IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.3391 of 2017

K.R.Mayilsamy ...Petitioner

Vs

1. The Inspector General of Registration,
Department of Registration, Santhome High Road,
Chennai - 600 028.

2. The District Registrar,
Tirupur Registration District,
Tirupur Town.

3. The District Registrar,
Coimbatore Registration District,
Coimbatore Town - 641 018.

4. The Inspector of Police,
City Crime Branch,
Coimbatore.

5. P.Nirmala
6. R.Ramakrishnan
7. P.Arumugam ...Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 and 2 herein to forthwith cancel the Sale Deed dated 03.02.2011 registered as Document No.2459 of 2011 on the file of the second respondent herein executed by the sixth respondent in favour of the seventh respondent in respect of the petitioner's property.

For Petitioner : Mr.AR.L.Sundaresan
Senior Counsel for
M/s.AL.Ganthimathi

For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader
(for R1 to R3)

ORDER

This writ petition is filed to issue a Writ of Mandamus to direct the respondents 1 and 2 herein to forthwith cancel the Sale Deed dated 03.02.2011 registered as Document No.2459 of 2011 on the file of the second respondent herein, executed by the sixth respondent in favour of the seventh respondent in respect of the petitioner's property.

2. The petitioner and one Valliammai owned the properties comprised in S.F.Nos.355/2 and 356, ad-measuring an extent of 1.56 ½ of land out of 3.13 acres and the land ad-measuring an extent of 33 cents comprised in S.F.No.354/2E with un-divided share of 0.02-1/6 acres, in which there are common rights in the Well, common place along with motor pump set and electricity service connection in S.F.No.354/2B and 354/2C in the same Village. They purchased the subject properties by the registered sale deed dated 18.12.2006, vide Document No.11589 of 2006

3. While that being so, one of the legal representatives of one Appachi Devar, viz., the fifth respondent herein, who is the daughter of late Subramanian and grand-daughter of the said Appachi Devar, had again, suppressing the sale deed executed by her in respect of the same properties in favour of the petitioner herein, executed a power of attorney in favour of the sixth respondent on 24.01.2011, vide Document No.246 of 2011 and in turn, the sixth respondent has sold the subject properties in favour of the seventh respondent by the registered sale deed dated 03.02.2011, vide Document No.2459 of 2011. Thereafter, the seventh respondent had tried to interfere with the peaceful possession and enjoyment of the subject properties. Therefore, the petitioner lodged a complaint before the second respondent. The second respondent conducted detailed enquiry and found that the fifth respondent along with other legal heirs, already executed the sale deed in the year 2006 itself in favour of the petitioner and another. Again, for the very same properties, the fifth respondent executed Power of Attorney in favour of the sixth respondent and made fraudulent transactions and the second respondent passed order dated 16.12.2013 had found that the document registered by the respondents 5 to 7 herein are fraudulent documents and thereby, directed to initiate criminal proceedings as contemplated under Section 82 of the Registration Act as against the respondents 5 to 7 herein. Accordingly, the third respondent lodged a complaint and the same has been registered as FIR in Crime No.8 of 2016. Subsequently, after completion of investigation, the fourth respondent herein filed a final report and the same has been taken cognizance in C.C.No.13 of 2016 and it is pending Trial on the file of the Judicial Magistrate No.1, Coimbatore. However, the subsequent

sale deed executed by the sixth respondent in favour of the seventh respondent has not yet been cancelled by the second respondent. Therefore, the petitioner has made representation to the second respondent to cancel the sale deed, which has not been considered yet, and hence the petitioner has filed the present writ petition for the relief stated supra.

4. The learned Senior Counsel appearing for the petitioner submitted that, though the transaction had to be declared as fraudulent transaction, this Court can very well direct the second respondent to cancel the sale deed executed in favour of the seventh respondent by the sixth respondent.

5. The first and second respondents filed counter affidavit, from which, it reveals that the fifth respondent along with other legal heirs, already executed sale deed in respect of the subject properties in favour of the petitioner and another on 18.12.2006, registered vide Document No.11589 of 2006. Once again, the fifth respondent executed Power of Attorney in favour of the sixth respondent in respect of the very same properties and in turn, the sixth respondent executed the sale deed in favour of the seventh respondent. Therefore, the second respondent, by order dated 16.12.2013 held that the document registered by the respondents 5 to 7 is fraudulent document and they are committed offence under Section 82 of the Registration Act. Therefore, the second respondent directed the third respondent to lodge a criminal complaint. Accordingly, the said criminal complaint has been lodged after filing charge sheet and the case has been taken cognizance in C.C.No.13 of 2016 and it is pending Trial on the file of the Judicial Magistrate, Coimbatore as against the respondents 5 to 7 herein. Since, a circular dated 03.11.2011 on the file of the first respondent has been withdrawn, the second respondent has no power to cancel the sale deed executed by the sixth respondent in favour of the seventh respondent.

6. In support of his contentions, the learned Senior Counsel appearing for the petitioner relied upon a judgment in W.P.No.27120 of 2018, dated 02.11.2021 passed by the Hon'ble Division Bench of this Court and the Hon'ble Division Bench of this Court observed that the Hon'ble Supreme Court of India in Meghmala and others -vs- G.Narasimha Reddy and others, reported in (2010) 8 SCC 383 held as follows:

> “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 Vimla (Dr.) v. Delhi Admn. [AIR 1963 SC 1572 : (1963) 2 Cri LJ 434] , Indian Bank v. Satyam Fibres (India) (P) Ltd. [(1996) 5 SCC 550] , State of A.P. v. T. Suryachandra Rao [(2005) 6 SCC 149 : AIR 2005 SC 3110] , K.D. Sharma v. SAIL [(2008) 12 SCC 481] and Central Bank of India v. Madhulika Guruprasad Dahir [(2008) 13 SCC 170 : (2009) 1 SCC (L&S) 272] .]

34. An act of fraud on court is always viewed 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 [(1994) 1 SCC 1 : AIR 1994 SC 853] , Gowrishankar v. Joshi Amba Shankar Family Trust [(1996) 3 SCC 310 : AIR 1996 SC 2202] , Ram Chandra Singh v. Savitri Devi [(2003) 8 SCC 319] , Roshan Deen v. Preeti Lal [(2002) 1 SCC 100 : 2002 SCC (L&S) 97 : AIR 2002 SC 33] , Ram Preeti Yadav v. U.P. Board of High School & Intermediate Education [(2003) 8 SCC 311 : AIR 2003 SC 4268] and Ashok Leyland Ltd. v. State of T.N. [(2004) 3 SCC 1 : AIR 2004 SC 2836])

35. In Kinch v. Walcott [1929 AC 482 : 1929 All ER Rep 720 (PC)] 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, 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."

7. From the above decision of the Hon'ble Division Bench of this Court, it is clear that the Court had quashed the fraudulent sale deed and directed the registering authority to cancel the sale deed and also directed to make appropriate entry in the Encumbrance Register.

8. In the case on hand, admittedly the second respondent already concluded that the sale deed executed by the sixth respondent in favour of the seventh respondent, is a fraudulent one.

9. In view of the above decision of the Hon'ble Division Bench of this Court, this Court has no hesitation to hold that the sale deed executed by the sixth respondent in favour of the seventh respondent dated 03.02.2011, registered vide Document No.2459 of 2011 on the file of the second respondent, is fraudulent one and it has become void. The second respondent is directed to make appropriate entries in the Encumbrance Register with regard to the declaration of sale deed as fraudulent one.

10. In the result, this Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector General of Registration,
Department of Registration, Santhome High Road,
Chennai - 600 028.

2. The District Registrar,
Tirupur Registration District,
Tirupur Town.

3. The District Registrar,
Coimbatore Registration District,
Coimbatore Town - 641 018.

4. The Inspector of Police,
City Crime Branch,
Coimbatore.

+1cc to M/s.AL.Ganthimathi, Advocate, S.R.No.3795
+1 cc to the Government Pleader, Sr.3999

W.P.No.3391 of 2017

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NSK 09/02/2022