the absolute owner of the suit plot and she is also entitled to permanent injunction restraining the defendant or her men agents from interfering with her peaceful possession and enjoyment of the suit plot.

32. Issue no.4: In the course of legal proceedings spanning nearly nine years in this Court, it is noticed that the

defendant who entered appearance through counsel was set ex-parte on 22.08.2008 for not filing written statement and an ex-parte decree came to be passed. Six years later i.e., on 08.04.2014, at the instance of the defendant herein, the ex-parte decree was set aside and the suit was set down for trial after the pleadings were completed. All these will go to show that the plaintiff is entitled to recover costs of the suit from the defendant.

33. In the result, suit decreed with costs.

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Index : Yes
smi

M.SUNDAR, J.

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