

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2018

CORAM

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.4100 and 4101 of 2014
and M.P.No.1 of 2014

1.Sakthi Kumar
2.Alli
3.Baskaran

.. Petitioners in
both CRPs.

Vs

1.Chithra Ramalingam
Represented by her Power Agent L.Ramalingam

2.G.Sridharane
3.Nirmala Premkumar
4.Amirtha Vijayakumar

5.G.Kannan
Power Agent of 1st defendant G.Sridharane

6.R.Kumaran
7.R.Manimozhi
8.S.Murali
9.R.Rani Ammal
10.N.Ganapathy
11.S.Muthuraman
12.A.Raja
13.N.Chandrakumar
14.K.Arunasalam
15.G.Munisamy
16.D.Rani
17.J.Ilangovan

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18.K.Thamizhmani
 19.R.Baskaran
 20.K.Tharanivel
 21.M.Rajalatchumi
 22.P.Varadhan
 23.V.Devaki
 24.N.Vittoba
 25.G.Kayalvizhi
 26.M.Anandaraj
 27.Geetha Anandaraj

28.M.Aneboucarassy
 (Power Agent of D25 and D26)

29.S.Geetha
 30.A.Sriramulu
 31.P.S.Ranganathan
 32.A.Lavanya @ Mahalakshmi
 33.S.Santhi
 34.S.Senthilkumaran

35.The Union of India
 Represented by the Chief Secretary
 Union Territory of Puducherry
 Government of Puducherry
 Goubert Avenue, Puducherry.

36.The Collector
 Government of Puducherry
 Puducherry.

37.The District Registrar
 Registration Department
 Government of Puducherry
 Puducherry.

38.The Tahsildar
 Puducherry Taluk Office
 Revenue Department
 Government of Puducherry
 Puducherry.

39.The Director
 Directorate of Survey and Land Records
 Revenue Department
 Government of Puducherry, Puducherry.

40.The Tahsildar (Settlement)
 Settlement Office
 Directorate of Survey and Land Records
 Revenue Department
 Government of Puducherry, Puducherry.

41.The Superintending Engineer
 Public Works Department
 Government of Puducherry, Puducherry.

42.The Commissioner
 Ariyankuppam Commune Panchayat
 Local Administration Department
 Government of Puducherry
 Puducherry.

.. Respondents

(Respondents 5 to 42 are no way connected with prayer made by the petitioners in the I.As. and the properties referred therein. In fact, they were dispensed with in the main I.As. itself. Hence, they are given up in these C.R.Ps. also)

Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal order dated 13.06.2014 made in I.A.No.333 of 2013 in I.A.No.41 of 2013 in O.S.No.35 of 2010 and order dated 31.07.2014 made in I.A.No.41 of 2013 in O.S.No.35 of 2010 on the file of the III Additional District Court, Puducherry.

In both CRPs.

For Petitioners :Mr.T.P.Manoharan, Senior Counsel
 for Mr.K.P.Jotheeswaran

For R1 :Mr.Samir S.Shah for
M/S.Shah and Shah
For R2 and R3 :No appearance
For R4 :Not ready in notice
For R5 to R42 : Given up

COMMON ORDER

The Civil Revision Petitions are filed against the fair and decretal order dated 13.06.2014 made in I.A.No.333 of 2013 in I.A.No.41 of 2013 in O.S.No.35 of 2010 and order dated 31.07.2014 made in I.A.No.41 of 2013 in O.S.No.35 of 2010 on the file of the III Additional District Court, Puducherry.

2.In both the Civil Revision Petitions, the parties and the issues are one and the same and hence, they are disposed of by this common order.

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3.The petitioners are third parties, first respondent is plaintiff and respondents 2 to 42 are defendants in O.S.No.35 of 2010 on the file of the III Additional District Court, Puducherry. The first respondent

filed the said suit for partition against the respondents 2 to 42 for preliminary decree of partition of 1/4th share of the first respondent and appointment of an Advocate Commissioner for effecting partition in terms of the preliminary decree and other reliefs. The petitioners filed I.A.No.41 of 2013 under Section 151 C.P.C., to delete Item Nos.'A', 'C', 'E', 'I' and 'J' mentioned in the schedule of properties and Cadastre No.173 (now Cadastre Nos.173/1, 173/2/1, 173/2/2) in R.S.No.75/1, measuring an extent of 01K-27K-10V as set out in "B" schedule and further pass an order that the interim orders passed in the suit do not affect their rights in respect of the schedule of properties.

4.According to the petitioners, they are absolute owners of the said properties and first respondent has no right to claim any partition in respect of these properties.

5.The respondents 1 and 2 filed separate counter affidavits and contended that the petitioners are not owners of the properties mentioned therein and without impleading themselves as party defendants in the suit, as per Order I Rule 10(2) C.P.C., they are not entitled to maintain the present application filed under Section 151 C.P.C. and prayed for dismissal of the application.

6.The petitioners also filed I.A.No.333 of 2013 in I.A.No.41 of 2013 under Order VII Rule 14(3) C.P.C., for permission to receive the documents mentioned in the petition and permit the petitioners to prosecute I.A.No.41 of 2013. The respondents 1 and 2 have filed separate counter affidavits in this application.

7.The learned Judge considering the averments made in the affidavits, counter affidavits and the fact that interim injunction granted by the trial Court was confirmed by this Court, dismissed both the applications filed by the petitioners.

8.Against the said order of dismissal dated 13.06.2014 made in I.A.No.333 of 2013 in I.A.No.41 of 2013 in O.S.No.35 of 2010 and order dated 31.07.2014 made in I.A.No.41 of 2013 in O.S.No.35 of 2010, the present two Civil Revision Petitions are filed by the petitioners.

9.The learned Senior Counsel appearing for the petitioners reiterated the averments made in the affidavits filed in support of the applications, contentions raised in the grounds of Civil Revision Petitions, referred to additional typed set of papers containing plaint in

O.S.No.36 of 1988 and compromise decree dated 04.12.1991 made in O.S.No.36 of 1988 passed in the suit between the respondents 1 and 3, petitioners herein and three others.

10.The learned Senior Counsel for the petitioners, in support of his contentions, relied on the following judgments:

(i) **(2012) 5 SCC 370 (Maria Margarida Sequeira Fernandes and others v. Erasmo Jack De Sequeira (dead) through legal heirs);**

"False claims and false defences

81. False claims and defences are really serious problems with real estate litigation, predominantly because of ever-escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent.

82. This Court in a recent judgment in Ramrameshwari Devi v. Nirmala Devi (2011) 8 SCC 249, aptly observed at page No.266, para 43 that

unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least can be minimized if exemplary costs is imposed for instituting frivolous litigation. The Court observed at pages 267-268, Para 58 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings."

(ii) (1994) 1 SCC 1 (S.P.Chengalvaraya Naidu (dead) by legal heirs v. Jagannath (Dead) by legal heirs and others);

"1. "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.

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.. ..

5. 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. 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 (Exhibit 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 Exhibit 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.” सत्यमेव जयते

11. Heard the learned Senior Counsel for the petitioners as well as the learned counsel appearing for the first respondent and perused the materials available on record.

12.The contention of the learned Senior Counsel for the petitioners is that the petitioners are absolute owners of the schedule of properties mentioned in Item Nos.'A', 'C', 'E', 'I' and 'J'. The first respondent is not entitled to seek partition of the said items in the present suit and the said items must be deleted from the plaint schedule. The above said contention is not acceptable. The petitioners are third parties to the suit and if they are absolute owners of the properties mentioned in the above schedule, proper course available to them is to get themselves impleaded in the suit and establish their right and title in the properties mentioned by them. The petitioners have not impleaded themselves in the suit by filing application under Order I Rule 10 C.P.C. and without impleading themselves as parties to the suit, the petitioners cannot maintain these applications for deletion of the Item Nos.'A', 'C', 'E', 'I' and 'J' and to receive 11 documents. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge.

13.In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

13.03.2018

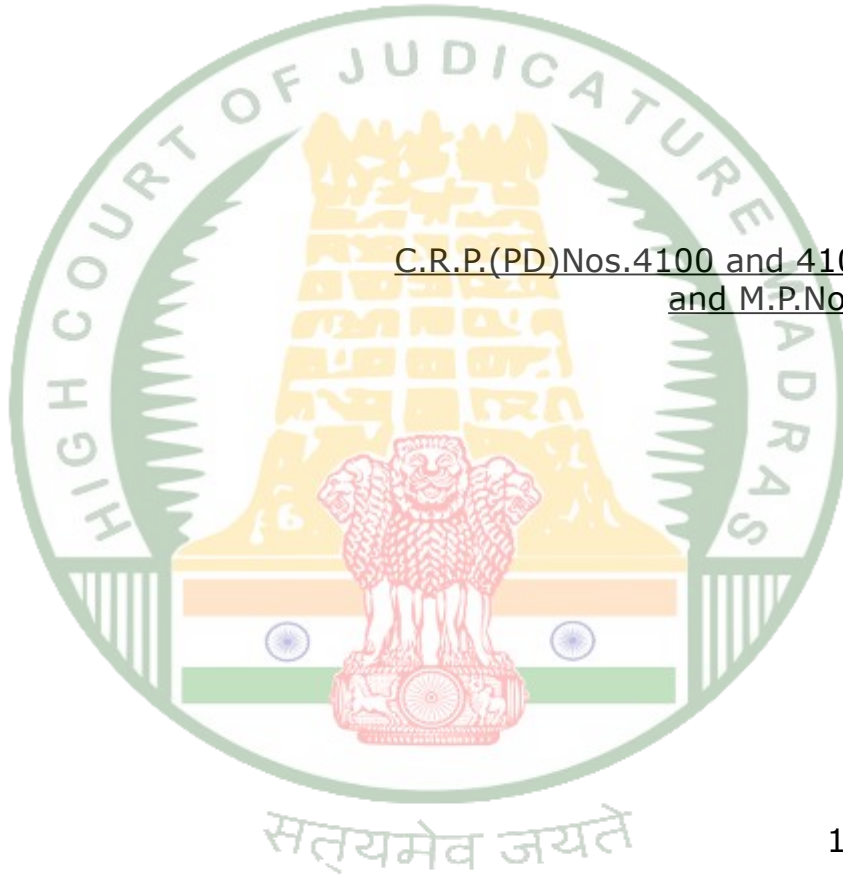
Index:Yes/No
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V.M.VELUMANI,J.

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To

III Additional District Judge, Puducherry.



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and M.P.No.1 of 2014

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