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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2021

Coram

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS. JUSTICE S.SRIMATHY

Writ Petition No.27120 of 2018
and
W.M.P.Nos.12915 of 2020 and 31527 of 2018

1.K.J.Sumathy
W/o.Late K.S.Jagannathan

2.S.J.Viswanathan
S/o.Late K.S.Jagannathan

3.J.Nithyasree
D/o.Late K.S.Jagannathan

.. Petitioners

(P1 to P3, legal heirs, are substituted in
the place of the deceased petitioner.
Amended as per order in W.M.P.No.14658/21
dated 05.10.2021)

Vs.

1.The District Registrar,
Dharmapuri Registration District,
Dharmapuri.

2.The Sub-Registrar,
Dharmapuri (West),
Dharmapuri District.

3.Nagaraaj
S/o.Narayanan

4.R.Rajendran
S/o.Rajasekaran

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing first respondent to cancel the sale deed dated 06.04.2017 registered as Doc.No.1075 of 2017, which was registered in favour of the fourth respondent after conducting the enquiry in respect of land measuring 8-16 Acres in S.No.867/2 and S.No.867/2B of Adhiyamankottai Village, Dharmapuri Taluk, Dharmapuri District.



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For Petitioners: Mr.A.Ilaya Perumal
For Respondents: Mr.V.Nanmaran
Government Advocate [R1 & R2]
Mr.R.Rajaramani [R3]
Mr.M.Gnanasekar [R4]

ORDER

[Order of the Court was made by P.N.PRAKASH, J]

This Writ Petition has been filed seeking issuance of a Writ of Mandamus directing first respondent to cancel the sale deed dated 02.05.2017 registered as Doc.No.1075 of 2017, which was registered in favour of the fourth respondent after conducting enquiry in respect of land measuring 8-16 Acres in S.No.867/2 and S.No.867/2B of Adhiyamankottai Village, Dharmapuri Taluk, Dharmapuri District.

2. The short facts that are required for deciding this Writ Petition are as under:

2.1. One K.S.Jagannathan was the owner of a land measuring 25 acres in Survey No.867/2, Adhiyamankottai village, Dharmapuri District. One Nagaraj [A1], a local politician, entered into a loan agreement dated 05.04.2004 with one Rajendran [A2], under which, Nagaraj [A1] made it appear as if he has received a loan around Rs.4,00,000/- for which, he has given the above said property of K.S.Jagannathan as security. The loan agreement dated 05.04.2004 contained an arbitration clause.

2.2. Thereafter, it appears that Nagaraj [A1] and Rajendran [A2], in collusion, contrived a dispute, appointed one Mr.K.Rajaram [A4], Advocate, as an arbitrator, based on which, K.Rajaram [A4] passed an award dated 31.10.2014 in a fake arbitration proceedings viz., AR.O.P.No.36 of 2014 directing execution of a sale deed in respect of 8 acres and 16 cents of K.S.Jagannathan's property in favour of Rajendran [A2].

2.3. While so, Rajendran [A2], who had obtained the fake arbitration award, presented the arbitration award in the District Court, Dharmapuri, for execution against Nagaraj [A1] in R.E.P.No.36 of 2016, in which K.S.Jagannathan was not shown as a party. Nagaraj [A1] remained ex parte in R.E.P.No.36 of 2016 and an ex parte order was passed by the District Judge, Dharmapuri, directing the execution of a sale deed in favour of Rajendran [A2] in respect of K.S.Jagannathan's property. Accordingly, the impugned sale deed dated 02.05.2017 in Doc.No.1075 of 2017 came to be registered as if the property has been sold to Rajendran [A2]. Challenging the registration of the sale deed dated 02.05.2017 in Doc.No.1075 of 2017,



K.S.Jagannathan has filed the present Writ Petition.

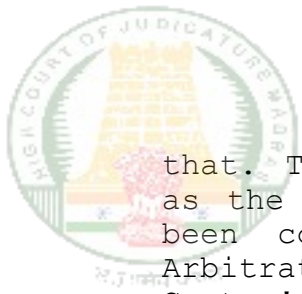
2.4. On coming to know about all this, K.S.Jagannathan approached the police and lodged a complaint, based on which, a case in DCB P.S.Crime No.1 of 2018 was registered and investigation was taken over. The police arrested Nagaraj [A1], Rajendran [A2] and Advocate Rajaram [A4] etc.

2.5. K.S.Jagannathan also filed a suit in O.S.No.71 of 2010 before the Additional District Judge, Dharmapuri, against Nagaraj [A1] and six other rival claimants for a declaration that he (K.S.Jagannathan) is the absolute owner of the property measuring 25 acres of land in Survey No.867/2, Adhiyamankottai village, Dharmapuri District, which was the subject matter of the fake arbitration proceedings. Nagaraj [A1] filed a counter suit in O.S.No.12 of 2015 for a bare injunction restraining K.S.Jagannathan and his relatives from interfering with his alleged possession of the property. Both suits were contested by the defendants therein. After contest, the Additional District Court, Dharmapuri, by judgment and decree dated 23.11.2016, allowed the suit filed by K.S.Jagannathan and gave a declaration and permanent injunction as sought for by him in respect of the property covered by the fake arbitration award and dismissed the suit filed by Nagaraj [A1]. Thereafter, K.S.Jagannathan presented the decree in O.S.No.71 of 2010 before the Sub-Registrar, Dharmapuri West and had it registered as Document No.145/2017 on 25.01.2017.

3. During the pendency of this Writ Petition, K.S.Jagannathan died on 04.10.2020 and his legal heirs have been impleaded as petitioners. Nagaraj [A1] has filed a counter affidavit dated 25.07.2019 in this Writ Petition reiterating that he had not entered into any fake arbitration agreement and that the sale deed is a valid document. Rajendran (A2/fourth respondent) has filed a counter affidavit dated 29.07.2019 wherein he has stated that he did not know that Nagaraj [A1] was not the owner of the property and that he had fallen into a trap laid by Nagaraj [A1].

4. Learned counsel for Rajendran [A2/fourth respondent] unequivocally stated that Rajendran (fourth respondent) is ready and willing to re-convey the property to the heirs of K.S.Jagannathan unconditionally. This submission is recorded.

5. On a conspectus of the facts obtaining in this case, we find that a wholesale fraud has been committed in respect of K.S.Jagannathan's property. Nagaraj [A1] and Rajendran [A2] have entered into a loan agreement, under which, they agreed to appoint an arbitrator for resolving any dispute arising under



that. Therefore, they have appointed K.Rajaram [A4], Advocate, as the Arbitrator. The arbitration proceedings appears to have been conducted by A.R.Chandran [A8], who was running an Arbitration Centre in the name of 'Asia - Pacific Arbitration Centre' with Government of India Emblem in Dharmapuri District, where Paneerselvam [A7] acted as bailiff. A.R.Chandran [A8] had with him two other accused, Kumar [A9] and Raja [A11], as his personal gunmen and they were given air gun to give credibility to their work. The police arrested A.R.Chandran [A8], Kumar [A9] and Raja [A11]. Thus, for perpetrating such huge frauds, these accused have established a make believe Court room in Dharmapuri District with Government of India emblem and other paraphernalia. In that film shooting set Court room, Rajaram [A4], Advocate, has sat as an arbitrator on the petition filed by Nagaraj [A1] and Rajendran [A2] and has passed an award on a totally stranger's [K.S.Jagannathan's] properties.

6. What surprises us is that, the Registrar, while registering the sale deed on 02.05.2017, has failed to even check the fact that K.S.Jagannathan has registered the decree in respect of the very same property vide document No.145/2017 on 25.01.2017. Thus, we have no hesitation in holding that the sale deed document No.1075 of 2017 dated 02.05.2017 is ab initio void and is a fraudulent transaction.

7. In our opinion, when fraud is writ large in these transactions, the true owner of the property cannot be made to run from pillar to post. Extraordinary cases require extraordinary remedies.

8. We are fortified by the following observations of the Supreme Court in Meghmala and others v. G.Narasimha Reddy and others¹:

'33. Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression "fraud" involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage. [Vide Vimal (Dr.) v. Delhi Admn. (AIR 1963 SC 1572), Indian Bank v. Satyam Fibres (India) (P) Ltd. (1996 (5) SCC 550), State of A.P. v. T.Suryachandra Rao (2005 (6) SCC 149), K.D.Sharma v. SAIL (2008 (12) SCC 481) and Central Bank of India v. Madhulika Guruprasad Dahir (2008 (13) SCC 170)].

34. An act of fraud on court is always viewed

¹ (2010) 8 SCC 383



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seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the court. (Vide S.P.Chengalvaraya Naidu v. Jagannath (1994 (1) SCC 1), Gowrishankar v. Joshi Amba Shankar Family Trust (1996 (3) SCC 310), Ram Chandra Singh v. Savitri Devi (2003 (8) SCC 319), Roshan Deen v. Preeti Lal (2002 (1) SCC 100), Ram Preeti Yadav v. U.P.Board of High School & Intermediate Education (2003 (8) SCC 311) and Ashok Leyland Ltd. v. State of T.N. (2004 (3) SCC 1).

35. In *Kinch v. Walcott* (1929 AC 482), it has been held that:

"... mere constructive fraud is not, at all events after long delay, sufficient but such a judgment will not be set aside upon mere proof that the judgment was obtained by perjury".

Thus, the detection/discovery of constructive fraud at a much belated stage may not be sufficient to set aside the judgment procured by perjury.

36. From the above, it is evident that even in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away. In such an eventuality the questions of non-executing of the statutory remedies or statutory bars like doctrine of res judicata are not attracted. Suppression of any material fact/document amounts to a fraud on the court. Every court has an inherent power to recall its own order obtained by fraud as the order so obtained is non est.'

9. We consider this as one of the extraordinary cases inasmuch as an arbitration centre has been established in Dharmapuri to make ordinary people to believe that it is a regular Court and in that premises, an award has been passed in respect of the property of K.S.Jagannathan in an alleged money dispute between Nagaraj [A1] and Rajendran [A2].



For the aforesaid reasons, this Writ Petition is allowed and the sale deed dated 02.05.2017 registered as Doc.No.1075 of 2017 on the file of Sub Registrar, Dharmapuri (West), stands quashed. We direct the Sub-Registrar [R2] to cancel the sale deed dated 02.05.2017 registered as Doc.No.1075 of 2017 on the file of Sub Registrar, Dharmapuri (West) and also make appropriate entries in the encumbrance register so that the cancellation towards sale deed appears therein. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

gm

To

1.The District Registrar,
Dharmapuri Registration District,
Dharmapuri.

2.The Sub-Registrar,
Dharmapuri (West),
Dharmapuri District.

+1cc to Mr.M.Gnanasekar, Advocate SR.No.57263

+2ccs to Mr.A.Ilaya Perumal, Advocate SR.No.57073

+1cc to Government Pleader SR.No.57613

Writ Petition No.27120 of 2018

KV (CO)

GMV (03/12/2021)