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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.03.2021

DELIEVRED ON : 06.10.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P (MD) No.554 of 2021

and

C.M.P. (MD) .No.2977 of 2021

M/s.Asset Reconstruction Company (India) Ltd.,
rep. by its Authorized Officer,
No.1-G, 1st Floor, Century Plaza,
No.560-562, Anna Salai,
Teynampet,
Chennai - 600 018.

.. Petitioner /
3rd party

Vs.

1.V.Chola

2.V.Oyila

... Respondents 1 & 2/
Plaintiffs 1&2

3.A.Veerabadharan @ Sivanesan

4.A.V.Sivagnana Devi

5.The Regional Manager,
Central Bank of India,
Dr.Ambedkar Road,
Raja Muthaiah Mandram 1st Floor,
Madurai

... Respondents 3 to 5/
Defendants 1 to 3

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the preliminary decree passed in O.S.No.55 of 2006 by the Principal District Judge, Theni, dated 28.06.2017.

For petitioner : Mr.Veerakathiravan,
Senior Counsel for
Mr.M.V.Manibabu

For respondents 1,2& 4 : Mr.R.Suriyanarayanan,



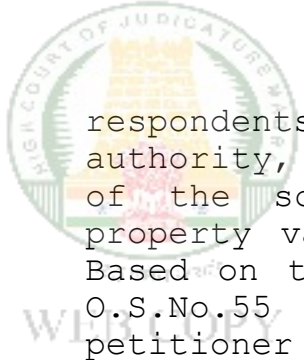
For 5th respondent : Mr.B.Rajesh Saravanan

ORDER

This Civil Revision Petition has been filed by the petitioner challenging the judgment and decree dated 28.06.2017 passed by the Principal District Court, Theni, in O.S.No.55 of 2006.

2. The learned senior counsel for the petitioner / 3rd party submitted that the third and fourth respondents, who started a partnership firm by name M/s.Puppy's Grand Swim and Slim, had availed loan from the 5th respondent Bank during the year 2003, for which they mortgaged two prime properties at Veerapandi Village, Palanichettipatti, Theni District. After availing the said loan, the third and fourth respondents failed to repay the loan amount. Hence, the 5th respondent Bank declared the above loan as a Non Performing Asset (NPA) and initiated the SARFAESI Act proceedings during the year 2006. In order to delay the said proceedings, the first and second respondents, who are the son and daughters of the third and fourth respondents, had filed a suit in O.S.No.55 of 2006 for partition in respect of the property mortgaged with the Bank by adding the Bank also as one of the defendants. As there was no interim order granted, the 3rd respondent herein had filed a Writ Petition before this Court and this Court had granted an interim order subject to deposit of 25% of the amount due to the bank. On the very same day, without any jurisdiction, the first and second respondents had filed another suit in O.S.No.3 of 2007 on the file of the Subordinate Court, Madurai, seeking permanent injunction from bringing the properties for auction and obtained an interim order. Then, the 3rd respondent purposefully withdraw the said writ petition. During the pendency of the said suits, the Bank assigned the mortgaged properties in favour of the petitioner company on 31.03.2011. As per the said agreement, the petitioner company has become absolute owner of the said property. Having coming to know about the same, the third and fourth respondents approached the petitioner company and sent a proposal for OTS on 29.08.2016 and the same was also accepted by the petitioner company on 12.09.2016. However, they failed to honour the OTS proposal. In the said circumstances, the petitioner company once again initiated the proceedings under SARFAESI Act.

3. The learned senior counsel for the petitioner company would further submit that while so, on 17.03.2017, the suit in O.S.No.3 of 2007 was dismissed by the Court below on the ground of lack of jurisdiction and suppression of filing of the suit in O.S.No.55 of 2006 for partition. Thereafter, the respondents 1 to 4 in collusion with each other have filed a joint memo in O.S.No.55 of 2006 contending that the third and fourth respondents herein / defendants 1 and 2 have no objection in allotting 2/3rd share in favour of the respondents 1 and 2/ plaintiffs in the suit. In collusion with the



respondents 1 to 4, the 5th respondent / Bank also, without any authority, filed a memo on 21.06.2017 stating that since the value of the schedule properties have increased substantially, 1/3rd property value is sufficient to settle the loan due to the Bank. Based on the said memos, the Court below has decreed the suit in O.S.No.55 of 2007 on 28.06.2017. Aggrieved by the same, the petitioner company has come up with this revision petition.

4. He would further submit that as the decree in O.S.No.55 of 2006 has been obtained by suppressing the factum of assignment of the properties in dispute in favour of the petitioner company and without impleading the petitioner company, the same is liable to be set aside. Even though the respondents 1 and 2 got the preliminary decree, they failed to take steps for final decree proceedings till date for the reasons best known to them. Since the decree in O.S.No.55 of 2006 does not bind the petitioner company, the petitioner company has issued a sale notice on 10.09.2020 by fixing the sale of the said properties. Challenging the said notice, the respondents 1 and 2 have filed S.A.No.235 of 2020 before the Debt Recovery Tribunal, Madurai and obtained a conditional order of stay on confirmation of sale in I.A.No.1017 of 2020 in S.A.No.235 of 2020. But, the first and second respondents failed to comply with the condition imposed in the said order and hence, the petitioner company has confirmed the auction sale in favour of one Prabhakaran and subsequently, sale certificate also issued on 15.12.2020. Only after filing of the application by the first and second respondents in S.A.No.235 of 2020 before the Debt Recovery Tribunal, the petitioner company came to know about the collusive decree obtained by the respondents 1 and 2, and as it is a collusive decree, the petitioner company has filed this revision challenging the said decree. Thus, he prayed to set aside the judgment and decree passed by the Court below in O.S.No.55 of 2006 by allowing this revision petition.

5. The learned counsel appearing for the respondents 1, 2 and 4 submitted that though he filed vakalath for the respondents 1 and 4, he is appearing for the 2nd respondent also. He would further submit that the suit for partition has been filed in the year 2006, but the 5th respondent Bank stated to be assigned the property to the petitioner only in the year 2011. As per Section 5 of the SARFAESI Act, the petitioner ought to have been substituted himself in the suit after assignment by the Bank, but it has failed to do so. As the petitioner is only an assignee of the 5th respondent / Bank, who is a party defendant in the suit and he came only within the shoes of the 5th respondent / Bank, the petitioner is not a third party. The respondents 1 to 4 had no knowledge about the assignment by the Bank to the petitioner. The assignment has arisen out of contract and hence, if there is any breach or damage, he can claim the same only from the 5th respondent/ Bank and cannot agitate against the judgment and decree passed in O.S.No.55 of 2006.



6. The learned counsel for the contesting respondents would further submit that as against the e-auction sale notice dated 17.08.2020 of the suit property, the respondents 1 and 2 filed S.A.No.235 of 2020 before the Debts Recovery Tribunal, Madurai, in which a conditional stay was granted on 25.09.2020 and aggrieved by the conditional stay, the first and second respondents approached the Appellate Tribunal and the same is pending. In the meantime, the petitioner sold the suit property to a third party against the decree in O.S.No.55 of 2006. Hence, the Appellate Tribunal directed the petitioner to implead the auction purchaser by its order dated 15.01.2021. But, all the above facts are suppressed by the petitioner. As the petitioner has already sold the suit property through e-auction to a third party and as his right is ceased off, he is not an aggrieved party. In any event, he has no *locus standi* to file this revision petition. He would further submit that the decree is not a collusive decree or consent decree, but a well considered judgment followed by a decree after answering the issues in favour of the respondents 1 and 2 in the suit by determining their right and interest over the suit properties, which mortgaged with the bank in the year 2004. Even assuming that it is a collusive decree, the same can be challenged or nullified by the Court that passed the decree and not by a separate suit or by way of this revision petition before this Court.

7. The learned counsel appearing for the contesting respondents would next submit that the Hon'ble Supreme Court in the case of Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs. Tuticorin Educational Society and others, reported in 2019 (5) CTC 696 has categorically held that the High Court should not entertain the Civil Revision under Article 227 of the Constitution of India, especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself. In this case, the petitioner has alternative remedy of appeal under Section 96 CPC. Though the petitioner very well knew about the decree passed in the suit in O.S.No.55 of 2006, he did not take steps to file an appeal. Now, there is a delay of four years in filing the appeal. In order to avoid to explain the delay, the petitioner has straight away filed this Civil Revision Petition under Article 227 of the Constitution of India. Thus, he prayed to dismiss this revision petition.

8. Heard the learned counsel appearing for both sides and perused the records carefully.

9. Before going into the issue involved in this case, this Court is of the view that it would be appropriate to refer to a decision of this Court in **Punjab National Bank Vs. J.samsath Beevi**, reported in 2010 (3) CTC 310, wherein observing that the Courts have



a greater duty to see that the allegations of fraud are made just for the purpose of maintaining a Civil Suit and categorising such civil suits filed challenging SARFAESI Act in 3 or 4 categories, a learned Single Judge of this Court has held in paragraph Nos.9 & 10 as under:

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"9. A Court is obliged to see if the allegations of fraud and collusion made in the plaint, are themselves a product of "fraud and collusion" between the family members of the borrowers, so as to escape liability and save the secured assets, somehow or the other. In the recent past, there is a sudden spurt in the number of civil cases filed against the actions initiated by Banks and Financial Institutions, either under the 1993 Act or under the SARFAESI Act, 2002. All these cases fall under 3 or 4 categories viz.,

(i) cases filed by strangers claiming that their properties are brought to sale on the basis of forged documents or certified copies of documents submitted by borrowers to banks

(ii) cases filed by guarantors claiming that they never signed letters of guarantee or offered their properties as securities

(iii) cases filed by close relatives of borrowers such as spouses, children, brothers and sisters, claiming that they have a share in the properties mortgaged by the borrowers and that they were never aware of and they never gave consent to the properties being offered as securities and

(iv) cases filed by third parties claiming that the properties were sold to them by the borrowers or guarantors by suppressing the creation of the mortgage and that they are bona fide purchasers for value without notice of the encumbrances.

10. It is not very difficult for a seasoned litigant or an intelligent lawyer to draft the plaint in such a manner as to make a secured asset, come within anyone of the above 4 categories, by a clever drafting of the plaint, thereby creating an illusion of fraud, collusion, misrepresentation and the like. Today, with the advancement of technology, the creation of an illusion and the creation of a virtual world are both possible. The moment the civil suit is taken on file, the proceedings before the Debts Recovery Tribunal or under the SARFAESI Act, 2002, gets slowed down.

This results in two consequences viz., (i) out of



frustration, the banks agree for one time settlements or (ii) third party rights get created by taking advantage of the situation. Therefore, the Courts have a greater responsibility to scan the pleadings and see if the allegations of fraud and collusion made in the plaint are actually a product of fraud and collusion between the borrowers and those making such claims.

10. In this case, the main contentions of the learned counsel for the petitioner/company are that:

(a) Only in order to delay the SARFAESI proceedings in respect of the mortgaged properties, the respondents 1 to 4 abused the process of the Court by filing O.S.No.3 of 2007 on the file of the III-Additional Sub Court, Madurai, without jurisdiction and obtaining interim order, during the pendency of the suit in O.S.No.55 of 2006 on the file of the Principal District Court, Theni.

(b) Though the respondents 1 to 5 knew about the assignment agreement, they failed to implead the petitioner/company in the suits and suppressed the said factum before the Court below.

(c) After assignment agreement dated 31.03.2011, 5th respondent/Bank has no legal right over the suit properties. But, the 5th respondent/Bank had filed a memo stating that 1/3rd property value is sufficient to settle the loan amount in collusion with the respondents 1 to 4 and thereby favoured the respondents 1 to 4 to get collusive decree.

(d) After obtaining preliminary decree in O.S.No.55 of 2006, the respondents 1 to 4 did not take any steps to obtain final decree, in order to further delay the auctioning of the properties.

11. It is seen from the record that the 3rd and 4th respondents herein started a partnership firm in the name and style of M/s.Puppy's Grand Swim and Slim and availed loan from the 5th respondent Bank during the year 2003 and as a security of the said bank loan, the 3rd and 4th defendants mortgaged the documents relating to the properties comprised in Survey No.2/1B measuring an extent of 0.82 acres and 3222 sq. ft. land together with Centre Theatre building situated at Survey Nos.2/2 and 2/1, Veerapandi Village, Pattiveeranpatti, Theni. According to the 5th respondent, the mortgaged properties are self acquired properties of the 4th defendant as it has been acquired by her giving valid sale consideration and there is no whisper about the family arrangement or joint family nucleus. After availing the said loan, the 3rd and 4th respondents had become defaulters. Hence, the Bank initiated SARFAESI proceedings. While so, the first and second respondents, who are son and daughters of the 3rd and 4th respondents, aged about 24 and 20 years respectively, have filed the suit for partition and permanent injunction in O.S.No.55 of 2006 against the 3rd and 4th respondents and 5th respondent/Bank stating that the mortgaged



properties are their ancestral properties and they entitled to 2/3rd share in the same. Along with the suit, the 1st and 2nd respondents filed an interim application for injunction. As there was no interim order granted, the 3rd respondent herein had filed a writ petition before this Court questioning the SARFAESI proceedings. In the meantime, without any jurisdiction and without impleading the respondents 3 and 4, the 1st and 2nd respondents herein had filed the suit in O.S.No.3 of 2007 on the file of the learned III-Additional Sub Court, Madurai, seeking permanent injunction against the Bank from alienating the mortgaged properties by auction, along with an interim application and obtained an interim order. Subsequently, the 3rd respondent purposefully withdrew the said writ petition. After about 10 years, the suit in O.S.No.3 of 2007 was dismissed by the learned III-Additional Subordinate Court, Madurai, on the grounds of lack of jurisdiction as the properties situated at Theni and suppression of filing of the suit for partition and injunction in respect of the very same properties in O.S.No.55 of 2006 on the file of the District Court, Theni. It is apparent that since no interim order could be obtained in O.S.No.55 of 2006 to stall auctioning of the mortgaged properties, the 3rd and 4th respondents had filed a writ petition before this Court and attempted to get an interim order, and at the same time, the respondents 1 and 2 herein had purposefully filed O.S.No.3 of 2007 without jurisdiction. However, the 1st and 2nd respondents managed to obtain an interim order by abusing the process of the Court in O.S.No.3 of 2007 and dragged on the proceedings about 10 years. The above act of the respondents 1 to 4 ultimately shows that only in order to delay the SARFAESI proceedings, they abused the process of the Court and succeeded in the same.

12. A perusal of record shows that the suit property has already been assigned by the Bank to the petitioner/company during the pendency of both the suits, by way of an assignment agreement dated 31.03.2011. Clause 2.1.1 of the agreement dated 31.03.2011 reads as follows:

"The parties hereto acknowledge the provision of SARFAESI including but not limited to Section 5 (3) will be applicable thereto and the conditions precedent set forth in Section 3 (Conditions Precedent) have been fulfilled or waived by the Assignee, as the case may be, and in consideration of the Assignee, paying the purchase consideration to the Assignor, and upon the terms and conditions set forth herein and in the relevant transaction documents, the Assignor as the true, legal and beneficial owner of the Loans, in the ordinary course of its business, hereby unconditionally and irrevocably sells, assigns, transfers and releases to and unto the Assignee all the loans forever, pursuant to Section 5(1) (b) of the SARFAESI on "As



Is Where Is Basis" TO HOLD the same absolutely IN TRUST for the benefit of the holders of the Security Receipts issued by the Assignee pursuant to the Arcil-Pupiys Grand-Trust, and the Trust Deed TO THE END AND INTENT THAT the Assignee shall hereafter be deemed to be the full and absolute legal owner, and the only person legally entitled to the Loans or any part thereof, free from any or all encumbrances, and to recover and receive all Amounts Due, including the right to file a suit or institute such other recovery proceedings and take such other action as may be required for the purpose of recovery of the Loans, in its own name and right and as an assignee, and not as a representative or agent of the Assignor and to exercise all other rights of the Assignor in relation thereto."

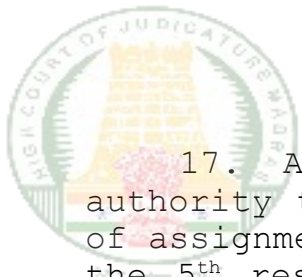
13. A reading of the above clause and also other terms of the agreement dated 31.03.2011 show that the 5th respondent / Bank has no right over the said property after assignment and the petitioner / company had become full and absolute owner of the properties and it has got right of collecting any monies pertaining to the loans, including the amounts due, enforcing the underlying security interests, pledges and / or guarantees, in whatever manner it may consider necessary and prudent in its absolute discretion. When that be so, the 5th respondent Bank ought to have been disclosed the above factum of assignment in favour of the petitioner/company before the Court and caused to adduce the petitioner/company in the suits. But, the Bank has failed to do so. Though it is stated by the respondents that the petitioner/company itself could be impleaded in the suits after assignment by filing an application, it is stated by the petitioner/company that they did not aware of the pendency of the suit proceedings and hence, they could not implead themselves. In the assignment agreement, no documents relating to the suits marked. Therefore, the submission of the petitioner/company is acceptable.

14. It is seen from the record that during the pendency of the suits, on 29.08.2016 the 3rd and 4th respondents had sent an OTS proposal to the petitioner/Company knowing fully well that the loan was assigned from Central Bank to ARCIL / Petitioner. The Petitioner/Company also accepted the said proposal and sent a letter dated 12.09.2016, directing the 3rd and 4th respondents to pay 15% of the OTS amount within fifteen days from the date of receipt of the said letter. Though the 3rd respondent received the said letter on 26.09.2016, he did not honour the same. A perusal of OTS proposal dated 29.08.2016 shows that the respondents 1 to 4 already knew about the assignment of the properties in favour of the petitioner/company. However, they also did not take any steps to implead the petitioner/company in the suits.



15. As stated earlier, on 05.04.2017 the III-Additional Subordinate Court, Madurai, dismissed the suit in O.S.No.3 of 2007 on the ground of lack of jurisdiction and suppression of fact and consequently, interim order granted was vacated. Only thereafter, the respondents 1 to 4 together filed a joint memo on 21.06.2017 before the Court below in O.S.No.55 of 2006 stating that since the value of the scheduled suit properties have increased enormously, 1/3rd property value is more than sufficient to settle the loan amount due to the Bank and the respondents 3 and 4 have no objection for allotment of 2/3rd share of suit properties to the respondents 1 and 2 / plaintiffs. On the very same day, the Regional Manager of the Bank/5th respondent also filed a memo stating that since the value of schedule properties have increased substantially, 1/3rd property value is sufficient to settle the loan due to the Bank and that whatever the judgment may be as per the suit is concerned, the Bank will have the right to take legal action against the share of the respondents 3 & 4 / defendants 1 and 2. Based on the above memos filed by the parties and also holding that the suit properties are the ancestral properties of the respondents 1 to 4, the Court below has passed a preliminary decree declaring that the respondents 1 and 2 / plaintiffs are entitled to 2/3rd share in the suit properties and the 3rd respondent/1st defendant is entitled to 1/3rd share in the suit properties, and granting injunction in respect of the 2/3rd share of properties of the respondents 1 and 2 / plaintiffs.

16. According to the petitioner/company, the mortgaged properties are self acquired properties of the 4th respondent / Mrs.A.V.Sivagnana Devi as per the averments in the sale deeds and payment of valid sale consideration. According to the respondents 1 and 2, the suit properties purchased by the 4th respondent through joint family nucleus and oral family arrangement. But, the Court below did not elaborately go into the question regarding the nature of acquisition of the properties by the 4th respondent and averments in the sale deeds. However, it is held that the suit properties are the ancestral properties of the respondents 1 to 4. Even assuming that the suit properties are the joint family properties, the loan was borrowed by the respondents 3 and 4 / defendants 1 and 2 only for their family business. The defendants 1 and 2, being the father and mother, have power to deal with the properties by creating security by way of equitable mortgage for business/family necessity. The 1st defendant, being the Manager/kartha of the family, represents all the family members in all transactions. When the Bank loan was obtained for the benefit of the family/business purposes, the security created is binding on the respondents 1 and 2 / plaintiffs also. Therefore, the submission of the respondents 1 and 2 that the loan was obtained without their knowledge and consent, the suit properties were mortgaged by the respondents 3 and 4, cannot be countenanced.



17. As discussed earlier, the 5th respondent Bank has no authority to file the memo after assignment. Suppressing the factum of assignment of the properties in favour of the petitioner/company, the 5th respondent company had filed the memo before the Court in favour of the respondents 1 to 4. More over, the respondents 1 to 4 also had already aware of the assignment by the Bank to the petitioner/company. Thus, it clearly shows that there is a collusion between the respondents 1 to 5 and the preliminary decree had been obtained by suppressing the real facts and by playing fraud on the Court.

18. What constitutes a fraud or collusion have been discussed by this Court in a decision reported in **1998 (1) CTC 66 [Ranipet Municipality V. M.Shamsheerkhan]**, wherein this Court made the following observations:

"9. It is this conduct of the respondent that is attacked by the petitioner as abuse of process of Court. What is 'abuse of the process of the Court'? Of course, for the term 'abuse of the process of the Court' the Code of Civil Procedure has not given any definition. A party to a litigation is said to be guilty of abuse of process of the Court, in any of the following cases:- (1) Gaining an unfair advantage by the use of a rule of procedure.

(2) Contempt of the authority of the Court by a party or stranger.

(3) Fraud or collusion in Court proceedings as between parties.

(4) Retention of a benefit wrongly received.

(5) Resorting to and encouraging multiplicity of proceedings.

(6) Circumventing of the law by indirect means.

(7) Presence of witness during examination of previous witness.

(8) Institution vexatious, obstructive or dilatory actions.

(9) Introduction of Scandalous or objectionable matter in proceedings.

(10) Executing a decree manifestly at variance with its purpose and intent.

(11) Institution of a suit by a puppet plaintiff.



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(12) Institution of a suit in the name of the firm by one partner against the majority opinion of other partners etc. (See The Code of Civil Procedure - A.I.R. Commentary to Section 151, C.P.C.) The above are only some of the instances, where a party may be said to be guilty of committing abuse of the process of Court."

19. The issue as to whether the revision petitioner, who was not a party to the suit, can seek for setting aside an order/judgment/award obtained by fraud or misrepresentation is also no more *res integra*, in view of the decision in **1998 (1) CTC 470 [J.Sivasubramanian V.N.Govindarajan]**, wherein this Court has held in paragraph No.12 and 13 as follows:

"12. In S.P. Chengalvaraya Naidu (dead) by LRs. v. Jagannath (dead) by LRs. and others, , their Lordships have decided as to what is meant by 'fraud'. In paragraph 6, Their Lordships have held thus:-

"... A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage..."

Their Lordships have further said thus:-

"A litigant who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side, then he would be guilty of playing fraud on the Court as well as on the opposite party."

In the earlier portion of that Judgment, their Lordships have held thus:-

"... We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation."

The effect of such a decree obtained in such cases is also stated in that judgment thus:-

"... 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.... A judgment or decree obtained by playing fraud on the



court is a nullity and non est in the eyes of law. Such a judgment/decree by the first Court or by the highest Court has to be treated as a nullity by every Court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."

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In Mahboob Sahab v. Syed Ismail and others, of the judgment, Their Lordships declared thus:-

"... The reason is that fraud is an extrinsic collateral act, which vitiates the most solemn proceedings of courts of justice. If a party obtains a decree from the Court by practicing fraud or collusion, he cannot be allowed to say that the matter is res judicata and cannot be reopened. There can also be no question of res judicata in a case where signs of fraud or collusion are transparently pregnant or apparent from the facts on record."

In paragraph 10, Their Lordships further declared thus:-

"... Section 44 of the Evidence Act envisages that any party to a suit or proceeding may show that any judgment, order or decree, which is relevant under Sections 40, 41 or 42 has been obtained by fraud or collusion. Under Section 40, the existence of the judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such court ought to take cognizance of such suit or to hold such trial."

In Indian Bank v. Satyam Fibres (India) Pvt. Ltd., it was declared thus:-

"The authorities, be they constitutional, statutory or administrative, (and particularly those who have to decide a lis) possess the power to recall their judgments or orders if they are obtained by fraud as fraud and justice never dwell together (Fraud et jus nunquam cohabitant). Fraud and deceit defend or excuse no man (Fraud et dolus nemini patrocinar debent). The judiciary in India also possesses inherent power, specially under Section 151, CPC., to recall its judgment or order if it is obtained by fraud on court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers which are resident in all Courts, especially of superior jurisdiction. These powers spring not from



legislation but from the nature and the constitution of the tribunals or courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rule, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Court's business. 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 the inherent power to recall its order."

13. I feel that all these decisions will show that a duty is cast on the litigant to plead, pray and get relief by placing all materials before Court. By suppressing facts and without impleading the necessary parties, a collusive decree is obtained. In the case on hand, the collusion is apparent. A person who has no right in the property concedes the right of the plaintiff to get a decree, and that too within 49 hours of filing of the suit. The result of this is getting unfair advantage over the rights of the petitioners and to deprive them of their properties. Both the respondents were aware that the petitioners are in possession on the basis of documents. They themselves (i.e. parties to the suit) admit the possession of the petitioners. But, without disclosing any of these documents, the power of attorney (agent) filed the suit against the principal and gets a decree, by consent. I have already stated as to what is the legal effect, i.e., the second respondent (defendant) himself is the plaintiff and defendant. It will be unjust to accept the contention of the respondents. Such a collusive decree also cannot be allowed to stand. After coming to know of these facts, if any Court shuts its eyes to realities, it will cease to be a Court of Justice. By invoking the judicial supervisory jurisdiction, I declare that the decree in O.S.No.7631 of 1997, on the file of XV Assistant Judge, City Civil Court at Madras is a nullity and on the basis of the said decree, possession of the petitioners shall not be disturbed. I further find that since the suit is filed fraudulently, the same is liable to be quashed, and I do so. O.S.No.7631 of 1997 is struck off from the file of the lower Court.



The Civil Revision Petition is allowed with costs. Advocate's fee Rs. 2,500 (Rupees Two thousand five hundred). CMP. No. 17556 of 1997 for stay is closed."

20. In the decision reported in **2002 (1) CTC 183 (Roshan Deen vs. Preeti Lal)**, the Honourable Supreme Court dealt with the powers that could be exercised by the Courts under Article 227 of the Constitution of India and held that no man should be subjected to injustice by violating the Rule of law.

21. In this case, though there is an alternative remedy of appeal, considering the issue involved in this case and also considering the fact that the respondents 1 to 4 delayed the process of auctioning about 10 years by abusing the process of the Court and the decree has been obtained by the respondents 1 to 4 by collusion and suppression, and without impleading necessary parties and in order to avoid further delay, this Court is of the view that interference of the judgment and decree passed by the Court below is required by exercising the power of superintendence under Article 227 of the Constitution of India.

22. Though, in this case, the respondents 1 to 4 obtained decree as early as on 28.06.2017, they did not take any steps to obtain final decree and execute the same for the reason best known to them. It further strengthened the submission of the learned counsel for the petitioner/company that only in order to create an hurdle to the recovery process and to delay the same, they kept the matter pending for years together. It is seen that only after issuance of sale notice by the petitioner/company, the respondents 1 and 2 came out and questioned the same before the Debt Recovery Tribunal stating that preliminary decree had been obtained in the suit in O.S.No.55 of 2006. On 25.09.2020, the Tribunal has granted an interim order of stay of confirmation of sale alone subject to payment of Rs.2,76,72,000/- in three instalments, failing which the interim order shall stand vacated. It is stated by the petitioner / company that since the respondents 1 and 2 did not pay any pie to the petitioner company as directed by the Tribunal, they confirmed the sale in favour of one Prabhakaran and issued sale certificate on 15.12.2020. The above act of the respondents 1 and 2 clearly shows that the intention of the respondents 1 and 2 is only to drag on the process and not to settle the amount. As the decree had been obtained by suppression of fact and collusion, this Court is of the view that the submission of the respondents 1 and 2 about *locus standi* of the petitioner need not be taken into account. In view of the above, this Court is inclined to set aside the judgment and decree passed by the Court below.

23. In the result, this Civil Revision Petition is allowed and the judgment and decree dated 28.06.2017 passed in O.S.No.55 of 2006

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are set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

bala

To

1.The Principal District Judge,
Theni.

2.The Record Keeper,
V.R. Section, (2C)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.SURIYA NARAYANAN, Advocate (SR-31484[F] dated
07/10/2021)

C.R.P (MD) No.554 of 2021
06.10.2021

AEK(CO)

KB(21.10.2021) 15P 5C