**HIGH COURT OF JUDICATURE AT MADRAS**

RESERVED ON : **19.02.2020**

PRONOUNCED ON : **01.06.2020**

CORAM:

**THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN**

C.R.P(NPD)Nos.742, 743 and 744 of 2010

1.Saliath Mary
2.V.S.Arulraj
3.V.S.Samikannu
4.V.S.Sagaya Arogya Muthu
5.V.S.Navamani Martin
6.V.S.Sagaya Mary ... Petitioners 2 to 7/2nd plaintiff & L.Rs of 1st plaintiff/ Petitioners

Vs.

1.Santhana Mary
2.V.S.Lawrence
3.V.S.Joseph
4.V.S.Ambrose
5.V.S.Francis
6.John Vincent
7.A.David
8.A.Maria Joseph
9.Louis
10.A.Xavier
11.Anthonyraj
12.Alexander
13.A.Arumainayagam
14.A.Bagya Mary
15.Rejina Mary

16.Thilda Mary
17.Josephin Rani
18.Mary
19.A.Arogyam
20.Philomina
21.G.Ramamurthi
22.Sahaya Mary
23.Siluvaimuthu
24.Paulraj
25.M.Shanmugam,
Advocate Receiver, Subordinate Judge's Court Buildings,
Coimbatore.

26.The Coimbatore Auto Service Industry,
Co-operative Society Ltd., rep. by Spl. Officer,
Krishnaswami Mudaliar Road,
Coimbatore.

(R-1 died memo recorded vide Court
order dated 11.09.2018 made in
C.R.P(NPD)No.722 of 2010(PTAJ)

... Respondents 4 to 29/third parties/respondents

PRAYER: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the fair and decreetal order of the learned II Additional Subordinate Judge, Coimbatore dated 19.02.2007 in E.P.No.86 of 1991 in O.S.No.806 of 1970.



C.R.P(NPD)No.743 of 2010:

1.Saliath Mary
2.V.S.Arulraj
3.V.S.Samikannu
4.V.S.Sagaya Arogya Muthu
5.V.S.Navamani Martin

6.V.S.Sagaya Mary
... Petitioners 2 to 7/2nd plaintiff & L.Rs of
1st plaintiff/ Petitioners

Vs.

C.R.S.Mannadiar & Bros,
rep. by its Partner S.Balasubramaniam
... Petitioner/Obstructor/Third Party/Respondent

PRAYER: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the fair and decreetal order of the learned II Additional Subordinate Judge, Coimbatore dated 19.02.2007 in E.A.No.648 of 2001 in E.P.No.86 of 1991 in O.S.No.806 of 1970.

C.R.P(NPD)No.744 of 2010:

1.Saliath Mary
2.V.S.Arulraj
3.V.S.Samikannu
4.V.S.Sagaya Arogya Muthu
5.V.S.Navamani Martin
6.V.S.Sagaya Mary
... Petitioners 2 to 7/2nd plaintiff & L.Rs of
1st plaintiff/ Petitioners



Vs.

1.CRS Mannadiar & Bros,
rep. by its Partner S.Balasubramaniam

2.Santhana Mary
3.V.S.Lawrence
4.V.S.Joseph
5.V.S.Ambrose

6.V.S.Francis
7.John Vincent
8.A.David
9.A.Maria Joseph
10.Louis
11.A.Xavier
12.Anthonyraj
13.Alexander
14.A.Arumainayagam
15.A.Bagya Mary
16.Rejina Mary
17.Thilda Mary
18.Josephin Rani
19.Mary
20.A.Arogyam
21.Philomina
22.G.Ramamurthi
23.Sahaya Mary
24.Siluvaimuthu
25.Paulraj
26.M.Shanmugam,
Advocate Receiver, Subordinate Judge's Court Buildings,
Coimbatore.

27.The Coimbatore Auto Service Industry,
Co-operative Society Ltd., rep. by Spl. Officer,
Krishnaswami Mudaliar Road,
Coimbatore.



(R-2 died memo recorded vide Court order dated 11.09.2018 made in C.R.P(NPD)No.744 of 2010(PTAJ)



... Petitioner & Respondents 5 to 30/
Third party & respondents 4 to 29/third parties/
Respondents

PRAYER: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the fair and decreetal order of the learned II Additional

Subordinate Judge, Coimbatore dated 19.02.2007 in E.A.No.649 of 2001 in E.P.No.86 of 1991 in O.S.No.806 of 1970.

For Petitioner : Mr.T.M.Hariharan
(In all CRPs)

For R-1 in
(C.R.P.Nos.743 & 744/2010)
: Mr.AR.L.Sundaresan, Senior Counsel for Mrs.AL.Gandhimathi

R-2 to R-26
(in C.R.P.Nos.742 2010)
: Ex-parte

R-2 to R-27
(in C.R.P.No.744/2010) : Ex-parte

**COMMON ORDER**

Second plaintiff and legal representatives of the first plaintiff in the suit in O.S.No.806 of 1970 on the file of the Sub-Court, Coimbatore, are the revision petitioners herein. The suit in O.S.No.806 of 1970 was filed by the plaintiffs for grant of probate of the Will in their favour dated 28.05.1958. One Devadass, son of the Testator has also filed a suit in O.S.No.496 of 1973 by claiming right under a Will dated 22.10.1962 said to have been executed by the Testator Siluvaimuthu.

2. Both the suits were dismissed, however, as against the judgment and decree in O.S.No.806 of 1970, A.S.No.215 of 1977 was filed before this Court in which the decree was modified and granted Probate of the Will dated 28.05.1958 in favour of the plaintiffs, hence, they have filed the E.P.No.86 of 1991 in O.S.No.806 of 1970.

3. Pending execution proceedings, one of the parties has filed Civil Appeal in C.A.No.2451 of 1984 before the Honourable Apex Court and both the parties through their respective counsel filed a compromise petition under Order XXIII and Rule 3 of CPC. To record the said compromise, I.A.No.3 of 1992 was filed and in terms of compromise petition, the appeal was allowed and a decree was passed in terms of the compromise deed on 25.08.1991. Thereafter, they have filed an affidavit before the Execution Court in E.P.No.86 of 1991 to execute the decree as per terms of decree in A.S.No.215 of 1977 on the file of the High Court of Madras and not as per terms of decree in C.A.No.2451 of 1984 before the Honourable Supreme Court.

4. When the Court has raised a specific question as to how the execution Court can execute the decree passed in A.S.No.215 of 1977, in view of the

compromise decree ordered by the Honourable Apex Court, they moved an application in I.A.No.4 of 1992 in CA.No.2451 of 1984, wherein the Honourable Apex Court has passed the order permitting the counsel to withdraw I.A.No.4 of 1992 and to proceed further in a manner known to law before the appropriate forum and the petition was dismissed as withdrawn.

5. After the orders passed by the Hon'ble Apex Court, the above said pending execution proceedings were continued on file by filing narration of facts and prayed the Execution Court to execute the decree as modified by the High Court in the Appeal Suit in A.S.No.215/1977 ignoring the compromise decree passed by the Hon'ble Supreme Court on the ground of fraud.

6. E.A.No.648 of 2001 was filed to record the obstruction of the petitioner against the order of delivery of possession ordered by the Execution Court and to recall the warrant of delivery of possession. E.A.No.649 of 2001 was filed under Section 47 read with Order 21 Rule 58 of C.P.C, to dismiss that the Execution Petition as not maintainable.

7. E.A.Nos.648 and 649 of 2001 in E.P.No.86 of 1991 were dismissed by a separate order dated 19.02.2007. Consequently, the Execution Petition in E.P.No.86 of 1991. Aggrieved by the same, the present CRPs are filed.

8. In these CRPs, the second plaintiff is the first petitioner herein and legal representatives of the first plaintiff are the petitioners 2 to 6, who are the beneficiaries under the Will dated 28.05.1958. The first respondent in C.R.P.No.742 of 2010, is the daughter of Siluvaimuthu. While the respondents 2, 3, 4 and 5 are the legal representatives of the predeceased son Samikannu Asari, while the respondents 6 to 20 are all legal representatives of Jayammal @ Antony Ammal, while 21st respondent is the third Executor, while respondents 22 to 24 are the legal representatives of the late.Devadass, respondents 25 and 26 are the Advocate Commissioner and tenant.

9. Pending CRPs, the first petitioner reported dead in all C.R.Ps. The other petitioners are the legal representatives of the first petitioner. Memo was filed to that effect and the same was recorded.

10. A memo was filed in C.R.P.Nos.742 and 744 of 2010, stating that the first respondent in C.R.P.No.742 of 2010 and second respondent in C.R.P.No.744 of 2010 died without leaving any issues and the same was recorded.

11. The first respondent in C.R.P.Nos.743 and 744 of 2010 is represented by learned counsel Mrs.A.L.Gandhimathi.

12. Insofar as the other respondents are concerned, since they remained ex-parte before the trial Court, notice to them were dispensed with.

13. Heard Mr.T.M.Hariharan, learned counsel for the petitioners and the Senior Counsel Mr.AR.L.Sundaresan, for the first respondent in C.R.P.Nos.743 and 744 of 2010.

14. On perusal of the lower Court records, it is seen that the property originally belonged to V.A.Siluvaimuthu Asari, son of V.R.Anthonimuthu Asari, who was an Indian Christian, who died on 15.04.1963. Before his death, he had executed a Will dated 28.05.1958 Voluntarily while possessed of sound disposed state of mind. He had lodged the Will in the Coimbatore Registrar's Office in a sealed cover with instructions that it will be opened after his death. As legatees and executors under the said Will viz., Susairaj, Saliath Mary and Ramamurthy filed O.S.No.806 of 1970 on the file of the Sub-Court, Coimbatore for grant of probate of the Will in their favour. The son of the

testator Devadass has filed O.S.No.496 of 1973 on the file of the Sub-Court, Coimbatore based another Will dated 22.10.1962 said to have been executed by his father viz., V.A.Siluvaimuthu Asari.

15. It is further seen that the learned III Additional Subordinate Judge, Coimbatore, who tried both the suits after full trial have dismissed them. Devadass did not file an appeal against the dismissal of his suit in O.S.No.496 of 1973. The plaintiffs in O.S.No.806 of 1970 filed an appeal in A.S.No.215 of 1977 before the High Court, Madras, against the dismissal of their suit. The Honourable High Court allowed the appeal filed by them and granted probate of the Will dated 28.05.1958 in their favour. As against this, two appeals were filed before the Supreme Court, viz.,

(i) C.A.No.2451 of 1984 was filed by Devadass and seven others. Devadass died pending the appeal and his legal representatives were brought on record in I.A.No.1 of 1991 before the Honourable Supreme Court.



(ii) C.A.No.2452 of 1984 was filed Jayammal alias Anthoniammal, who died pending appeal and her legal representatives were brought on record in C.M.P.No.1851 of 1984. However, for want of prosecution

C.A.No.2452 of 1984 was dismissed and the application to restore the same was also dismissed by the Supreme Court. Ultimately, there was only one appeal before the Supreme Court, viz., C.A.No.2451 of 1984.

16. For better appreciation of the factual matrix as to their inter personal relationship against parties to the lis, the Genealogical tree of the family of V.A.Siluvaimuthu Asari is given hereunder:

(V.A.Siluvaimuthu Asari S/o.V.R.Anthonymuthu Asari)

Jayammal @ Anthoniammal    Santhana Mary    Samikannu Mary(predeceased Testator)    Devadass-Sagaya Mary

Lawrence    Joseph    Ambrose    Francis    D.Siluvaimuthu    Mary Margaret    Paulraj    Rose Mary    Ruby Mary

A.John Vincent    David    Maria Joseph    Louis    Xavier    Alexander    Anthoni raj    Arumai nayagam    Bagya mary    Regina Mary    Thilda Mary    Josephin Rani    A. Mary    A.Arogyam    Philomina

17. It appears, during pendency of proceedings before the Apex Court, Devadass, the first appellant in C.A.No.2451 of 1984 died on 16.06.1991. The petitioners in E.P.No.86 of 1991 received a communication dated 21.02.1992 from Advocate Mr.V.Goswamy to the effect that he had filed vakalat for them only on 08.12.1992 and a draft agreement of compromise dated 25.08.1991 is sent to them.

18. It is seen from the lower Court records that, based upon the compromise petition filed in I.A.No.3 of 1992 in C.A.No.2451 of 1984, by an order dated 30.03.1992, the Honourable Apex Court has passed the following order:

> *"Heard learned counsel for the parties.*
>
> *The compromise petition has been filed under Order 23 Rule 3 C.P.C. In terms of compromise petition, this appeal is allowed and a decree would be passed in terms of compromise dated 25.08.1991 which would form part of the decree.*
>
> *Parties shall bear their own costs throughout."*

19. Subsequent to the above said compromise decree, it appears from the records that the present revision petitioners has filed I.A.No.4 of 1995 in the above said C.A.No.2451 of 1984 alleging that there was a fraud committed in obtaining the compromise decree from the Honourable Apex Court alleging that in the draft agreement, it is mentioned that site No.9 and building, site No.10 and building and the machineries of Vasa Engineering Works are allotted to the petitioners and their sons. However, by a clever ruse, the 5th and 9th respondents in E.P.No.86 of 1991 managed to file a xerox copy of the compromise into Supreme Court with a petition in I.A.No.3 of 1992 showing that the site and building in site No.9 alone and the machineries alone are

allotted to the petitioners and their sons and the site and building in site No.10 and the house in Siddha Naidu Layout have been allotted to the opposite parties and therefore, it is contended that a fraud has been played upon the Apex Court by the respondents 5, 9 and 25 therein and further alleged that the compromise was not in accordance with Order 23 Rule of C.P.C., as the parties are not signed the compromise. What was produced before the Apex Court is only a xerox copy(this part of the allegation is discussed infra).

20. By an order dated 10.04.1995, the Division Bench of the Honourable Apex Court consisting of Honourable Justice A.S.Anand ( As the Lordship then was) and Honourable Justice M.K.Mukherjee, has passed the following order:

> *"Learned counsel seeks to withdraw the I.A., so that the petitioner may, if so advised, take such other recourse to the proceedings in law in an appropriate forum, as may be available to him. We record the statement and dismiss the I.A., as withdrawn."*



21. While things be so, after dismissal of C.A.No.2452 of 1984 for default, however when the other civil appeal C.A.No.2451 of 1984 was still pending, the revision petitioners have filed E.P.No.86 of 1991 for the

implementation of the decree passed in A.S.No.215 of 1977. After the compromise decree, the learned counsel for the revision petitioners herein also filed a statement of facts alleging that the compromise decree passed in C.A.No.2451 of 1984 dated 30.03.1992 is obtained by playing fraud on the Apex Court and the terms of the compromise filed before the Apex Court is not agreed by the parties and allegations are made against their own advocates and furthermore, stated that as per original draft settlement of compromise, it had contained three properties for their share, while in the compromise deed as per the compromise decree, the revision petitioner was allotted only two items of property and hence, it is alleged that the compromise decree is obtained by fraud and has further requested the Execution Court to execute the decree as per terms contained in A.S.No.215 of 1977 by the Court and requested the Execution Court to ignore the compromise decree passed by the Honourable Apex Court on the ground of fraud, as alleged.

22. The Execution Court, after conclusion of the proceedings before the Apex Court had ordered for delivery and when the case is at this situation, when the Amin went to the first respondent Firm herein/obstructor, they have raised objection and claimed that pursuant to the compromise decree passed by the Honourable Apex Court, the they have purchased site No.9 together with

building constructed thereon from the revision petitioners under a registered sale deed dated 07.03.1996 and 25.03.1996. So also, the obstructor purchased site No.10 together with building constructed thereon from the opposite party viz., Sahaya Mary and others under two registered sale deeds dated 01.03.1993 and 21.03.1996.

23. It is pertinent to point out that all the sale deeds referred to supra and the sale agreements entered into prior to the sale. After purchasing the said properties, the first respondent Firm has been in possession and enjoyment of the same ever since and they have been remitting the property taxes for the same, from the date of purchase and further it is stated that the revision petitioners herein themselves sold the adjacent property bearing site No.9 to the first respondent and they are also aware of the fact that site No.10 had been conveyed to the first respondent by the other parties.

24. Accordingly, the first respondent herein filed the above E.A.Nos.648 and 649 of 2001 for the relief as state supra, alleging that

(a)the petitioners are attempting to execute the execution of decree granted by the High Court of Madras in A.S.No.215 of 1977, by suppressing the Compromise decree passed by the Honourable Supreme Court and further stated that the compromise decree passed by the Honourable Supreme Court has superseded the decree and judgment of the High Court and thereby, the matter has reached a finality.

(b) the revision petitioners herein had even filed an application before the Honourable Supreme Court in the year 1995 challenging the compromise, but had later withdrawn the same. However, by suppressing all the above facts, they have played a fraud on the Execution Court and have obtained an order for delivery of possession by deceitful means.

25. Before the Execution Court, during the time of trial, on the side of the Obstructor Exs.A1 to A13 were marked and on the side of the respondents, Ex.R-1 and R-2 were marked. No witness was examined on both sides.



26. On consideration of the position, the Execution Court has allowed the two execution applications and dismissed the execution petition by holding that the compromise decree was entered before the Honourable Supreme Court and the petition filed by revision petitioners herein before the Honourable Supreme Court in I.A.No.4 of 1992 has been dismissed without any liberty and

also observed that in view of the compromise decree passed by the Honourable Supreme Court, the order passed by the Honourable High Court in the above said A.S.No.217 of 1977 is superseded and accordingly, execution of the decree as granted in A.S.No.215 of 1977 cannot be granted and also held that the first respondent herein is a bonafide purchaser for valuable consideration having purchased one property from 'A' party and another property from 'B' party. Both parties to the compromise deed, i.e., both the vendors of the obstructor viz., contesting parties before the Honourable Apex Court have conveyed the property to the Obstructor/first respondent herein under Exs.A5, A2, A4, A3 respectively and allowed the E.As and hence, the plaintiffs in the suit has filed these CRPs.

27. The learned counsel T.M.Hariharan appearing for the petitioners, would contend that a fraud has been committed on the Honourable Apex Court in recording the compromise. The draft was not reflected in the compromise deed and what was approved by the revision petitioners shows that they are entitled for three properties, while the respondent before the Honourable Apex Court is entitled for only one property with the movables in other property and further alleged that the Execution Court has not properly appraised various situation pointed out by the petitioners in respect of the allegation of fraud

played by the respondent before the Honourable Apex Court in obtaining the compromise decree and the revision petitioners are the victims of the fraud.

28. The learned counsel for the petitioners also relied upon the following decisions:

(i)***1950 SCR 852: AIR 1951 SC 16 (Yeswant Deorao Deshmukh v. Walchand Ramchand Kothari).***

(ii) ***(1994) 1 SCC (S.P.Chengalvaraya Naidu (dead) by LRS. vs. Jagannath (dead) by Lrs. And Others).***

(iii) ***(2000) 7 SCC 543 (Gram Panchayat of Village Naulakha v. Ujagar Singh and Others).***

(iv) ***(2007) 4 SCC 221 (A.V.Pappaya Sastry and Others v. Government of A.P., and Others).***

(v) ***(2008) 12 SCC 353 (Ganpatbhai Mhijibhai Solanki v. State of Gujarat and Others).***

(vi) ***(2011) 6 SCC 47(Trishala Jain and another v. State of Uttaranchal and another).***

(vii) ***(2016) 6 SCC 368 (Securities and Exchange Board of India v. Kishore R.Ajmera).***



29. Per contra, Mr.AR.L.Sundaresan, learned senior counsel for the first respondent/purchaser would contend that based upon the compromise decree granted by the Honourable Supreme Court, the first respondent herein

purchased Plot No.9 from one of the parties and Plot No.10 from the other party as clearly mentioned in the compromise decree of the Honourable Supreme Court and also made submissions in support of the order passed by the Execution Court.

30. Before adverting to the factual position, the plea of fraud was raised by the revision petitioners in recording the compromise memo before the Honourable Apex Court. On the point that, this Court finds that in the decision reported in ***(1994) 1 SCC (S.P.Chengalvaraya Naidu (dead) by LRS. v. Jagannath (Dead) by LRS., and others)*** (cited supra), the Honourable Supreme Court, has held as follows:

> *"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 and decree obtained by playing fraud on the Court is a nullity and non est in the eye 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."*

31. Further, in the decision reported in ***(2007) 4 Supreme Court Cases 221 (A.V.Papayya Sastry and Others v. Government of A.P., and others) (cited supra)***, it is held as follows:

> *"... 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 act, ecclesiastical or temporal."*
>
> *"... (fraud and justice never dwell together) (fraus et jus nunquam cohabitant); or fraud and deceit ought to benefit none) (fraus et dolus nemini patrocinari debent).."*
>
> *"... 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..."*
>
> *"... Such order can truly be said to be a judgment to which Article 141 of the Constitution applies..."*
>
> *" ...The above principle, however, is subject to exception of fraud.."*



32. On the point of standard of proof required for the plea of fraud on the Court or on obtaining a consent decree, the Honourable Apex Court in the decision reported in ***(2008) 12 SCC 353 (Ganpatbhai Mahijibhai Solanki v. State of Gujarat and Others)) (cited supra)***, has held as follows:

*"It is now 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."*

33. In the decision reported in ***(2011) 6 Supreme Court Cases 47 (Trishala Jain and Another v. State of Uttarachal and another) (cited supra)***, it is held as follows:

*"…. the Court has to take a general view keeping in mind the facts and circumstances of the case with particular reference to the intent of parties, their action in furtherance thereto and the object sought to be achieved by them."*



*34.* In the decision reported in ***1950 SCR 852:AIR 1951 SC 16 (Yeswant Deorao Deshmukh v. Walchand Ramchand Kothari)(cited supra)***, it is held as follows:

*".. Fraudulent motive or design is not capable of direct proof in most cases; it can only be inferred. The facts before us here leave no room for doubt that the true object*

*of the judgment-debtor was to prevent the execution of the decree against the Prabhat newspaper which he had purchased..”*

*“12. Section 48 of the Civil Procedure Code (which corresponds to Section 230 of the Code of 1882), is in these terms:*

*“48.(1) Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of 12 years from*

*(a) the date of the decree sought to be executed, or,*

*(b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment of delivery in respect of which the applicant seeks to execute the decree.*

*(2) Nothing in this Section shall be deemed-*

*(a) to preclude the court from ordering the execution of a decree upon an application presented after the expiration of the said term of twelve years, where the judgment-debtor has by fraud or force prevented the execution of the decree at some time within twelve years immediately before the date of the application;*

*(b) to limit or otherwise affect the operation of Article*

*183 of the first Schedule to the Indian Limitation Act, 1908..”*

35. As to the fact of fraud challenging the decree on the point of fraud, the Honourable Apex Court in the decision reported in ***(2000) 7 SCC 543 (Gram Panchayat of Village Naulakha v. Ujagar Singh and Others) (cited supra)***, has held as follows:

*“In order to contend in a later suit or proceeding that an earlier judgment was obtained by collusion, it is not necessary to file an independent suit for a declaration as to its collusive nature or for setting it aside, as a condition precedent.”*

*“.... 44. Any party to a suit or proceeding may show that any judgment order or decree which is relevant under Section 40, 41 or 42 , and which has been proved by the adverse party, was delivered by a court not competent to deliver it, or was obtained by fraud or collusion.”*



*“... The passage from Sarkar's Evidence which refers to various decisions reads as follows:*

*“Under Section 44 a party can, in a collateral proceeding*

*in which fraud may be set up as a defence, show that a decree or order obtained by the opposite party against him was passed by a court without jurisdiction or was obtained by fraud or collusion and it is not necessary to bring an independent suit for setting it aside."*

*".... an earlier judgment was obtained by collusion, it is not necessary to file an independent suit as stated in Jagar Ram case for a declaration as to its collusive nature or for setting it aside, as a condition precedent."*

36. On the required proof for such plea of fraud, in the decision reported in ***(2016) 6 SCC 368 (Securities and Exchange Board of India v. Kishore R.Ajmera)(cited supra)***, the Honourable Apex Court has held as follows:

*"26.It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear*

*to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion."*

37. Let us apply the aforesaid test to the facts of the present cases before us wherein admittedly there is no direct evidence forthcoming and Fraudulent motive or design is not capable of direct proof in most cases; it can only be inferred and the Court has to take a general view keeping in mind the facts and circumstances of the case with particular reference to the intent of parties, their action in furtherance thereto and the object sought to be achieved by them and it is not necessary to file an independent suit for a declaration as to its collusive nature or for setting it aside, as a condition precedent."

38. Keeping in view the law laid down by the Honourable Apex Court, in obtaining a consent decree, the burden of proof and the standard of proof thereof have been summarised as under and keeping in view of the above legal position in mind let us examine the factual position.

39. After considering the rival submissions made by the parties and after perusing the compromise decree passed by the Honourable Apex Court on

30.03.1992 and also taking note of the allegations now levelled against the counsel before the Honourable Apex Court, this Court finds that the Honourable Apex court has only recorded the statement of the learned counsel for the revision petitioners in C.A.No.2451 of 1984, to revoke the compromise decree. However, there is no order with regard to liberty to agitate the plea of fraud before the Executing Court since the order of the Honourable Apex Court dated 10.04.1995 is self-explanatory as extracted supra.

40. The main grievance of the revision petitioners is that memorandum of compromise filed before the Honourable Apex Court is contrary to the agreement entered between the parties and the intendment of the parties and in fact what was filed is against the specific agreement between the parties amounting to a fraud not merely on the petitioners, but also upon Court and is liable to be rejected.



41. The learned counsel for the petitioners also stated that during pendency of the civil appeal, a compromise was mooted by V.ASiluvai Muthu, V.S.Joseph and A.David. The petitioners were pressurized to agree to the terms suggested which were incorporated in an agreement dated 08.01.1991. Under the said agreement, the properties allotted to the petitioners herein are listed out

in the A-Schedule to include Site No.9 Palm Grove Road with superstructure, plant and machinery in Vasa Engineering Works and Site No.10 Palm Grove Road with superstructure. The 'B' schedule property allotted to the share of the judgment debtors is 32 cents in Siddha Naidu Lay Out, No.53, Rangasami Road. This agreement has been signed by the petitioners as parties of the First Part. The petitioners received a communication dated 21.02.1992 from their new counsel Mr.V.Gowswamy that he had filed vakalat for the petitioners on 08.12.1991 and a draft agreement of compromise dated 25.08.1991 was also sent to them. The said draft, was in accordance with the agreement originally entered into on 08.01.1991 and the petitioners issued a letter to their counsel in this regard. The petitioners therefore signed the compromise petition believing that the same is in accordance with the agreement dated 08.01.1991 and the draft compromise sent by the counsel.



42. This Court has perused the original records from the Executing Court. It is seen that in the memorandum of compromise filed before the Honourable Supreme Court, on each page, both the parties have signed and hence, finds that the above contention raised by the learned counsel for the revision petitioners does not stand to reason.

43. It remains to be stated that.

(a)the schedule of the property covered under the suit Will, dated 22.10.1962, consisting of landed property at Plot No.9, movable property (machinery) at Plot No.10 and landed property at Plot No.10 and a residential plot.

(b)The Will was executed by the testator Siluvaimuthu .

(c)The relationship between the parties are the legal heirs of the said Siluvaimuthu (defendant) while the plaintiff, beneficiary, under the Will is the brother's son of the said Siluvaimuthu.

(d)Though the legal heirs of the said Silvaimuthu also filed O.S.No.496 of 1973, based upon a Will, dated 22.10.1962, the same was dismissed and no appeal has been preferred. While the beneficiary under the Will, dated 28.05.1972 in favour of the brother's son, his suit was initially dismissed. O.S.No.806/1970 was dismissed.

(e)However, A.S.No.215/1977 was allowed as against which two civil appeals have been preferred. One was dismissed for default; in another, a compromise was entered and a compromise decree was passed. The present terms of the compromise as reflected in the decree of compromise passed by the Apex Court, one landed property and movable property on another Plot No.10

goes to the brother's son of the testator while one residential plot and the another Plot No.10 goes to all the legal heirs of the testator also assumes significance.

(g)Merely because it was not in accordance with the initial terms of agreement mooted by the plaintiffs, the compromise recorded by the Honourable Apex Court based upon the compromise deed signed by the respective parties, cannot be termed as a fraud.

44. It is needless to say that the revision petitioners herein are also signed on each page wherein it clearly indicates the schedule of properties that are alleged to be allotted to the plaintiffs and the properties that are allotted to the defendants.

45. When that being the case, I do not see any force in the above said contention raised by the learned counsel for the revision petitioners and after perusing the compromise deed filed by both the parties before the Honourable Supreme Court, the Honourable Supreme Court by an order dated 30.03.1992 has recorded the same and furthermore, in the order dated 10.04.1995, the Honourable Apex Court has also recorded the statement and dismissed the

I.A.No.4 of 1995 as withdrawn. I fasten to add up that no specific liberty was given and therefore, in view of the discussion as supra this contention raised by the revision petitioners stands negatived on the above factual background.

46. Further, this Court finds that in Ex.A2, A3 these are sale deeds effected by the revision petitioners, one of the parties to the compromise and the sale deeds viz., Ex.A4 and A5 are executed by the respondent herein/appellant before the Honourable Supreme Court wherein there is a recital regarding the compromise decree and the first respondent herein have purchased the property viz., Plot Nos.9 and 10 covered in the suit property from the respective parties as allotted in the compromise decree before the Honourable Supreme Court.

47. Hence, I do not find any irregularity in the sale or the purchase effected by the other side in favour of the first respondent herein and in the absence of any positive evidence in support of the alleged plea of fraud as discussed supra, this Court finds that the CRPs are devoid of merits and liable to be dismissed and accordingly, the CRPs are dismissed and the order of the learned II Additional Subordinate Judge, Coimbatore dated 19.02.2007 passed in E.P.No.86 of 1991 and in E.A.No.648 of 2001 in O.S.No.806 of 1970, are hereby confirmed. No Costs.

**01.06.2020**

Index :Yes/No
Internet :Yes/No
pm

To

The II Additional Subordinate Judge,
Coimbatore.

**RMT. TEEKAA RAMAN, J.**

pm

**C.R.P(NPD)Nos.742, 743 and 744 of 2010**

**01.06.2020**