

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.11.2019
DATE OF DECISION : 16.09.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.P.Nos.192, 193 of 2014, 1919 of 2019 in S.A.No.323 of 2000
and

M.P.Nos.1, 2 of 2014, 1918 of 2019 in S.A.No.1302 of 2006

C.M.P.Nos.192, 193 of 2014 in S.A.No.323 of 2000:

1. S.Mala
2. S.Prasanth (Minor)
rep.by mother and natural guardian
Mrs.S.Mala (1st petitioner)
3. V.Yogalakshmi
4. V.Mahalakshmi (Minor)
rep.by mother
and natural guardian Petitioners / Proposed 2 to 5
Mrs.V.Yogalakshmi (3rd petitioner)
..Respondents in both petitions

-vs-

1. J.Mohanasundaram
2. J.Priyadarshini
3. J.Prasad
(Minors petitioners 2 and 3 declared
major vide order of Court dated
13.7.2012 in memo filed before Court
1 to 3 Respondents/Appellants
dated 13.7.2012) ..in both petitions
4. J.Banumathi
(Brought on record as LR of the
deceased sole respondent vide order
of Court dated 13.7.2012 made in
memo filed before Court
dated 13.7.2012) 4th Respondent/Respondent
..in both petitions

C.M.P.No.1919 of 2019 in S.A.No.323 of 2000:

1. J.Mohanasundaram
2. J.Priyadarshini
3. J.Prasad

(Minors petitioners 2 and 3 declared major vide order of Court dated 13.7.2012 in memo filed before Court dated 13.7.2012) ..Petitioners/Appellants/1 to 3 Respondents

-vs-

1. S.Mala
2. S.Prasanth (Minor)
rep.by mother and natural guardian
Mrs.S.Mala (1st petitioner)
3. V.Yogalakshmi
4. V.Mahalakshmi (Minor)
rep.by mother and natural guardian
Mrs.V.Yogalakshmi (3rd petitioner)
5. J.Banumathi
(Brought on record as LR of the deceased sole respondent vide order of Court dated 13.7.2012 made in memo filed before Court Respondents/ Proposed/Petitioner dated 13.7.2012) ..2 to 5 Respondents

M.P.Nos.1, 2 of 2014 in S.A.No.1302 of 2006:

1. S.Mala
2. S.Prasanth (Minor)
rep.by mother and natural guardian
Mrs.S.Mala (1st petitioner)
Mrs.V.Yogalakshmi (3rd petitioner) Petitioners / Proposed 2 & 3
..Respondents in both petitions

-vs-

1. J.Mohanasundaram
2. J..M.Priyadarshini
3. J.M.Prasath
(Minors petitioners 2 and 3 declared major vide order of Court dated 13.7.2012 in memo filed before Court 1 to 3 Respondents/Appellants dated 13.7.2012) ..in both petitions
4. J.Banumathi
(Cause title accepted vide order of Court dated 18.9.2006 in MP1/06) ..4th Respondent/Respondent

C.M.P.No.1918 of 2019 in S.A.No.1302 of 2006:

1. J.Mohanasundaram
2. J.M.Priyadarshini
3. J.M.Prasad

(Minors petitioners 2 and 3 declared
major vide order of Court dated
13.7.2012 in memo filed before Court
dated 13.7.2012)

1 to 3 Respondents
..Petitioners/Appellants

-vs-

1. S.Mala
2. S.Prasanth (Minor)
rep.by mother and natural guardian Respondents/Proposed 2 & 3
Mrs.S.Mala (1st petitioner) ..Respondents
3. J.Banumathi
(Brought on record as LR of the
deceased sole respondent vide order
of Court dated 13.7.2012 made in
memo filed before Court
dated 13.7.2012) ..3rd Respondent/Respondent

Civil Miscellaneous Petition No.192 of 2014 is filed under Order XXII, Rule 4 of the Civil Procedure Code, praying to implead the petitioners i.e., (1) S.Mala, aged about 39 years, (2) S.Prasanth (Minor), aged about 17 years rep.by mother and natural guardian, S.Mala, both 1 and 2 all are residing at Old Door Nos.94 and 95, New Door Nos.313 and 315, T.H.Road, Chennai 600 081; (3) V.Yogalakshmi, wife of Veeran, aged about 33 years and (4) V.Mahalakshmi (minor), aged about 14 years rep by mother and natural guardian V.Yogalakshmi, both 3 & 4 are residing at No.11, P.K.Garden, Korukkupet, Chennai 600 021, as proposed respondents 2 to 5 in S.A.No.323 of 2000.

Civil Miscellaneous Petition No.193 of 2014 is filed under Order XLIII, Rule 17 of the Civil Procedure Code, praying to set aside the judgment and decree dated 13.07.2012 passed in S.A.No.323 of 2000.

Civil Miscellaneous Petition No.1919 of 2019 is filed under Section 151 of the Civil Procedure Code, praying to vacate the order of stay dated 24.9.2014 in C.M.P.Nos.192 & 193 of 2014 in S.A.No.323 of 2000 granted by this Hon'ble Court.

Civil Miscellaneous Petition No.1 of 2014 is filed under Order XXII, Rule 4 of the Civil Procedure Code, praying to implead the petitioners i.e., (1) S.Mala, aged about 39 years, (2) S.Prasanth (Minor), aged about 17 years rep.by mother and natural guardian, S.Mala, both 1 and 2 all are residing at Old

Door Nos.94 and 95, New Door Nos.313 and 315, T.H.Road, Chennai 600 081, as proposed respondents 2 & 3 in S.A.No.1302 of 2006.

Civil Miscellaneous Petition No.2 of 2014 is filed under Order XLIII, Rule 17 of the Civil Procedure Code, praying to set aside the judgment and decree dated 13.07.2012 passed in S.A.No.1302 of 2006.

Civil Miscellaneous Petition No.1918 of 2019 is filed under Section 151 of the Civil Procedure Code, praying to vacate the order of stay dated 24.9.2014 in M.P.Nos.1 & 2 of 2014 in S.A.No.1302 of 2006 granted by this Hon'ble Court.

For Petitioners :: Mr.K.Ramu in CMP Nos.192, 193 of 2014 in S.A.No.323 of 2000 and in M.P.Nos.1, 2 of 2014 in S.A.No.1302 of 2006 and for R1 to 4 in CMP No.1919 of 2019 in S.A.No.323 of 2000 and for R1 & 2 in CMP No.1918 of 2019 in S.A.No.1302 of 2006, respectively

For Respondents :: Mr.P.Wilson Senior Counsel for M/s C.Arul Vadivel @ Sekar for R1 to 3 in CMP Nos.192, 193 of 2014 in S.A.No.323 of 2000 and in M.P.Nos.1, 2 of 2014 in S.A.No.1302 of 2006 and for petitioners in CMP Nos.1919, 1918 of 2019 in S.A.Nos.323 of 2000 and 1302 of 2006, respectively

No appearance for R4 in CMP Nos.192, 193 of 2014 in S.A.No.323 of 2000 and M.P.Nos.1, 2 of 2014 in S.A.No.1302 of 2006 and for R5 in CMP No.1919 of 2019 in S.A.No.323 of 2000 and for R3 in C.M.P.No.1918 of 2019 in S.A.No.1302 of 2006

ORDER

1.1. Civil Miscellaneous Petition No.192 of 2014 has been filed seeking to implead the petitioners i.e., (1) S.Mala, aged about 39 years, (2) S.Prasanth (Minor), aged about 17 years rep.by mother and natural guardian, S.Mala, (3) V.Yogalakshmi, wife of Veeran, aged about 33 years and (4) V.Mahalakshmi (minor), aged about 14 years rep by mother and natural guardian V.Yogalakshmi, as the proposed respondents 2 to 5 in S.A.No.323 of 2000.

1.2. Civil Miscellaneous Petition No.193 of 2014 has been filed by the petitioners seeking to set aside the judgment and decree dated 13.07.2012 passed in S.A.No.323 of 2000.

1.3. Civil Miscellaneous Petition No.1 of 2014 has been filed seeking to implead the petitioners i.e., (1) S.Mala, aged about 39 years, (2) S.Prasanth (Minor), aged about 17 years rep.by mother and natural guardian, S.Mala, as the proposed respondents 2 & 3 in S.A.No.1302 of 2006.

1.4. Civil Miscellaneous Petition No.2 of 2014 has been filed by the petitioners seeking to set aside the judgment and decree dated 13.07.2012 passed in S.A.No.1302 of 2006.

2. Mr.K.Ramu, learned counsel appearing for the petitioners in the above petitions/proposed respondents in both the second appeals stated that when the second appeals filed by the sole respondent went abated eleven years ago, without even moving applications to set aside the abatement of the second appeals, without filing applications to condone the delay in setting aside the abatement and without bringing on record the legal representatives, who are the petitioners herein/proposed respondents, improperly misleading this Court by merely filing the memos to bring on record the terms of compromise, the appellants in the second appeals brought on record their own sister J.Banumathi, as the legal representative of late K.Kanniammal, which is not correct and as a result, the concurrent findings of the Courts below were given up and thereupon, the property rights have been unlawfully settled in favour of the respondent, therefore, when the judgments and decrees have been fraudulently obtained by suppressing several facts before this Court, the said judgments and decrees passed by this Court on the mere memos are liable to be set aside.

3. Explaining further, learned counsel for the petitioners/proposed respondents pleaded that originally the suit schedule properties described in item nos.1 and 2, forming the subject matter of the suit in O.S.No.7046 of 1991 and the suit schedule property forming the subject matter of the suit in O.S.No.7045 of 1991 respectively, belonged to late K.Kanniammal, the sole respondent in the above appeals. The said late K.Kanniammal originally executed the alleged registered settlement deeds in favour of the respondents 1 to 3/appellants herein on 19.11.70 & 11.2.74 respectively. Subsequently, the said K.Kanniammal executed a registered deed of revocation dated 30.3.88. Aggrieved by the deed of revocation, the respondents 1 to 3, filed the suits, namely, O.S.No.7046 of 1991 on the file of the learned VII Assistant Judge, City Civil Court, Chennai and O.S.No.7045 of 1991 on the file of the learned XIV Assistant Judge, City Civil Court, Chennai, against the said late K.Kanniammal praying for a declaration that the revocation deed dated 30.3.88 registered as document No.510 of 1988 is null and

void and for a consequential permanent injunction. The said suits filed by the respondents 1 to 3 were dismissed with a finding that the alleged settlement deed dated 19.11.70 executed by late K.Kanniammal was only a Will, but not a settlement deed, because K.Kanniammal had reserved the right of revocation of the said alleged settlement deed dated 19.11.70. As against the dismissal of the suits in O.S.No.7046 & 7045 of 1991, the respondents 1 to 3/appellants also filed appeals, namely, A.S.No.37 of 1996 before the learned III Additional Judge, City Civil Court, Chennai & A.S.No.158 of 2000 before the learned V Additional Judge, City Civil Court, Chennai unsuccessfully and the same were also dismissed by the judgments and decrees dated 8.8.96 & 24.11.2004 respectively. Being aggrieved thereby, the respondents 1 to 3 again filed Second Appeal Nos.323 of 2000 & 1302 of 2006 before this Court.

4. During the pendency of the said second appeals, the said Mrs.K.Kanniammal, the sole respondent died on 15.11.2001. However, during her lifetime, the said K.Kanniammal executed two registered settlement deeds dated 29.5.2000 & 14.7.2000 bearing document nos.2847 and 2590 of 2000 on the file of the Sub Registrar office, Royapuram, Chennai and thereby divided the suit item no.2 property bearing Door No.89, T.H.Road, New Washermanpet, Chennai-81 in favour of the petitioners 1 and 3 and Mrs.Janaki ammal, the deceased mother of the petitioners 1 and 3 with limited right of enjoyment of the suit item 2, being part Door No.89, T.H.Road, Washermanpet, Chennai-21 for the lifetime of the petitioners without any power of alienation and also after their lifetime, the property would devolve in favour of the petitioners 2 and 4 herein. Moreover, the said late K.Kanniammal also executed a registered Will dated 31.8.2000 bearing Document No.108 of 2000, bequeathing the properties in Door Nos.94 & 95, T.H.Road, Chennai in favour of the first petitioner and her deceased mother Janaki Ammal for life without power of alienation and thereby vested the remainder absolutely in favour of the second petitioner herein. In respect of other properties, namely, item no.1 viz., old Door No.338/1, new Door No.94, T.H.Road, Washermanpet, Chennai-21, being the subject matter of the property relating to the second appeal no.323 of 2000, detailed as item no.1 of the suit schedule. When there are two items of suit properties of which the petitioners 1 and 2 are the owners of a portion of the item no.2 of the suit schedule and the entire extent in item no.1 of the schedule, the petitioners 3 and 4 are the owners in a portion of the item no.2, therefore, the petitioners 1 and 2 are entitled to a portion of the suit item no.2 by virtue of the registered settlement deed executed by late K.Kanniammal during her lifetime. Similarly, the petitioners 3 and 4 are also entitled to the other portion of item no.2 of the suit property under the settlement deed executed by late K.Kanniammal in their favour.

5. In view of the above, the first petitioner and her deceased mother Janaki Ammal and the second petitioner herein filed O.P.No.414 of 2004 on the file of the original side of the High Court for grant of Letters of Administration to the registered Will dated 31.8.2000 executed by late K.Kanniammal as beneficiaries under the Will relating to Door Nos.94 & 95, T.H.Road, Washermanpet, Chennai-21, of which Door No.94, (old Door No.338/1), T.H.Road is the item no.1 of the suit property. Whereas the first respondent and his mother late J.Lakshmi filed application no.310 of 2005 for discharge of their caveat. However, the said application was dismissed by a learned single Judge in his order dated 21.3.2006. Aggrieved thereby, the petitioners filed O.S.A.No.264 of 2006 and accepting the case of the petitioners that J.Mohanasundaram and his mother late Lakshmi have no caveatable interest, allowed the appeal by order dated 22.4.2008, dismissing the caveat application filed by the first respondent and his mother J.Lakshmi holding clearly that they do not have any caveatable interest. As the said order became final, the petitioners 1 and 2 herein alone became entitled to the said two properties. Thereafter, by order dated 7.8.2009 in O.P.No.414 of 2004, this Court was pleased to grant Letters of Administration in favour of the petitioners 1 and 2 herein in respect of the properties bearing Door Nos.94 & 95, T.H.Road, Chennai. Accordingly, the petitioners 1 and 2 were issued with the Letters of Administration as beneficiaries under the registered Will dated 31.8.2000 executed by K.Kanniammal.

6. Surprisingly, when the first respondent was a party to the caveat proceedings initiated in O.P.No.414 of 2004 and he also heavily contested the matter in O.S.A.No.264 of 2006 and he was discharged from the caveatable interest in respect of the property along with his mother Mrs.J.Lakshmi, the respondents herein/appellants have deliberately, without taking any step to implead the petitioners as the respondents in the above second appeals consequent upon the death of K.Kanniammal on 15.11.2001, with ulterior motive of grabbing the suit properties, more particularly, when the second appeals should have been dismissed as abated for not taking steps by the respondents to bring on record the petitioners as the successors in interest of late K.Kanniammal due to her death on 15.11.2001, the first respondent, by filing only memos, wrongly has brought on record his own sister Banumathi as the legal heir of the deceased Kanniammal, which is not correct as, by colluding with her, they have given up the concurrent findings of the Courts below.

7. Learned counsel for the petitioners further submitted that when the judgment dated 22.4.2008 passed in O.S.A.No.264 of 2006 makes the factual and legal issues clear that the petitioners have become the owners of the two suit properties,

by virtue of the registered settlement deed and the registered Will dated 19.11.70 and 31.8.2000 respectively, executed by late K.Kanniammal, in respect of the properties at Door Nos.94 and 95, T.H.Road, Washermanpet, Chennai, suppressing the said judgment, wrongly impleading the first appellant's own sister as the legal representative of the deceased late K.Kanniammal, who was not at all the legal heir, fraudulently the appellants entered into the compromise with the said Banumathi and thereby have given up the concurrent findings of the Courts below, which were against the appellants in the second appeal and the first respondent herein, and virtually amounted to playing a fraud on the Court. Therefore, when this Court was misled to pass the compromise decree due to the fraud played on the Court, as per the ratio laid down by the Apex Court in the famous S.P.Chengalvaraya Naidu (Dead) by Lrs v. Jagannath (dead) by Lrs and others case, (1994) 1 SCC 1 ruling that non disclosure of relevant and material documents with a view to take advantage amounts to fraud, such person would be guilty of playing a fraud on the Court as well as on the opposite party and any such order passed by the Court has to be treated as nullity. Again referring to paragraphs 1 and 5 of the judgment, he further argued that if a judgment or decree obtained by playing fraud on the Court is a nullity, it can be challenged in any Court even in collateral proceedings. Therefore, 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.

8. Again referring to the judgments of the Apex Court in Indian Bank v. Satyam Fibres (India) Pvt.Ltd.,, (1996) 5 SCC 550 and in Meghmala and others v. G.Narasimha Reddy and others, (2010) 8 SCC 383, learned counsel for the petitioners argued that the Apex Court has held on this issue that an act of fraud played on Court is always viewed seriously. Moreover, the collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Therefore, when fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable principle, he emphatically appealed that once fraud is proved, all advantage gained by playing fraud can be taken away. Moreover, every Court having inherent power has to recall its own order obtained by fraud, as the order so obtained is non est in the eye of law. On this basis, he prayed for allowing the civil miscellaneous petitions as prayed for.

9. Per contra, Mr.P.Wilson, learned senior counsel appearing for the respondents, raising a preliminary objection for the maintainability of the miscellaneous petitions filed by the

petitioners, contended that when the petitioners/proposed respondents were not parties before the trial Court, first appellate Court and the second appellate Court, without the leave of this Court, being third parties, without filing applications to condone the delay and then to seek for impleadment, the present petitions to set aside the judgments and decrees are not maintainable. Placing reliance on the judgment of this Court in C.Venkatesan v. R.Natarajan, 2013 (5) CTC 640 holding that if any application is filed by any person who was not a party before the suit, without leave of the Court, that application is not maintainable in law. Referring to Order 22, Rule 10 of the Civil Procedure Code, Mr.Wilson argued that when the petitioners 1 & 2 have obtained an order in O.S.A.No.264 of 2006 dated 22.4.2008 that they are entitled to have the caveatable interest in respect of the suit properties, they should have come to this Court and sought leave of the Court to continue the second appeals. Without seeking leave of the Court, they cannot move these petitions for impleadment and for setting aside the judgments and decrees obtained by the respondents 1 & 2, as seeking the leave of the Court is the first and foremost step they should have taken, if they are not parties to the proceeding, that too, when the proceedings have culminated into passing of decrees and therefore the present petitions cannot be taken on record.

10. Taking up another point, Mr.Wilson argued that stranger to suit cannot challenge the compromise decree by taking out applications like this. The reason being that Order 23, Rule 3A of Civil Procedure Code provides that fresh suit may not be filed challenging the decree obtained through compromise, however, this bar is applicable for the parties to a suit and will not apply to third parties. The Bombay High Court in the case of Ramakrishna Shridhar and others v. Court Receiver and others, 2011 (2) Mh.L.J. 473, has explained the reason as to why the institution of suit is proper in law, in view of the fact that as the present petitioners were not parties to the suit, what transpired before the Court at the time of arriving at the consent terms could not be known to them, because one will have to read the contents of the decree, minutes of the order, consent terms etc. In the present cases, this Court, sitting under Section 100 CPC in second appeals, cannot hold a roving enquiry whether fraud has been committed as alleged by the petitioners or not and therefore the petitions should be dismissed directing the petitioners to go back to the trial Court to maintain the suit for challenging the decrees and judgments, if it is their case that the said judgments and decrees have been obtained by playing fraud on the Court.

11. Again referring to yet another judgment of the Bombay High Court in Gaurishankar v. Asaram, 2017 (1) Mh.L.J. 122, he has argued that the Bombay High Court, while dealing with a similar situation arising from a compromise decree passed in the second appeal, considering the fact that stranger to the proceedings who was not party either in the suit or the first appeal had filed a review against the compromise decree, held that a stranger to the compromise decree cannot file an application in appeal to challenge the compromise as not being lawful, but must file a separate suit for the purpose. Therefore, the bar to sue under Order 23, Rule 3A applies only to the parties to a compromise and the same does not apply to stranger to the suit, hence, the petitioners must institute a fresh suit to challenge the same.

12. Next coming to the probate issue, Mr. Wilson also pleaded that the grant of probate merely establishes the existence of Will and genuineness of the same, but it does not decide upon the title or the existence of the property therein. Again taking support from the judgment of the Apex Court in the case of Pasupati Nath Das (dead) v. Chanchal Kumar Das (dead) by L.Rs and others, 2018 SCC Online SC 1647, he submitted that when the Apex Court in the above cited case has held that there cannot be any dispute to the legal position that the grant of Probate establishes conclusively as to the execution of the Will, however, it does not establish the factum of the Will and the Probate Court does not decide the question of title, therefore, the petitioners succeeding before the OSA that they have the caveatable interest, cannot come to this Court claiming that they are the lawful owners of the properties. Hence, the implead applications are liable to go.

13. Concluding his arguments, summarizing the issue, the learned senior counsel also submitted that without the leave of the Court, when the petitioners were not parties before the trial Court, first appellate Court and the second appellate Court, they cannot move any application to set aside the judgments and decrees reached under Order 23 Rule 3A of CPC, as they are strangers to the proceedings. Secondly, when they are strangers to the proceedings right through from the trial Court till this Court, without seeking leave of the Court, they cannot maintain the petitions. Thirdly, it was pleaded that the question whether the respondents have played fraud or misrepresentation has to be gone into by the trial Court in an independent suit to be filed by the applicants/petitioners and without doing so, they cannot come to this Court seeking an order to set aside the compromise decree reached before this Court. Fourthly, he has stated that when late K.Kanniammal defendant in the original suit had no issues, as her husband predeceased her, settled five properties under four settlement

deeds, the property no.1 was settled in favour of minor nephew Mohanasundaram by naming his father Jayaraman under document no.4596/70, property no.2 was settled in favour of minor nephew Mohanasundaram by naming guardian in document no.214. Hence, he prayed for vacating the interim order of stay granted on 24.9.2014 by this Court by ordering the C.M.P.No.1919 of 2019 in S.A.No.323 of 2000 and the C.M.P.No.1918 of 2019 in S.A.No.1302 of 2006 filed by the respondents/appellants.

14. Heard learned counsel for the parties.

15. Originally the suit schedule properties described in item nos.1 & 2 forming part of the subject matter of the dispute in O.S.No.7046 of 1991 belonged to late K.Kanniammal, who was the sole respondent in the Second Appeal No.323 of 2000 before this Court. Since the said late K.Kanniammal is said to have allegedly registered a settlement deed dated 19.11.70 in favour of the respondents 1 to 3/appellants in the second appeal, subsequently, the said K.Kanniammal executed the registered deed of revocation of the alleged settlement deed by a deed of revocation dated 30.3.88. Aggrieved by the deed of revocation, the respondents 1 to 3/appellants, filed the suits, namely, O.S.No.7046 of 1991 on the file of the learned VII Assistant Judge, City Civil Court, Chennai and O.S.No.7045 of 1991 on the file of the learned XIV Assistant Judge, City Civil Court, Chennai, against the said late K.Kanniammal praying for a declaration that the revocation deed dated 30.3.88 registered as document No.510 of 1988 is null and void and for a consequential permanent injunction. The said suits filed by the respondents 1 to 3 were dismissed with a finding that the alleged settlement deed dated 19.11.70 executed by late K.Kanniammal was only a Will, but not a settlement deed, because K.Kanniammal had reserved the right of revocation of the said alleged settlement deed dated 19.11.70. As against the dismissal of the suits in O.S.No.7046 & 7045 of 1991, the respondents 1 to 3/appellants also filed appeals, namely, A.S.No.37 of 1996 before the learned III Additional Judge, City Civil Court, Chennai & A.S.No.158 of 2000 before the learned V Additional Judge, City Civil Court, Chennai unsuccessfully and the same were also dismissed by the judgments and decrees dated 8.8.96 & 24.11.2004 respectively, confirming the judgments and decrees of the trial Court. Being aggrieved thereby, the respondents 1 to 3 again filed Second Appeal Nos.323 of 2000 & 1302 of 2006 before this Court. During the pendency of the second appeals, the said K.Kanniammal, the sole respondent sadly died on 15.11.2001. Since the said late K.Kanniammal during her lifetime executed the registered settlement deeds dated 29.5.2000 and 14.7.2000 registered as Document Nos.2847 and 2590 of 2000 on the file of the Sub Registrar, Royapuram, Chennai and thereby devolving the suit property no.2 bearing document no.89, T.H.Road, Washermanpet,

Chennai in favour of the applicants/petitioners 1 to 3 and Mrs. Janaki Ammal, the deceased mother of the petitioners 1 and 3 with limited right of enjoyment of the suit item no.2 being part of door no.89, T.H.Road, Washermanpet, Chennai in favour of the petitioners without any power of alienation and after their lifetime, the property was to devolve on the petitioners 2 and 4 herein and in respect of the property bearing door nos.94 & 95, T.H.Road, Washermanpet, Chennai, the said late K.Kanniammal executed a registered sale deed dated 31.8.2000 registered as Document No.108 of 2000 on the file of the Sub Registrar, Royapuram, Chennai, by which the said K.Kanniammal bequeathed the said property in favour of the first petitioner and her deceased mother Janaki Ammal for life without power of alienation and vesting remainder absolutely in favour of the second petitioner, it has been claimed that the petitioners 1 and 2 are the owners on the portion of the item no.2 of the suit property and the entire item no.1 of the suit property. Besides, the petitioners 3 and 4 are claiming to be owners of a portion of item no.2 of the suit property. In view of the above, after the death of K.Kanniammal, the first petitioner and his mother Janakiammal as well as the second petitioner filed O.P.No.414 of 2004 on the original side of the High Court seeking grant of Letters of Administration of the registered Will dated 31.8.2000 executed by late K.Kanniammal as the beneficiaries under the Will relating to Door Nos.94 & 95, T.H.Road, Washermanpet, Chennai, because door no.94, old no.338/1, T.H.Road, Chennai is item no.1 of the suit property. In the said Probate proceedings, the first respondent and his mother late J.Lakshmi filed caveat. Therefore, the petitioners filed application no.310 of 2005 raising objection against the respondents 1 to 3 herein that they did not have any caveatable interest, hence, they should be discharged from the caveat. However, it was dismissed by the learned single Judge by his order dated 21.3.2006. Aggrieved thereby, the petitioners filed O.S.A.No.264 of 2006 before this Court. After heavy contest, the Hon'ble Division Bench of this Court in its order dated 22.4.2008, was pleased to allow the appeal and discharged the caveat application filed by the first respondent and his mother late J.Lakshmi giving a finding that they do not have any caveatable interest at all. It is relevant to extract the relevant paragraphs of the judgment as follows:-

"8. The main contention of the caveators, which has been accepted by the learned single Judge, is to the effect that if the validity of the deeds of settlement in favour of the caveators is upheld in the pending Second Appeals, such caveators would be taken to be the lawful owners and in such event it should be concluded that the Testator had no disposable interest in the properties. The above claim of the caveators is

fully supported by the observations made in AIR 1972 Madras 212 (cited supra).

9. If such a decision can be said to be still holding the field, obviously the ultimate order passed by the learned single Judge would be sustainable. Unfortunately, however, for the caveators, in view of the subsequent decision of the Supreme Court in 2008 (4) Scale 202 (cited supra), it cannot be said that the decision in AIR 1972 Madras 212 is still holding the field. As a matter of fact, the aforesaid decision of the Madras High Court has been specifically considered by the Supreme Court in the decision cited above and has been disapproved. The Supreme Court in the aforesaid decision had observed:-

"89. The propositions of law which in our considered view may be applied in a case of this nature are:

(i) To sustain a caveat, a caveatable interest must be shown;

(ii) The test required to be applied is: does the claim of grant of probate prejudice his right because it defeats some other line of succession in terms whereof the caveator asserted his right.

(iii) It is a fundamental nature of a probate proceeding that whatever would be the interest of the testator, the same must be accepted and the rules laid down therein must be followed. The logical corollary whereof would be that any person questioning the existence of title in respect of the estate or capacity of the testator to dispose of the property by Will on ground outside the law of succession would be a stranger to the probate proceeding inasmuch as none of such rights can effectively be adjudicated therein.

"10. Applying the above test, the primary question is, if the Will fails, whether the caveators will have right to succeed to the property.

11. There is no dispute that Kanniammal was the last absolute female owner of the property. If the Will fails, succession to such property will be in accordance with Section 15 of the Hindu Succession Act. The caveators (and for that matter the applicants for the issuance of Letters of Administration) claimed relationship not directly to Dhanakoti Ammal, but through Arjuna Gramini and the first wife Thayarammal. By no stretch of imagination it can be said that such caveators can at all be successors to the property of Kanniammal, if the Will fails. Their claim to the property appears to be through the deeds of settlement and not on the basis of any right of succession as heirs.

12. In view of the above conclusion and particularly in view of the aforesaid decision of the Supreme Court, there is no escape from the conclusion that the present respondents in their caveat petitions have not shown existence of any caveatable interest and, therefore, the caveats filed by them are bound to be discharged. It is, however, made clear that the aforesaid conclusion relating to caveat filed by them will not stand in the way of consideration of S.A.Nos.323 of 2000 and 1302 of 2006, which are to be decided on their own merit in accordance with law."

16. A careful reading of the above observation clearly and categorically shows that the appellants in the second appeals do not have any caveatable interest in the property in question. However, it is open to them to pursue the pending Second Appeal Nos.323 of 2000 and 1302 of 2006. While so, surprisingly, when the Division Bench allowed O.S.A.No.264 of 2006 in its order dated 22.4.2008, so far as all the applicants, due to the death of the sole respondent K.Kanniammal who died on 15.11.2001, leaving behind the petitioners 1 & 2 as legal heirs, after the death of the sole respondent late K.Kanniammal, the first respondent J.Mohanasundaram, who lost his suit in O.S.Nos.7046, 7045 of 1991 and A.S.Nos.37 of 1996 and 158 of 2000 from both the Courts below, ought to have impleaded the applicants/petitioners as legal representatives of the deceased late K.Kanniammal in the pending second appeals to proceed further. But for the reasons known to him, he has deliberately and wilfully omitted to implead the applicants/petitioners, who are having caveatable interest, as per the Division Bench judgment dated 22.4.2008. Concealing the fact that he lost his case not only before the trial Court, the first appellate Court

and the second appellate Court, but also lost his case of caveatable interest before the Division Bench in O.S.A.No.264 of 2006 in its order dated 22.4.2008, deceptively they filed memos of compromise, not even an application under Order 23, Rule 3A of the Civil Procedure Code, bringing their own sister Banumathi as the legal heir of the deceased Kanniammal and obtained an order by setting aside the concurrent findings of the Courts below.

17. Now three misrepresentations have been placed. Firstly, when K.Kanniammal the sole respondent died on 15.11.2001, as per Order 23, Rule 3A, within 60 days, the legal representatives should have been brought on record, failing which, the second appeals would stand abated. Admittedly, in the present cases, when the sole respondent late K.Kanniammal died, while challenging the Will executed by the said K.Kanniammal, the appellants in the second appeal/respondents 1 to 3 herein, ought to have impleaded the legal representatives of the said K.Kanniammal, the applicants/petitioners 1 and 2 as they have also succeeded before the Division Bench in the O.S.A.No.264 of 2006 in respect of the same suit property, which has not been done. Secondly, instead of filing an application under Order 23, Rule 3A, mere memos have been filed stating that there was a compromise reached between the appellants and the respondents which are not correct. Thirdly, there is no application filed to condone the delay of eleven years in setting aside the abatement. Fourthly, no application to set aside the abatement has been filed by the respondents 1 to 3. Fifthly, no petition to bring on record the legal representatives has been filed. For all these reasons, concealing these infirmities and deceptively obtaining decree of compromise from this Court, their deceptive act would certainly amount to playing fraud with the Court.

18. The Hon'ble Apex Court, while dealing with a similar situation in the leading case dealing with fraud in SP.Chengalvarayan Naidu's case, has held that the judgment and decree obtained by playing fraud on the Court is a nullity and non est in the eye of law. Such a judgment and decree has to be treated as nullity by every Court, whether superior or inferior, and it can be challenged even in collateral proceedings. The relevant paragraphs 1 & 5 are given as under:-

"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/decreed - 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.

5....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."

19. A careful reading of the above paragraphs clearly would show that any judgment or decree obtained by playing fraud on the Court is a nullity and non est in the eye of law and the judgment can be challenged in collateral proceedings. Therefore, I am of the considered opinion that the objection raised by the respondents/appellants that a fresh and independent suit alone should be filed, is devoid of any merit, hence, the same is liable to be repelled. Secondly, the further argument advanced by the learned senior counsel for the respondents that the petitioners were not parties before the Courts below, therefore, they cannot maintain the present petitions without seeking leave of the Court, is also liable to be rejected, in view of the sole reason that they obtained the order by playing fraud. Moreover, the respondents herein at the time of moving memos of compromise had not sought the leave of this Court when the Second Appeals had gone abated one decade ago, hence, they cannot be allowed to be heard to support the impugned judgments and decrees obtained by playing fraud with the Court. Therefore, the memos of compromise dated 9.7.2012 filed deceptively shall stand cancelled.

20. For all the aforementioned discussions, C.M.P.Nos.192, 193 of 2014 in S.A.No.323 of 2000 and M.P.Nos.1, 2 of 2014 in S.A.No.1302 of 2006 filed by the petitioners/proposed respondents are allowed and ordered as prayed for.

Consequently, for the very same reasons, C.M.P.No.1919 in S.A.No.323 of 2000 and C.M.P.No.1918 of 2019 in S.A.No.1302 of 2006 filed by the respondents/appellants are dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

SS

To

1.The III Additional Judge,
City Civil Court, Madras.

2.The 7th Assistant Judge,
City Civil Court, Madras.

3.The XIV Assistant Judge,
City Civil Court, Madras.

+1cc to Mr.Arul Vadivel@Sekar, Advocate, S.R.No.30564

Order in
C.M.P.Nos.192 of 2014 etc. in
S.A.No.323 of 2000 etc.

AP (CO)
KKV/29/10/2020



सत्यमेव जयते

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