

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2019

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

C.M.A.No.1057 of 2015 and M.P.Nos.1 and 2 of 2015

1.Sri Kaliappa Charitable Trust
rep.by its Trustee T.Radha
Door No.6, EVR Nagar, Peelamedu
Coimbatore District.

2.T.Radha
3.Goundammal
4.N.Veerammal
5.Nanjappan
6.Jagannathan
7.Gowrishankar

..Petitioners 1 to 7/Defendants 1 to 7/
Respondents 1 to 7 /Appellants

-Vs-

1.Pankajam (Died)
2.Yashodha
3.Vijayalakshmi
4.Kanagaraj
5.Deivanai
6.Raju
7.Gandhimathi
8.Karthikeyan
9.Jayalakshmi

.... Respondents 1 to 9 /
Plaintiffs / Appellants /
Respondents 1 to 9

10.Nagammal (Died)
11.R.Ravichandran
12.R.Shanmugasundaram
13.R.Prakash

... Respondents 10 to 13 /
Defendants 8 to 11 /
Respondents 8 to
11/Respondents 10 to 13

14.Saraswathi
15.A.Santhamani
16.Annapoorni
17.Nirmala
18.Kanagamani
19.Shanthi alias B.Santhamani
20.B.Kalaivani

21.Vellingirin (Died)
22.Dhandapani
23.Thulasiammal
24.Gunasundari
25.Nachammal
26.Paramasivam
27.Devaraj

(Respondents 14 to 20 brought on record as
LRs of the deceased R1 vide order dated
09.01.2019 in CMP No.623/2019)

(Respondents 21 to 27 brought on record as
LRs of the deceased R10 vide order dated
09.01.2019 in CMP No.614/2019)

28.Mohanambal
29.Sabariraj
30.Harishkumar
31.Poovizhi

(Respondents 28 to 31 brought on record as
LRs of the deceased R21 vide order dated
22.04.2019 in CMP No.5685 of 2019) ... Respondents

Prayer : Civil Miscellaneous Appeal under Order 43 Rule (1(U) of
the Civil Procedure Code to set aside the judgment and decree
dated 05.01.2015 made in A.S.No.38 of 2014, on the file of II
Additional Sub Court, Coimbatore, reversing the judgment and
decree dated 06.03.2014 made in I.A.No.3140 of 2013 in
O.S.No.2688 of 2013, on the file of I Additional District Munsif
Court, Coimbatore.

For Appellants : Mr.M.S.Krishnan, Senior Counsel
for M/s.Sarvabhauman Associates

For Respondents : Mr.G.Arul Murugan for R2 to 4, R7 to 9
Mr.N.Balaji for R14, R16 to 20
Mr.Babu Rangasamy for
M/s.Babu Rangasamy Associates - for R15
No appearance for R5,6, 11 to 13, 22 to 31

JUDGMENT

This appeal has been remanded back, by the order passed by
the Apex Court dated 12.07.2016 in Civil Appeal No.6221 of 2016
arising out of Petition for Special Leave to Appeal (Civil)
No.5653 of 2016, setting aside the impugned order dated
22.09.1995 passed in CMA No.1057 of 2015, on the file of this
Court, with a direction to render a fresh decision in accordance
with law.

2. The short facts leading to the filing of the appeal are stated as follows. The suit land of 6.46 acres of land comprised in S.F.No,393, 364/1, 392/1 of Vilankurichi village, Coimbatore Taluk originally belonged to one Arumuga Asari, S/o Karuppanna Asari, which was purchased by him under a sale deed dated 11.04.1960. The said Arumuga Asari, along with his wife, sons and daughters, executed an agreement of sale dated 17.08.1990, in favour of Mr.K.Thangavel, agreeing to sell the entire extent of 6.46 acres mentioned above at an agreed sale consideration of Rs.50,000/- per acre in all aggregating to Rs.3,23,000/-. Having received the entire sale consideration, they have also executed a registered power of attorney dated 24.04.1992 in favour of K.Thangavel, authorising him to deal with the entire property. On the same day i.e., on 24.04.1992, they also executed a Uruthimozhi Pathiram in favour of K.Thangavel, acknowledging and confirming the execution of the agreement dated 17.08.1990. In pursuance of the agreement and power of attorney, the said Thangavel had settled an extent of 5.00 acres in favour of Sri Kaliappa Charitable Trust, his wife T.Radha and mother Goundammal (appellants 1 to 3 herein), by a deed of settlement dated 25.07.1993. The said Thangavel sold the remaining extent of 1.46 acres, by a settlement deeds dated 13.05.1997 in favour of N.Veerammal and Nanjappan (Appellants 4 and 5), admeasuring 0.73 cents each. It is the claim of the appellants that suppressing the above said agreement, Power of Attorney and Uruthimozhi Pathiram, the legal heirs of Arumuga Asari and his sons and daughters, created a sale deed for the entire extent of 6.46 acres in favour of one Nagammal and her sons (Respondents 10 to 13 herein) under two registered sale deeds dated 12.06.1998.

3. Aggrieved thereby, the said Thangavel and appellants 1, 4 and 5 have jointly filed a suit in O.S.No.630 of 1998 on the file of the learned Subordinate Judge, Coimbatore, which was subsequently transferred and renumbered before the District Munsif Court, Coimbatore in O.S.No.3987 of 2004. The learned trial Court, appreciating the merits of the case that the suit land having an extent of 6.46 acres covered in different survey numbers in S.F.No,393, 364/1, 392/1 of Vilankurichi village, Coimbatore Taluk, originally belonged to one Arumuga Asari under a registered sale deed dated 11.04.1960, sold it to one Thangavel for a total sale consideration of Rs.3,23,000/-, who in turn sold away the entire land to the appellants, decreed the suit by a judgment and decree dated 30.10.2006.

4. Aggrieved thereby, the respondents 10 to 13 filed A.S.No.107 of 2007 before the learned I Additional Subordinate

Judge, District Court, Coimbatore. The learned first appellate Court, clearly appreciating the facts as mentioned above, by a judgment and decree dated 31.07.2009, dismissed the appeal and confirmed the judgment and decree passed in O.S.No.3987 of 2004. As against the said judgment, for the reasons best known to the respondents 10 to 13, they once again took up the matter before this Court in Second Appeal No.1052 of 2009, which was also dismissed, confirming the concurrent findings of both the Courts below.

5. When the issue raised in O.S.No.3987 of 2004 has been substantially adjudicated and concluded, and became final, the second round of litigation was initiated by the respondents 1 to 9, by filing a civil suit in O.S.No.2688 of 2013 on the file of the I Additional District Munsif Court, Coimbatore on 10.09.2013. On 17.08.1990, when Arumuga Asari entered into an agreement with one Thangavel, who is the husband of the second appellant herein T.Radha and father of the appellants 6 and 7, for a total sale consideration of Rs.3,23,000/-. Subsequently, the said Arumuga Asari also received the entire sale consideration from Thangavel on various dates by way of cash and cheques, and after receipt of the entire sale consideration from the said Thangavel, Arumuga Asari had executed a Power of Attorney on 24.04.1992 as Document No.146 of 1992 in Book IV, in favour of the said Thangavel, authorising him to deal with the suit property. Thereafter on the same day, the said Arumuga Asari, his wife, sons and daughters have also joined executed a Urudhimozhi Pathiram (confirmation letter) in favour of the said Thangavel. After admitting the execution of the agreement dated 17.8.1990, they have also executed a Power of Attorney on 24.04.1992 also in favour of the said Thangavel. Finally, on receipt of the entire sale consideration, they handed over the original title documents of the suit property in favour of Thangavel and possession was also handed over to him. Thereafter, the said Thangavel settled the extent of 5 acres of land in favour of the appellant Trust, his wife T.Radha and mother Goundamani (appellants 1 to 3 herein) by a deed of settlement dated 25.07.1993, and the remaining extent of 1.46 acres was settled to appellants 4 and 4 and 5 by a settlement deed dated 13.05.1997 admeasuring 0.73 cents each.

6. After selling away the suit property, the said Arumuga Asari, his sons and daughters, without having any right over the suit property, have created a settlement dated 12.05.1998 in favour of respondents 10 to 13. The said Thangavel and appellants 1 and 4 jointly filed a suit in O.S.No.3987 of 2004 on the file of the District Munsif Court, Coimbatore, against Arumuga Asari, his and daughters as well as the respondents 10

to 13 for a declaration that they are the absolute owners of the suit properties measuring 6.46 acres and also for declaration that the sale deed dated 12.05.1998 executed in favour of the respondents is null and void. The trial Court has rightly decreed the suit on 30.10.2006, holding that the appellants 1, 4 and 5 are absolute owners of the suit property and therefore the sale in favour of respondents 10 to 13 is not valid and also not binding upon the appellants 1, 4 and 5. Aggrieved thereby, A.S.No.107 of 2007 was filed unsuccessfully and the same was dismissed on 31.09.2009, against which the respondents filed S.A.No.1052 of 2009 and the same was also dismissed on 20.09.2010. Suppressing all these materials facts, including the judgment and decree passed by the trial Court in O.S.No.3987 of 2004 dated 30.10.2006, which was confirmed by the first appellate Court in A.S.No.107 of 2007 by the judgment and decree dated 31.07.2009, which was also subsequently confirmed by this Honourable Court in the judgment dated 20.09.2010 in S.A.No.1052 of 2009, filing a fresh suit in O.S.No.2688 of 2013, is nothing but playing a fraud on the Court.

7. As the second round of litigation is nothing but a re-litigation of the same issue adjudicated on the same suit property, the appellants moved an application in I.A.No.3140 of 2013 under Order VII Rule 11, seeking rejection of plaint. The learned trial Court, rightly appreciating that the suit in O.S.No.2688 of 2013 is hit by the principles of Res Judicata and also the ratio laid down by the Honourable Supreme Court in "T.Arivanandam -Vs- T.V.Satyapal and another (1977) 4 S.C.C.467", reiterated in "K.K.Modi -Vs- K.N.Modi and Others (1998) 3 SCC 573", that it is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier, allowed the application in I.A.No.3140 of 2003 filed by the appellants under Order VII Rule 11 of C.P.C., for rejection of the plaint, by an order dated 06.03.2014. As against the said order, A.S.No.38 of 2014 was filed by respondents 1 to 9, on the file of the learned II Additional Subordinate Judge, Coimbatore, on the ground that no summons were issued to the appellants by the trial Court in O.S.No.3987 of 2004 and the appellants have not engaged their counsel. The learned II Additional Subordinate Judge, by a judgment dated 05.01.2015, accepting the plea that the respondents 1 to 9 have not engaged any counsel on their behalf to conduct their case during the first round of litigation, remanded the matter back to the trial Court by setting aside the order passed by the trial Court rejecting the plaint, for fresh consideration. As against the said judgment, the matter was again taken up to this Court in C.M.A.No.1057 of 2015.

8. This Court, by the judgment dated 22.09.2015, dismissed the Civil Miscellaneous Appeal, and confirmed the order of remand and directed the learned trial Court to proceed with the suit on merits. As against the said judgment, the appellants took up the matter before the Honourable Supreme Court in Civil Appeal No.6221 of 2016, which was re-numbered as S.L.P. (Civil) No.5653 of 2016 and the honourable Apex Court, finding some errors apparent therein, passed an order dated 12.07.2016, remanding the matter back to the file of this Court for fresh disposal. This is how the matter has come up before this Court for fresh hearing and disposal.

9. Heard Mr.M.S.Krishnan, Senior Counsel, appearing for the appellants, Mr.G.Arul Murugan, learned counsel for Respondents 2 to 4 and 7 to 9, and Mr.Babu Rangasamy, learned counsel for Respondent No.15.

10. Learned Senior Counsel appearing for the appellants Mr.M.S.Krishnan, vehemently contended that it is a clear case of misuse of the process of law by the respondents 1 to 9, inasmuch when the appellants were able to lay their claim in O.S.No.3987 of 2004 before the learned II Additional District Munsif Court, Coimbatore, taking up a plea that the legal heirs of one Arumuga Asari viz., his sons and daughters, without having any right over the suit property, wrongly and unlawfully created a sale deed dated 12.06.1998 in favour of respondents 10 to 13, and consequently one Thangavelu, vendor of the appellants, jointly with others filed O.S.No.3987 of 2004 before the learned District Munsif Court, Coimbatore and obtained a judgment and decree dated 30.10.2006, which was repeatedly confirmed by the learned first appellate Court in A.S.No.107 of 2007, by the judgment and decree dated 31.07.2009 and again re-confirmed by this Court in S.A.No.1052 of 2009 by the judgment dated 20.09.2010, the respondents ought not to have again re-litigated the matter by filing a fresh suit in O.S.No.2688 of 2013 on the file of the I Additional District Munsif Court, Coimbatore on 10.09.2013. When the learned I Additional District Munsif was rightly apprised of the facts by moving an application under Order VII Rule 11, the learned trial Court has rightly rejected the plaint, giving a reasoned finding that the suit land having an extent of 6.46 acres comprised in S.F.No,393, 364/1, 392/1 of Vilankurichi village, Coimbatore Taluk originally belonged to one Arumuga Asari by virtue of the sale deed dated 11.04.1960, and it was sold to one Thangavel for a total consideration of Rs.3,23,000/-, who in turn, by virtue of settlement deed dated 25.07.1993 settled an extent of 5 acres of land, out of the total 6.46 acres and remaining extent of 1.46 acres was sold in

favour of the appellants 4 and 5 under two sale deeds dated 13.05.1997, at the rate of 0.73 cents each. Unfortunately, when the order rejecting the plaint was also questioned before the learned II Additional Subordinate Judge, Coimbatore in A.S.No.38 of 2014, on the ground that they have not engaged any counsel on their behalf, without even verification of the issue that was concluded repeatedly in O.S.No.3987 of 2004 by way of the judgment and decree dated 30.10.2006, which was again confirmed by the learned I Additional Sub Court, Coimbatore in A.S.No.107 of 2007 by the judgment and decree dated 31.07.2009 and further appeal before this Court in S.A.No.1052 of 2009 was also dismissed, confirming the concurrent findings, by a judgment and decree dated 20.09.2010, the matter was remanded erroneously. Arguing further Mr.Krishnan pleaded that aggrieved by the remand order, the appellants have come to this Court with the present C.M.A. It is on this occasion when this Court, confirmed the order of remand, therefore, aggrieved thereby, the appellants approached the Apex Court by S.L.P. (Civil) No.5653 of 2016, and the Apex Court setting aside the remand order, remanded this case to this Court for fresh consideration.

11. The only issue to be adjudicated now in the present appeal is whether the order passed by the learned trial Court in I.A.No.3140 of 2003 in O.S.No.2688 of 2013 by the learned I Additional District Munsif Court, Coimbatore dated 10.09.2013, rejecting the plaint filed in O.S.No.2688 of 2013, is in order or not, and the learned I Additional District Munsif has followed the ratio laid down by the Apex Court in "K.K.Modi -Vs. K.N.Modi and Others (1998) 3 SCC 573".

12. Relying heavily on the ratio laid down by the Apex Court, particularly to paragraph No.44 in the decision cited supra, Mr.M.S.Krishnan, learned Senior Counsel, submitted that undoubtedly this is a case of re-litigation of the same issue, which has already been tried and decided earlier by three Courts, viz., the II Additional District Munsif, Coimbatore by a judgment dated 30.10.2006 in O.S.No.3987 of 2004, learned I Additional Sub Judge, Coimbatore by a judgment dated 31.07.2009 in A.S.No.107 of 2007 and this Court by a judgment dated 20.09.2010 in S.A.No.1052 of 2009. When the first round of litigation became concluded, the same subject matter cannot be re-litigated in O.S.No.2688 of 2013. This has been completely overlooked by the learned II Additional Subordinate Judge, Coimbatore and also this Court in C.M.A.No.1057 of 2015, Hence, the appeal deserves to be allowed.

13. Learned counsel for the respondents submitted that when there was a doubt with regard to the sale of the suit land, said

to have been sold away by Thangavel, on the basis of a Power of Attorney given to him by Arumuga Asari, who was also not alive subsequently, they have filed a suit in O.S.No.2688 of 2013 on the file of the learned I Additional District Munsif Court, Coimbatore, seeking for a decree to set aside the judgment and decree dated 30.10.2006 passed in O.S.No.3987 of 2004 by the learned II Additional District Munsif, Coimbatore, and declare the same as null and void. This was wrongly rejected, while allowing the application filed seeking rejection of the plaint filed by the appellants. On further appeal before the learned II Additional Sub Court, Coimbatore, the case of the respondents was that they had never engaged any counsel before the first round of litigation, and the said contention was accepted and the matter was simply remanded back for fresh consideration in the manner known to law and therefore the said order remanding the case back to the learned Trial Court, giving an opportunity to both the parties, cannot be found fault with.

14. This Court, is at a loss to appreciate such contention. The reason being, when the subject matter of the suit land comprising an extent of 6.46 acres covered in S.F.No,393, 364/1, 392/1 of Vilankurichi village, Coimbatore Taluk was sold to one Thangavel by one Arumuga Asari after executing an agreement of sale dated 17.08.1990, agreeing to sell the entire extent of 6.46 acres for a sum of Rs.50,000/- per acre, aggregating to a total sum of Rs.3,23,000/- along with a Power of Attorney and Uruthimozhi Pathiram confirming the execution of the sale agreement, and the said Thangavel in turn has settled 5 acres of land in favour of the first appellant under the settlement deed dated 25.07.1993 and the remaining extent of 1.46 acres was sold in favour of appellants 4 and 5, under sale deed dated 13.05.1997 at the rate of 0.73 cents each, again the legal heirs of Arumuga Asari, suppressing the above agreement, the Power of Attorney and the Uruthimozhi Pathiram, created a sale deed for the entire extent of 6.46 acres in favour of one Nagammal and her sons / respondents 10 to 13 herein, therefore a Civil Suit was filed in O.S.No.630 of 1998 on the file of the learned Subordinate Judge, Coimbatore, which was subsequently transferred and renumbered before the District Munsif Court, Coimbatore in O.S.No.3987 of 2004, finally the issue has been rightly adjudicated by the learned I Additional District Munsif in O.S.No.3987 of 2004 vide judgment and decree dated 30.10.2006. This was rightly confirmed by the learned I Additional Subordinate Judge, Coimbatore in A.S.No.107 of 2007 by 31.07.2009 and the same finding was once again re-confirmed by this Court in S.A.No.1052 of 2009 by a judgment dated 20.09.2010 and that became final and concluded. While so, the children of Arumuga Asari, having suffered and lost their case

in S.A.No.1052 of 2009, cannot file fresh suit in O.S.No.2688 of 2013 challenging the judgment in S.A.No.1052 of 2009.

15. In this context, it is relevant to refer to the relevant paragraphs of the decision of the Honourable Supreme Court in "K.K.Modi -Vs.K.N.Modi and Others (1998) 3 SCC 573", wherein it has been held as follows:

"43. The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraph 18/19/33 (page 344) explains the phrase "abuse of the process of the court" thus:

"This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation..... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material."

44. One of the examples cited as an abuse of the process of the Court is relitigation. It is an abuse of the process of the Court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as a res judicata. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the Court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the Court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised

only in special cases. The Court should also be satisfied that there is no change of the suit succeeding.

45. In the case of *Greenhalgh v. Mallard* [19147 (2) AER 255] the court had to consider different proceedings on the same cause of action for conspiracy, but supported by different averments. The Court, held that if the plaintiff has chosen to put his case in one way, he cannot thereafter bring the same transaction before the court, put his case in another way and say that he is relying on a new cause of action. In such circumstances he can be met with the plea of *res judicata* or the statement or plaint may be struck out on the ground that the action is frivolous and vexation and an abuse of the process of court.

46. In *McIlkenny v. Chief Constable of West Midlands Police Force and another* [1980 (2) AER 227], the Court of Appeal in England struck out the pleading on the ground that the action was an abuse of the process of the court since it raised an issue identical to that which had been finally determined at the plaintiffs' earlier criminal trial. The court said even when it is not possible to strike out the plaint on the ground of issue estoppel, the action can be struck out as an abuse of the process of the court because it is an abuse for a party to re-litigate a question or issue which has already been decided against him even though the other party cannot satisfy the strict rule of *res judicata* or the requirement of issue estoppel."

16 When the respondents / plaintiffs have been able to prevail upon one lawyer or the other to present to the Court, a case which was worse, it is nothing but gross abuse of the process of the Court, repeatedly made by the respondents / plaintiffs herein. It is not known how the lower appellate Court has lost to see the flagrant misuse of the mercies of law, when the trial Court has rightly rejected the plaint as the relitigation of the same issue which has already been tried and decided earlier against them, is barred as *res judicata*. When the lower appellate Court has the power to stop such proceedings summarily and prevent the time of the public and Court from being wasted, the lower appellate Court miserably failed in its duty to go through even *prima facie* case of the appellants. When the Court had to consider different documents, evidence and more carefully the judgments and decrees passed by the lower Court on the same issue, the lower appellate Court, in my considered

opinion, has miserably failed to keep a vigil on the issue raised by the appellants. As a result, this Court is constrained to waste its precious time on vexatious litigation.

17. In this context, it is apt to consider a relevant observation of the Apex Court in "T.ARIVANANDAM -vs- T.V.SATYAPAL AND ANOTHER" (1977) 4 S.C.C.467, condemning a party persistently resorting to frivolous and vexatious litigation, evading the proper process of Court, and speaking loudly that the Courts below, should exercise their power under Order VII Rule 11 of C.P.C., taking care to see that any suit filed abusing the process of Court repeatedly and unrepentently should be rejected. The relevant paragraph of the judgment is extracted below.

" 5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now, pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Or. VII r. 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial court should insist imperatively on examining the party at the first bearing so that bogus litigation can be shot down at the earliest stage. The Penal Code (Ch. XI) is also resourceful enough to meet such men, and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi "It is dangerous to be too good."

18. Coming back to the case on hand, when the suit was decreed by the trial Court and confirmed by the first appellate Court and re-confirmed by the High Court, the second round of litigation initiated in O.S.No.2688 of 2013 is an act of deliberate deception with the design of securing something by

unfair advantage of another, as held by the Honourable Supreme Court in 1994 (1) S.C.C. 1 (S.P.Chengalvaraya Naidu (Dead) by L.Rs -Vs- Jagannath (Dead) by L.Rs and Others". The relevant portion of the said judgment reads as follows,

"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 this Court. He can be summarily thrown out at any stage of the litigation."

19. It may be mentioned here that when the appellants have purchased the property from Thangavel, who has sold the same after purchasing the suit property from one Arumuga Asari, the filing of the suit in O.S.No.2688 of 2013 raising the issue over and again and against the judgment of this Court in S.A.No.1052 of 2009 dated 20.09.2010, is nothing but playing fraud on the Court. Any fraud committed before the Court would amount to abuse of process of the Court. A useful reference can be had of the judgment reported in (1996) 5 SCC 556 "Indian Bank -Vs- Satyam Fibres Pvt Limited", wherein the Supreme Court has held as follows,

"Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court. Similarly, where the Court is misled by a party or the court itself commits a mistake, which prejudices a party, the Court has inherent power to recall its order."

20. The Courts of law are meant for imparting justice between the parties. It is well settled legal position that one who comes to the Court must come with clean hands. From the facts found on records, I am constrained to say that more often,

than not, the process of the Court is being abused. The respondents / plaintiffs, taking the Courts for granted, knowing pretty well that they are playing fraud, attempted to obtain illegal gains, wasting the precious and valuable time of the Courts below, including the Honourable Apex Court. Therefore, I have no hesitation to say that the respondents / plaintiffs case is based on falsehood and they have no right to approach the Courts below. Hence, this Court deprecates the conduct of the appellants and is inclined to impose exemplary costs. For all these reasons, looking at the conduct of the respondents / plaintiffs, this Court, while setting aside the impugned order of remand, is inclined to allow the present civil miscellaneous appeal, as the impugned order of remand deserved to be set aside. Accordingly, the impugned order is set aside and the appeal is allowed with exemplary costs of Rs.5,00,000/- to be paid by the respondents, to the appellants, within four weeks from the date of receipt of a copy of this judgment. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1 THE II ADDITIONAL SUBORDINATE JUDGE, COIMBATORE
- 2 THE I ADDITIONAL DISTRICT MUNSIF, COIMBATORE.
- 3 YASODHA
D.NO. EW SB2340 GANDHIMA NAGAR GANAPATHY PO, COIMBATORE
- 4 VIJAYALAKSHMI
D.NO. EW 2340 GANDHIMA NAGAR GANAPATHY PO, COIMBATORE
- 5 KANAGARAJ
D.NO. EW 2340 GANDHIMA NAGAR GANAPATHY PO, COIMBATORE.
- 6 DEIVANAI, D.NO. 229 VELLAGOWNDEN PUDUR PIRIVU
KUNNATHUR RD UTHUKULI TIRUPPUR DISTRICT
- 7 RAJU, D.NO. 229 VELLAGOWNDEN PUDUR PIRIVU
KUNNATHUR ROAD UTHUKULI TIRUPPUR DISTRICT
- 8 GANDHIMATHI, D.NO. 584/E3 ANNA NAGAR NEAR DHANASIVA
THIRUMANA MANDAPAM SANYASHI KUNDRU
EXTENSION KICHIPALAYAM VILLAGE SALEM DISTRICT

- 9 KARTHIKEYAN, D.NO. 584/E3 ANNA NAGAR NEAR DHANASIVA
THIRUMANA MANDAPAM SANYASHI KUNDRU
EXTENSION KICHIPALAYAM VILLAGE SALEM DISTRICT
- 10 JAYALAKSHMI, D.NO. 584/E3 ANNA NAGAR NEAR DHANASIVA
THIRUMANA MANDAPAM SANYASHI KUNDRU
EXTENSION KICHIPALAYAM VILLAGE SALEM DISTRICT
- 11 R.RAVICHANDRAN, D.NO. 333 DR ALAGESAN RD EAST SAIBABA
COLONY POST COIMBATORE
- 12 R.SHANMUGASUNDARAM, D.NO. 333 DR ALAGESAN RD EAST SAIBABA
COLONY POST COIMBATORE
- 13 R.PRAKASH, D.NO. 333 DR ALAGESAN RD EAST SAIBABA
COLONY POST COIMBATORE
- 14 SARASWATHI, A82 MULLAI NAGAR PEELAMEDU POST, COIMBATORE.
- 15 A.SANTHAMANI, NO.10 KULATHUPUDUR ANDIPALAYAM TIRUPUR.
- 16 ANNAPOORANI,
A82 MULLAI NAGAR PEELAMEDU POST, COIMBATORE.
- 17 NIRMALA, 87/458 GANAPATHY NHS MULLAI NAGAR,
PEELAMEDU POST, COIMBATORE.
- 18 KANAGAMANI, 37 GANAPATHY NHS MULLAI NAGAR,
PEELAMEDU POST, COIMBATORE
- 19 SHANTHI @ B.SANTHAMANI,
77 MULLAI NAGAR, PEELAMEDU POST, COIMBATORE.
- 20 B.KALAIVANI, NO.77 MULLAI NAGAR,
PEELAMEDU POST, COIMBATORE.
- 21 DHANDAPANI
DOOR NO.333 DR.ALAGESAN ROAD EAST SAIBABA
COLONY COIMBATORE - 641 043
- 22 THULASIMMAL
DOOR NO.333 DR.ALAGESAN ROAD EAST SAIBABA
COLONY COIMBATORE - 641 043
- 23 GUNASUNDARI
DOOR NO.333 DR.ALAGESAN ROAD EAST SAIBABA
COLONY COIMBATORE - 641 043

- 24 NACHAMMAL
DOOR NO.333 DR.ALAGESAN ROAD EAST SAIBABA
COLONY COIMBATORE - 641 043
- 25 PARAMASIVAM
DOOR NO.333 DR.ALAGESAN ROAD EAST SAIBABA
COLONY COIMBATORE - 641 043
- 26 DEVARAJ
DOOR NO.333 DR.ALAGESAN ROAD EAST SAIBABA
COLONY COIMBATORE - 641 043
- 27 MOHANABAL
NO.333 DR.ALAGESAN ROAD EAST SAIBABA
COLONY COIMBATORE- 641 043
- 28 SABARIRAJ
NO.333 DR. ALAGESAN ROAD EAST SAIBABA
COLONY COIMBATORE - 641 043
- 29 HARISHKUMAR
NO.333 DR. ALAGESAN ROAD EAST SAIBABA
COLONY COIMBATORE 641043
- 30 POOVIZHI
NO.333 DR. ALAGESAN ROAD EAST. SAIBABA
COLONY COIMBATORE -341 043

COPY TO : THE SECTION OFFICER, V.R.SECTION,
HIGH COURT OF MADRAS, CHENNAI -104.

+1 cc to M/s.SARVABHAUMAN ASSOCIATES, Sr.No. 66116
+2 cc to M/s.G.Arulmurugan, Advocate Sr.No.66013 and 66546

AKM/29.11.19/15P- 35C/ सत्यमेव जयते

C.M.A.No.1057 of 2015

WEB COPY