



O.S.A.No.191 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.06.2023

Pronounced on : 13.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE C. KUMARAPPAN

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- 1.C.H.Madhava Rao
- 2.C.H.Manohar
- 3.C.H.Madhusudan Rao
- 4.D.Vijayalakshmi
- 5.C.H.Leelakumari
- 6.C.H.Balakrishnaiah

*[Legal representatives of the
deceased/first plaintiff
Chebrolu Thayaramma (deceased)*

... Appellants

Vs.

- 1.South India Educational Trust,
Represented by its Secretary,
Office at College Avenue,
No.310, Mount Road,
Madras – 18.

- 2.L.Dayalan



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3.The Corporation of Madras,
Represented by its Commissioner,
Office at Ripon Building,
Madras – 3.

... Respondents

Original Side Appeal filed under Order XXXVI Rule 1 of Original Side Rules r/w. Clause 15 of the Letters Patent against the judgment and decree dated 03.10.2007 in C.S.No.985 of 1993 on the Original Side of this Court.

For Appellants	:	Mr.P.J.George and Mr.Najeeb Usman Khan
For R1	:	Mr.S.Parthasarathy Senior Counsel for Mr.B.Senthilnathan
For R2	:	No appearance

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

The plaintiffs in the suit in C.S.No.985 of 1993 on the Original Side of this Court, are the appellants in the above Original Side Appeal.



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2.The suit in C.S.No.985 of 1993 was originally filed by Smt.Chebrolu Thayaramma, the mother of 1st appellant and also the wife of 6th appellant, for permitting her to institute the suit *in forma pauperis* and for recovery of possession of plaint A-Schedule properties, after removing the superstructure built by defendants, and to direct the 1st defendant to pay a sum of Rs.14,55,000/-, the 2nd defendant to pay a sum of Rs.3,60,000/-, and the 3rd defendant to pay a sum of Rs.60,000/- as mesne profits and for future mesne profits.

3.During the pendency of the suit, the original plaintiff Smt.Chebrolu Thayaramma died and therefore, the appellants were impleaded as legal heirs of the deceased 1st plaintiff and they became plaintiffs 2 to 7 in the suit in C.S.No.985 of 1993.

4.The suit property consists of A and B Schedules. Item 1 of suit A-Schedule is an extent of 2 Cawnies and 12 Grounds in R.S.No.3799 in Teynampet, within Mylapore Sub-Registration District, Chennai. Item 2 of



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suit A-Schedule is an extent of 1 Ground in R.S.No.3798/B (now in R.S.No.3798/2) in Mylapore, Chennai.

5.The case as pleaded by the original plaintiff Smt.Chebrolu Thayaramma, as per the plaint averments, is as follows :

5.1.The suit property described as Items 1 and 2 in A-Schedule originally belonged to plaintiff's grandfather Sri Narayanasamy Chetty.

5.2.By a deed of family settlement dated 01.02.1937 executed by Sri Narayanasamy Chetty, life interest in respect of Items 1 and 2 of plaint A-Schedule property was created in favour of father of plaintiff, namely, Sri Lakshmiah Chetty and vested remainder was given in favour of plaintiff. The elder brother of plaintiff's father, by name Sri Achanna Chetty, was nominated as Trustee of the properties for the benefit of life estate holder in the said deed.

5.3.Plaintiff came to know that the said Sri Achanna Chetty was removed from the Trusteeship for alleged acts of malfeasance, misfeasance and non-feasance. Plaintiff also learnt that her father Sri Lakshmiah Chetty effected some alienations in respect of the properties described in A-



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Schedule to third parties without the knowledge and consent of the plaintiff.

The plaintiff's father, who is only a life estate holder, did not have any right to alienate the properties and the rights of plaintiff had neither accrued for her to take necessary action nor the plaintiff had knowledge of such transactions.

5.4.The life estate holder, namely the father of plaintiff, died on 14.12.1975 and from the said date, the plaintiff became the absolute owner of the properties in terms of the family settlement deed dated 01.02.1937.

5.5.The 1st defendant is in possession of 2 Cawnies of land in R.S.No.3799 and the 2nd item of A-Schedule. From the Registration Records, plaintiff learnt that the 3rd defendant is in occupation of an extent of 2 Grounds and 192 sq.ft. Another extent of 12 Grounds is in the name of Smt.Dhanalakshmi Ammal, who purchased the said property from plaintiff's father Sri Lakshmiah Chetty in a Court auction. The 2nd defendant is the only known surviving heir of Smt.Dhanalakshmi Ammal, who purchased the property in Court auction.

5.6.Defendants are in occupation of plaint A-Schedule properties on the basis of a few registered documents which did not convey any right, title



or interest to the defendants, as all those alienations were made by plaintiff's father Sri Lakshmiah Chetty and the transactions are void and collusive in nature. Since the plaintiff was not a party to the transactions, the alleged sales in favour of defendants and any other transactions are not binding on the plaintiff. Sri Lakshmiah Chetty, the father of plaintiff, who was only a life estate holder, is not competent to alienate the property and such alienations do not affect the title of plaintiff who is the vested remainder and the transactions are non est in the eye of law and hence, liable to be ignored.

5.7.Under the void transactions, the defendants have made constructions over the plaint A-Schedule properties without the consent and knowledge of the plaintiff. Therefore, defendants are bound to deliver possession of plaint A-Schedule properties to the plaintiff, after removing the superstructure put up by them over the land.

5.8.The plaintiff addressed a letter to the 1st defendant on 10.03.1983, to which, the Secretary of 1st defendant sent a reply, dated 19.04.1993, making untenable allegations and denying the rights of plaintiff over the suit property.

5.9.The plaintiff is therefore entitled to recovery of vacant possession



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of plaint A-Schedule properties from the defendants and an order for removal of superstructures erected by defendants in the plaint A-Schedule property. The plaintiff is also entitled to mesne profits for three years before suit for the wrongful use and occupation of the land by the defendants.

6.Though the plaintiff filed the suit as an indigent person, it is admitted that the application seeking permission to file the suit as an indigent person was dismissed and the plaintiff paid the Court Fee, thereafter.

7.The suit was mainly contested by the 1st defendant. Though the 1st defendant, in the original written statement, only denied every averment in the plaint and did not raise all the legal grounds which are germane to defend the suit regarding suit 'A' Schedule, the additional written statements filed by the 1st defendant are more relevant and the allegations in the first and second Additional written statements are specific.



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8. It is the case of 1st defendant that the father of plaintiff Sri Lakshmiah Chetty, along with 1st plaintiff Chebrolu Thayaramma who was then a minor represented by her father, filed a suit in C.S.No.480 of 1948 before the Original Side of this Court against the brother of plaintiff's father Sri Achanna Chetty for several reliefs in relation to the private Trust. The prayer in the said suit was to remove Sri Achanna Chetty from the Trusteeship over the properties described in suit schedule and to appoint Sri Lakshmiah Chetty as Trustee and for the delivery of the land comprised in S.No.3999. It is further stated that the suit ended in a compromise decree based on a compromise memo dated 22.09.1948 filed in C.S.No.480 of 1948. Based on the compromise recorded, a decree was passed by order dated 05.10.1948 in A.No.3005 of 1948. It is the case of 1st defendant that, as per the decree, an Advocate Commissioner was appointed to effect division by metes and bounds and demarcation of the properties including the suit A-Schedule. Sri Lakshmiah Chetty, the father of plaintiff, filed an application in A.No.1745 of 1949 in C.S.No.480 of 1948 for appointment of Commissioner for demarcation of lands and for the sale of 1st item of suit A-



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Schedule located in Teynampet, Chennai. It is the case of 1st defendant that this Court was pleased to appoint a Commissioner to sell the property in public auction, as there was no income from the property.

9.It is then contended by the 1st defendant that, pursuant to the order passed by this Court in the application for sale of lands by auction, a public auction was held on 11.07.1949 in respect of the property described in Item 1 of plaint A-Schedule and the Sale Certificate was issued to the auction purchaser Smt.Dhanalakshmi Ammal. It is stated that the Sale Certificate was also registered on 05.03.1954 on the file of Sub-Registrar's Office, T.Nagar. It is stated that the property in suit Item 1 of A-Schedule was sold in Court auction for a substantial consideration of more than Rs.30,000/- and the Court also permitted the plaintiff's father to invest the sale proceeds by obtaining a mortgage for a sum of Rs.25,000/-. Therefore, it is contended that the property was sold only for the benefit of minor, as the suit A-Schedule property was not capable of giving any income. Stating that this Court has granted permission by its order dated 14.12.1949 and that the sale proceeds of the land comprised in R.S.No.3799 was reinvested by



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the plaintiff's father for their benefit, it is contended that the plaintiff cannot question the Court auction sale after several decades.

10.It is the further case of 1st defendant that Smt. Dhanalakshmi Ammal, who purchased an extent of 46 ½ Grounds by virtue of the Sale Certificate issued by this Court dated 03.01.1950, sold the entire property in favour of one Sri P.S.Swaminatha Iyer and his son for a substantial sale consideration under a registered sale deed dated 25.02.1953. It is also stated that the sale was confirmed by the release deed executed by husband of Smt.Dhanalakshmi Ammal in favour of Sri P.S.Swaminatha Iyer and his son by another registered document dated 25.02.1953. It is further stated in the written statement that Sri P.S.Swaminatha Iyer and others have mortgaged the property on 05.03.1953. The 1st defendant claimed to have purchased the property from the said Sri P.S.Swaminatha Iyer by way of exchange deed dated 11.02.1954 registered as Doc.No.170 of 1954 on the file of Sub-Registrar's Office, T.Nagar. Thus, the 1st defendant took a definite stand that they became the absolute owner of the suit A-Schedule land by virtue of the exchange deed and further stated that its title is



perfected.

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11.It is the further case of 1st defendant that the 1st defendant after taking possession put up constructions immediately after the exchange deed and that the 1st defendant is running a Women's College for more than 50 years without any interference or claims from anybody. Therefore, the 1st defendant specifically raised a plea of limitation on multiple counts. Stating that the 1st defendant is in possession and enjoyment of suit A-Schedule property for more than 50 years without any interference from anybody, the 1st defendant specifically denied all the plaint averments and reiterated that all the transactions are valid and binding on the plaintiff and that the plaintiff cannot question the transfers after a lapse of several decades. It is also contended that the defendants are *bona fide* purchasers and that the sale deeds are binding on plaintiff, as the plaintiff has not sought for any prayer to set aside the alienations within the prescribed period of limitation. 1st defendant pleaded adverse possession and contended that the suit is barred by *res judicata*.



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12. In the second Additional written statement, the 1st defendant further contended that the plaintiff cannot seek delivery of vacant possession of plaint A-Schedule properties and mesne profits without a prayer to set aside the alienations. Referring to the fact that the plaintiff was *eo nomine* party to the Court proceedings in C.S.No.480 of 1948, it is contended that the plaintiff is bound by the transactions/alienations made by her father. It was pointed out by the 1st defendant that the plaintiff has not even come forward with specific plea to set aside any of the alienations, which are not void but only voidable as per plaint allegations. It is further contended that the present prayer for delivery of possession without even paying proper Court Fee, is not maintainable. Since the sale transactions were in 1953, it is contended by the 1st defendant that the suit for recovery of possession without a prayer to declare the alienations as void, cannot be entertained. The 1st defendant raised a plea that the plaintiff is not entitled to relief by applying the Doctrine of Acquiescence pointing out that the plaintiff and her husband had full knowledge of the transactions and atleast the factum of huge constructions being put up by 1st defendant. It is also



contended that the 1st defendant has invested a huge money for construction of buildings for starting and running a Women's College and School.

13.In the suit, a preliminary issue was raised questioning the maintainability of the suit in the absence of a prayer to set aside the sale deeds dated 22.08.1949 and 30.11.1956. The following issues were also framed in the suit :

- i. *“Whether the father of the deceased first plaintiff, Lakshmiah had the right to alienate the property described in A schedule of the plaint and whether the alienation and subsequent alienation made by him and his successors-in-title are valid in the eye of law ?*
- ii. *Whether the suit claim is barred by limitation ?*
- iii. *Whether the plaintiff is entitled to mesne profits as prayed for ?*
- iv. *Whether the defendants have prescribed title by adverse possession ?*
- v. *Whether the plaintiff is entitled to delivery of vacant possession of the property described in A schedule of the plaint after removal of the superstructure built by the defendants ?*
- vi. *To what relief, are the plaintiffs entitled ?”*



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14. On the side of plaintiffs, 7th plaintiff was examined as P.W.1 and Exs.P1 to P4 were marked. On the side of defendants, a Member of the Executive Council of the 1st defendant Trust was examined as D.W.1 and Exs.D1 to D19 were marked.

15. Learned Single Judge of this Court, while deciding the preliminary issue, found that the father of 1st plaintiff, for himself and on behalf of 1st plaintiff who was then a minor, filed the suit in C.S.No.480 of 1948 and that the suit was decreed in terms of the compromise memo, granting an order not only for removal of Sri Achanna Chetty from the Trusteeship, but also for demarcation and delivery of Items 1 and 2 of A-Schedule. Learned Single Judge, referring to the fact that the compromise was effected in the interest of the plaintiff who was then a minor, upheld the consent decree under Ex.D4, dated 05.10.1948, passed by this Court in C.S.No.480 of 1948 in terms of memo of compromise filed by both parties under Ex.D2. Learned Single Judge found that the application in A.No.1745 of 1949 in C.S.No.480 of 1948, filed by the father of plaintiff for himself and on behalf



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of 1st plaintiff for a direction to the Advocate Commissioner, to sell Item 1 of suit A-Schedule property, is allowed on merits. Referring to the fact that this Court had granted permission for Court auction sale and the chronological events relating to Court auction sale, the confirmation of sale in favour of Smt.Tharani Singh Gramani (Smt.Dhanalakshmi Ammal) for a consideration of Rs.33,100/- on 19.08.1949, the Sale Certificate and the delivery of property through Court, the learned Single Judge held that the Court auction sale, which was held in the interest of minor in a proceeding where minor was *eo nomine* a party, cannot be questioned by the minor without a prayer to set aside the compromise decree or subsequent alienations. Referring to the facts that the Court auction purchaser had alienated the property in favour of Sri P.S.Swaminatha Iyer and the subsequent exchange deed by which the 1st defendant got title to the property, the learned Single Judge found that the 1st defendant became the owner of 1st item of A-Schedule by virtue of the Court auction sale. As regards 2nd item, it is admitted that plaintiff's father, for himself and on behalf of plaintiff who was then a minor, sold the property to one Kesavan under a sale deed dated 22.08.1949 marked as Ex.D15 and that the 1st



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defendant has purchased the said property under subsequent sale deed dated 30.11.1956 from the said Kesavan under Ex.D16.

16.Since the suit Items 1 and 2 of A-Schedule are found to be sold by the father of plaintiff for the benefit of both the father of plaintiff and the plaintiff, who was then a minor, and the minor plaintiff was *eo nomine* party in all the proceedings and transactions, the learned Single Judge, after referring to several judgments, held that the plaintiff who had not chosen to challenge the public Court auction sale as well as the private sale, lost her right by virtue of Section 27 of Limitation Act, as no suit was filed before the expiry of three years from the date, the plaintiff attained majority. It is also to be noted that the plaintiff's father, though was given life interest, the learned Single Judge held that the plaintiff acquired vested right as on the date of settlement deed executed by her grandfather and that therefore, the plaintiff cannot slumber over the alienations made already by her father ignoring the vested remainder conferred on her under Ex.P1 settlement deed. In other words, the contention of plaintiff that her right to question the alienations arise only after the lifetime of her father, was rejected. Since



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the 1st plaintiff was *eo nomine* party not only to the suit proceedings in C.S.No.480 of 1948 which culminated in the Court auction sale at the instance of her father, but also the private sale effected by her father for himself and on behalf of his minor daughter under Ex.D15 dated 22.08.1949, the learned Single Judge held that the plaintiff cannot simply seek for recovery of possession ignoring the transactions which are only voidable and not void in nature.

17.Examining the case whether the Court auction sale or private sale was for legal necessity or in the interest of minor, the learned Single Judge found that there is no plea as to want of legal necessity in the plaint and that therefore, it is held that the plaintiff cannot contend that the alienations are not for legal necessity. The learned Single Judge also held that the alienations by the father, even without a legal necessity, is only voidable and not void and therefore, the suit without a prayer to set aside the alienations, is not maintainable. It is true that the learned Single Judge held that the alienations are only voidable by referring to the provisions of Hindu Minority and Guardianship Act, 1956, ignoring the fact that the said Act



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was not in the Statute when the alienations were effected.

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18.Further, learned Single Judge, relying upon several precedents, made a distinction between the alienations which are totally void and the alienations in the present case which are voidable which can be questioned by reversioner or minor within three years on attaining majority or on the death of limited estate holder. The learned Single Judge has further made distinction between a case where the transaction can be held to be void on account of lack of jurisdiction or competency and a transaction which can be characterised as irregular on the admitted facts. Though the learned Single Judge agreed that a judgment or decree obtained by playing fraud upon the Court is null and non-est in law and such a fraudulent decree can be simply ignored, the learned Single Judge found that the well settled position of law reiterated by Hon'ble Supreme Court cannot be applied in the present case where the plaintiff has not even pleaded fraud or collusion to challenge the alienations that had taken place in 1950s.



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19. After deciding the preliminary issue against the plaintiff, the learned Single Judge did not go into the other issues and dismissed the suit holding that the suit itself is not maintainable in the absence of a prayer to set aside the sale deeds dated 22.08.1949 and 30.11.1956.

20. Aggrieved by the judgment and decree of the learned Single Judge, the above appeal is preferred.

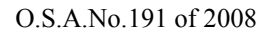
21. Mr. P.J. George, learned counsel appearing for the appellants, submitted that the learned Single Judge failed to consider the fact that the suit in the present case was filed by the life estate holder as an ordinary suit against the Trustee appointed by the settlor for his removal from Trusteeship. Stating that the previous suit, which was only for removal of Trustee on the ground of misfeasance and malfeasance and for substitution of himself as Trustee, filed by the life estate holder, was decreed on the memo of compromise filed by the plaintiff's father, the life estate holder and his brother, learned counsel for appellant submitted that the sale in Court



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auction, is a collusive one. Learned counsel submitted that the whole proceedings starting from the suit till the order passed in the application filed by the plaintiff's father seeking permission for the sale of property, are fraudulent and therefore, contended that fraud vitiates every solemn transaction including Court auction sale or any alienation by the life estate holder which were only to defeat the vested right of the plaintiff under the settlement deed.

22.Learned counsel appearing for the appellants then submitted that the application in A.No.1745 of 1949 filed under Order XXXII Rule 12 read with Order 13 Rule 14 of Original Side Rules on originating summons is only used to obtain directions and therefore, the prayer for sale of property under originating summons is outside the jurisdiction of Court which passed the order. Learned counsel then submitted that the application in A.No.1745 of 1949 was filed without making the plaintiff as a party, as seen from Ex.D5. Learned counsel submitted that the suit ought not to have been dismissed on the ground that it is not maintainable without a prayer to set aside the decree and orders in A.No.1745 of 1949, especially when the



direction for sale of property of the vested remainder is without jurisdiction and void.

23. Learned counsel then submitted that the learned Single Judge has erroneously held that the alienations are voidable without an application of mind as to the irregularities pointed out by the plaintiff. Learned counsel further submitted that the learned Single Judge has confused himself by passing orders relying upon the provisions of Hindu Minority and Guardianship Act, 1956, which was not even in existence in 1948, when Court orders were passed based on a collusive compromise memo filed to defeat the right of vested remainder. Learned counsel also submitted that this is not a case where sale of property of minor by guardian is challenged, but about the right of a vested remainder to redeem the property which was alienated by the Trustee by a fraudulent and collusive act without the power of alienation.

24. Referring to Section 44 of Indian Evidence Act, 1872, and a few precedents, learned counsel appearing for the appellants submitted that



fraud and collusion in obtaining a judgment vitiates not only the judgment of Court, but also all the subsequent transactions and that therefore, the sale ordered by Court in an application filed by the plaintiff's father in a suit filed for removal of Trustee, is without jurisdiction and that therefore, the judgment or order in the suit and in the compromise memo and in the applications are vitiated by fraud and collusion. Learned counsel submitted that the Court, as a matter of policy, should set aside such fraudulent transactions unmindful of any technicalities. In other words, learned counsel appearing for the appellants submitted that the order passed in A.No.1745 of 1949 granting permission for sale of property is a nullity, as the order for sale of property is outside the purview of the suit and therefore, it is without jurisdiction.

25.Learned counsel appearing for the appellants reiterated the fact that the family settlement deed executed in 1937 creates only a life estate in favour of father of plaintiff and that the plaintiff, being the vested remainder, gets right only after the death of plaintiff's father. Learned counsel submitted that the finding of learned Single Judge that the suit is



barred by limitation is erroneous and unsustainable in law. Learned counsel then submitted that, none of the other parties in the suit appeared nor were represented in the previous suit and he further submitted that the memo of compromise marked as Ex.D3 in the suit was nothing but a diabolical misuse of the power of Court and abuse of process to achieve the father's selfish needs. Learned counsel then submitted that no third party affidavit, which is mandatory for sale of property of a minor, was filed, but only by the interested Advocate of the father. Learned counsel then submitted that the decision of the learned Single Judge dismissing the suit on the preliminary issue is fundamentally wrong, as the Court failed to advert to the main issues regarding collusion and fraud which vitiates the transaction as void and not voidable.

26.Learned counsel appearing for the appellants then pointed out that the learned Single Judge erred in applying Article 60 of Schedule to Limitation Act, instead of Article 65 which is applicable in the factual context. Learned counsel relied upon a few judgments of Hon'ble Supreme Court and other High Courts to buttress his arguments that it is not



necessary to set aside a void sale and that in appropriate cases, the plaintiff, who has established fraud and collusion, need not file an independent suit to set aside the void sale.

27.However, on the other hand, Mr.S.Parthasarathy, learned Senior Counsel appearing for the 1st respondent, submitted that Article 60 of Limitation Act, 1963 will apply to the facts of the case and that the suit in C.S.No.985 of 1993 is clearly barred by limitation. Learned Senior Counsel referred to the chronology of events and submitted that the application in A.No.1745 of 1949 was filed by father of 1st plaintiff to sell Item 1 of suit A-Schedule property in C.S.No.985 of 1993. Since the property in Item 1 of plaint A-Schedule was sold on public auction on 11.07.1949 pursuant to the permission that was granted by this Court in A.No.1745 of 1949, learned Senior Counsel submitted that, without a plea of fraud or collusion, the plaintiff cannot set at naught the alienations made several decades ago. Referring to the terms of compromise decree and several facts, learned Senior Counsel submitted that the sale proceeds created out of sale by Court auction was deposited to the credit of C.S.No.480 of 1948 and that out of



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the amount of deposit, all the statutory liabilities and the remuneration to Advocate Commissioner were met.

28.Learned Senior Counsel appearing for the 1st respondent also relied upon several precedents to substantiate that the findings of the learned Single Judge on the preliminary issue are perfectly in order and that the suit as such is barred by limitation. Though the broad proposition that fraud vitiates every solemn transaction, is accepted by learned Senior Counsel, referring to Order 6 Rule 4 CPC and the plaint in the present case, learned Senior Counsel submitted that the plaintiff has not even come forward with a plea to satisfy the requirements of Order 6 Rule 4 CPC. Though the learned Senior Counsel admitted that the suit is filed within 12 years from the date of cause of action, he submitted that Article 65(a) of Limitation Act, 1963, is not applicable to the facts of the case and that the Court auction sale and the private sales by way of registered sale deeds which culminated in the transfer of title in favour of 1st defendant, have extinguished the title of plaintiff. Learned Senior Counsel then submitted that, by virtue of Articles 59 and 60 of Limitation Act, 1963, the suit which



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is filed in 1983 by 1st plaintiff who attained majority in 1960 is barred by limitation and the right to the suit property insofar as the 1st plaintiff is extinguished under Section 27 of the Limitation Act.

29.Sum and substance, learned Senior Counsel submitted that the sale in favour of a stranger, who is the subsequent purchaser pursuant to a Court auction sale, is protected and that the innocent purchaser of suit property pursuant to the Court auction cannot be set at naught at the instance of 1st plaintiff who was *eo nomine* party to all the proceedings and who never raised her little finger during the lifetime of her father. Referring to the Doctrine of Acquiescence, learned Senior Counsel further submitted that the plaintiff is not entitled to any relief by applying the equitable principles of acquiescence. He also relied upon several judgments.

30.Having regard to the substantial arguments of learned counsel appearing for the appellants and the learned Senior Counsel appearing for the 1st respondent, this Court is required to frame the following points for determination :



- i. *Whether the suit for recovery of possession is maintainable in the absence of a prayer to set aside the Court auction sale and private sales pursuant to order of Court in proceedings where minor is eo nomine party, namely on the ground of fraud without specific pleadings as required under Order VI Rule 4 CPC ?*
- ii. *Whether the father of 1st plaintiff had right to alienate the property in suit A-Schedule as a guardian of plaintiff ?*
- iii. *Whether the suit is barred by limitation ?*
- iv. *Whether the defendants have prescribed title by adverse possession ?*
- v. *Whether the learned Single Judge is right in dismissing the suit on the preliminary issue ?*

31. Before going into the merits of the submissions, this Court has to summarise briefly the admitted facts and events which are not in controversy:

31.1. The suit A-Schedule properties and several other properties originally belonged to one Sri Narayanasamy Chetty.

31.2. From the plaint filed in C.S.No.480 of 1948, it is seen that the 1st plaintiff Smt. Chebrolu Thayaramma is the daughter of Sri Lakshmiah



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Chetty. Father of Sri Lakshmiah Chetty is one Sri Ramanna Chetty. The said Sri Ramanna Chetty is the son of Sri Veerasamy Chetty. Therefore, grandfather of Sri Lakshmiah Chetty is Sri Veerasamy Chetty. One Sri Narayanasamy Chetty is the father's brother's son of the said Sri Veerasamy Chetty who is the grandfather of Sri Lakshmiah Chetty (the father of 1st plaintiff Smt.Chebrolu Thayaramma). Therefore, Sri Narayanasamy Chetty is not the grandfather of 1st plaintiff Smt.Chebrolu Thayaramma as projected in the plaint, but the plaintiff's grandfather is Sri Veerasamy Chetty.

31.3.It is admitted that, by a deed of family settlement executed on 01.02.1937, Sri Narayanasamy Chetty conveyed several movable and immovable properties belonging to him. The properties that are the subject matter of C.S.No.480 of 1948 belonging to Sri Narayanasamy Chetty were conveyed in favour of the male and female heirs of Sri Lakshmiah Chetty, the father of 1st plaintiff. However, the said Sri Narayanasamy Chetty retained his absolute right over the properties set out in A-Schedule to the said settlement deed.

31.4.As regards the properties mentioned in Schedules B, C and D to the said family settlement deed, Sri Lakshmiah Chetty, the father of 1st



plaintiff Smt.Chebrolu Thayaramma, was given life interest and it is stated that the properties would vest absolutely with the male and female issues of Sri Lakshmiah Chetty upon his death. It is to be noted that the property was entrusted to the brother of Sri Lakshmiah Chetty, by name Sri Achanna Chetty, in trust for the benefit of Sri Lakshmiah Chetty, to manage and pay the income of the properties in the C-Schedule to the settlement, to Sri Lakshmiah Chetty.

31.5.It is stated that Sri Narayanasamy Chetty died in November, 1939.

31.6.As per the settlement deed executed by Sri Narayanasamy Chetty, suit properties and other properties which are enumerated in C-Schedule to the said family settlement deed were to be enjoyed by the said Sri Narayanasamy Chetty during his life and the properties would vest in favour of Sri Lakshmiah Chetty who is entitled to derive income from the properties during his lifetime. After the lifetime of Sri Lakshmiah Chetty, the properties as per the settlement deed should vest absolutely in all the male or female issues of Sri Lakshmiah Chetty. It is also provided that possession of all the properties referred to in C-Schedule to the family



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settlement deed should vest in Sri Achanna Chetty, the brother of Sri Lakshmiah Chetty, who should hold them in trust for the benefit of Sri Lakshmiah Chetty to manage and pay the income of the properties mentioned in C-Schedule to the settlement deed, to Sri Lakshmiah Chetty.

31.7.After the death of Sri Narayanasamy Chetty and after the marriage of Sri Lakshmiah Chetty, there appears some dispute in the family and Sri Achanna Chetty, the brother of Sri Lakshmiah Chetty, who was appointed as Trustee to manage the properties and supposed to pay income to Sri Lakshmiah Chetty, neglected to pay the income nor to render the accounts to Sri Lakshmiah Chetty. Therefore, Sri Lakshmiah Chetty and the plaintiff who was then a minor represented by Sri Lakshmiah Chetty filed a suit in C.S.No.480 of 1948 for various reliefs including the relief for removal of Sri Achanna Chetty from the Trusteeship of the properties described in A-Schedule.

31.8.From the Schedule of properties in C.S.No.480 of 1948, it is seen that several properties in heart of Madras City were given to Sri Lakshmiah Chetty and Smt.Chebrolu Thayarammal, apart from valuable jewels and properties in Alaganipadu Village in Vellore District.



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WEB COPY 31.9.The family settlement deed dated 01.02.1937 is produced as Ex.P1.

31.10.Ex.P4 dated 11.08.1948 is the plaint in C.S.No.480 of 1948. The 1st plaintiff in C.S.No.480 of 1948 is Sri Lakshmiah Chetty, the father of Smt.Chebrolu Thayammalar, the original plaintiff in the present suit in C.S.No.985 of 1993. The 2nd plaintiff in C.S.No.480 of 1948 is none other than the plaintiff in the present suit. Since the plaintiff was then a minor, she was represented by her father, Sri Lakshmiah Chetty. The 1st defendant in the said suit is the brother of Sri Lakshmiah Chetty, namely Sri Achanna Chetty. The 2nd defendant in the said suit is the daughter of Sri Narayanasamy Chetty, the settlor who executed the settlement deed under Ex.P1. The 3rd defendant in the suit is the wife of Sri Narayanasamy Chetty.

31.11.Under Ex.D2 dated 22.09.1948, a consent memo was executed by the 1st plaintiff and the 1st defendant in C.S.No.480 of 1948. The suit against other defendants were dismissed as withdrawn. As per the compromise memo (memo of consent), the 1st defendant in the suit namely Sri Achanna Chetty was discharged from Trusteeship without any liability to



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account. Father Sri Lakshmiah Chetty was appointed as Trustee of the properties settled by Sri Narayanasamy Chetty in favour of Sri Lakshmiah Chetty and his children. Sri Achanna Chetty agreed to deliver to Sri Lakshmiah Chetty all the properties that were given in favour of Sri Lakshmiah Chetty and his children under the settlement deed and hand over all the title deeds mentioned in the Schedule to the compromise memo. The parties also agreed for appointment of Mr.P.C.Sarangapani, Advocate, as Commissioner for the purpose of effecting division by metes and bounds and demarcation of all the items of Schedule mentioned properties which have to be divided and demarcated. Sri Achanna Chetty agreed to pay a sum of Rs.1,100/- to Sri Lakshmiah Chetty within a month from the date of compromise memo in full satisfaction of all other claims against the 1st defendant as per the suit prayers.

31.12.On 24.09.1948 under Ex.D3, the counsel for the plaintiffs in C.S.No.480 of 1948 certified that the compromise as per the terms found in the consent memo is in the interest of minor Chebrolu Thayaramma and that the terms are not in any way adverse to the interest of Chebrolu Thayaramma who is the 2nd plaintiff in C.S.No.480 of 1948.



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31.13. During the pendency of the suit in C.S.No.480 of 1948, an order was passed in A.No.3005 of 1948 dated 05.10.1948 (marked as Ex.D4) by Hon'ble Mr. Justice Yahya Ali, granting leave to the 1st plaintiff in C.S.No.480 of 1948 to enter into a compromise on behalf of 2nd plaintiff and a consent decree was passed based on the compromise memo. While recording the compromise, the order passed in A.No.3005 of 1948 dated 29.09.1948 is referred to. It is seen that the Court, while passing the order, has observed that the compromise is beneficial to the interest of minor.

31.14. Thereafter, Judges Summons in A.No.1745 of 1949 was filed under Order XXXII Rule 12 r/w. Order XIII Rule 4 of Original Side Rules by Sri Lakshmiah Chetty, the father of plaintiff and plaintiff represented by her father for permission to sell the lands in Teynampet, that is the land which is shown as Item 1 in Schedule-A, measuring 2 Cawnies and 12 Grounds in R.S.No.3799 and the extent of 1 Ground in R.S.No.3798/B. The prayer in A.No.1745 of 1949 is to direct the Advocate Commissioner appointed earlier to sell the land in Teynampet in plots or in one lot at a price of not less than Rs.650/- a Ground and to direct the Commissioner to



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pay the applicant therein from and out of the sale proceeds a sum of Rs.7,500/- for discharge of debts and for improving the properties premises Nos.19 and 23-A, Bheemanna Mudali Street, Mylapore, Madras. A.No.1745 of 1949 was allowed by directing the Commissioner to sell the property by public auction at the price already mentioned in the Schedule. The order passed in A.No.1745 of 1949 is not available and it is reported that the order is not traceable. However, the subsequent order passed in A.No.1745 of 1949 under Ex.D6 dated 19.08.1949 would show that the sale that was effected by public auction by the Commissioner on 11.07.1949 for a sum of Rs.33,100/- to Smt.Tharani Singh Gramani (Smt.Dhanalakshmi Ammal) is confirmed and that the Commissioner was directed to collect the money and deposit the same into the Court to the credit of the suit.

31.15.Under Ex.D7, an application was filed in A.No.3239 of 1949 by Sri Lakshmiah Chetty and the plaintiff for permission to invest a sum of Rs.25,000/- out of the sale proceeds by advancing a mortgage loan to a third party on the security of the Bungalow and garden to the said third party at 6.25% interest after examination of title by the Advocate. Under Ex.D8 dated 20.10.1949, order was passed in A.No.3239 of 1949, issuing certain



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directions to the Advocate Commissioner to examine the title in respect of the properties owned by the proposed mortgager. The application in A.No.3239 of 1949 was allowed by order dated 14.12.1949 marked as Ex.D9, by according sanction for the investment of Rs.25,000/- out of the amount deposited in Court by the Commissioner on the security of Bungalow and Garden of Door No.12, Brindavan Street, Mylapore, Madras.

31.16.On 03.01.1950 under Ex.D10, Sale Certificate in favour of Smt.Dhanalakshmi Ammal was issued by the II Assistant Registrar on 03.01.1950.

31.17.Under Ex.D11, dated 25.02.1953, a sale deed was executed by Smt.Dhanalakshmi Ammal in favour of one Sri P.S.Swaminatha Iyer in respect of the property purchased by her in Court auction, i.e., substantial portion of Item 1 in suit A-Schedule. A release deed was also executed by the husband of Smt.Dhanalakshmi Ammal in favour of Sri P.S.Swaminatha Iyer dated 25.02.1953, which is marked as Ex.D12.

31.18.Under Ex.D13 dated 05.03.1953, Sri P.S.Swaminatha Iyer and others who have purchased the portion of suit property, executed a mortgage deed in favour of Vanguard Insurance Company.



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WEB COPY 31.19.Under Ex.D14 dated 11.02.1954, by a deed of exchange between Sri P.S.Swaminatha Iyer and three others with the 1st defendant, a major portion of Item 1 of suit A-Schedule was transferred in favour of 1st defendant.

31.20.Under Ex.D15 dated 22.08.1949, the father of plaintiff namely Sri Lakshmiah Chetty executed a sale deed in respect of suit 2nd Item of A-Schedule in favour of one Sri S.Kesavan.

31.21.Under Ex.D16 dated 30.11.1956, the 2nd Item of suit A-Schedule was sold by Sri S.Kesavan in favour of 1st defendant.

31.22.Sri Lakshmiah Chetty, the father of 1st plaintiff in C.S.No.985 of 1993 died on 14.12.1975.

31.23.On 11.12.1987, the plaint in C.S.No.985 of 1993 was presented before the Original Side of this Court.

32.From the facts narrated and the compromise decree based on the consent memo as evident from Ex.D2 and Ex.D4, this Court is unable to find any procedural irregularity. It is by virtue of the compromise decree,



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the 1st plaintiff and her father have redeemed the property from the brother of plaintiff's father who was in enjoyment of entire property conveyed to plaintiff without paying income or rendering account.

33.The Rules of High Court of Judicature at Madras which were in force in 1927 is brought to the notice of this Court. Rules relating to the procedures on the Original Side of this Court includes Original Side Rules, High Court Fees Rules, Insolvency Rules, Company Rules, Madras, etc. Order XXXII of the then Original Side Rules relates to 'Guardians and Wards'. Rule 1 of Order XXXII of the then Rules is relating to the proceedings under the Guardians and Wards Act, 1890. Rules 12 and 13 of Order XXXII of the then Original Side Rules read as follows :

“12.An application for leave to deal with immovable property of a minor by way of sale, mortgage, lease or otherwise, shall state, concisely the substance of the order prayed for; and shall be supported by the affidavit of some disinterested and independent person, stating what, in his opinion, is the value of the property proposed to be dealt with, and the best manner of disposing thereof in the interests of the minor, and also by the affidavit of some person, acquainted



with the circumstances of the minor showing the necessity or advantage of the said disposition.

13.If leave to sell is granted, the sale shall, unless the Court otherwise orders, be made by public auction with the sanction of the Court; and the sale shall be conducted in manner prescribed by Order XVIII of these rules.”

34.Learned Senior Counsel for 1st respondent relied upon Clause 17 of Letters Patent conferring Jurisdiction of High Court with respect to the persons and estate of infants, and lunatics within the Presidency of Madras. Though it is stated that the application for leave to deal with the immovable property of minor should be supported by the affidavit of disinterested or independent person to the effect that the value of the property proposed to be dealt with is in the best interest of minor, this Court cannot ignore the fact that a third party affidavit was available at the time when Court granted permission to sell the property of minor by public auction. Unfortunately, the order granting permission to sell the property and the connected records are not available and this Court is convinced that a *bona fide* attempt was made by the respondent to search all records relating to the procedure that



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was followed or the order granting leave.

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35.This Court finds that a substantial consideration received by Court auction sale has been invested to earn interest for a sum of Rs.25,000/-. Having regard to the nature of dispute as seen from the plaint in C.S.No.480 of 1948 and the compromise memo, absolutely, there is no reason for this Court to suspect any foul play or the *bona fides* of the father in filing the suit on his behalf and also on behalf of 1st plaintiff for removal of Trustee and for taking possession of the property in the best interest of both. Absolutely, there is no connection, whatsoever, between the father and the third party Court auction purchaser to justify an allegation of collusion.

36.The provisions under Section 44 of the Indian Evidence Act that a party to the suit or any other proceeding may show that a judgment or an order or a decree which is relevant under Sections 40, 41 or 42 of Evidence Act was delivered by a Court not competent to deliver it or it was obtained by fraud or collusion, would only show that a party to the proceeding who is adversely affected by the judgment or order can still contest that such



adverse order or decree against him has been delivered by a Court not competent to deliver it or on the ground that it was obtained by fraud or collusion. Want of jurisdiction to entertain a suit or proceeding vitiates all judicial acts of the Court. However, a decree passed by a competent court can only be set aside on the ground of want of jurisdiction or collusion or fraud and otherwise, the judgment will stand.

37. “Fraud” or “collusion” has been explained in several judgments of Hon'ble Supreme Court and this Court. In ***Bhaurao Dagdu Paralkar v. State of Maharashtra and others*** reported in **(2005) 7 SCC 605**, the words “fraud” and “collusion” have been explained and the legal implications in setting aside an order of Court on the ground of fraud or collusion have been considered. Section 17 of the Indian Contract Act, 1872, defines “fraud” as follows :

“17. “Fraud” defined.—“Fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent , with intent to deceive another party thereto of his agent, or to induce him to enter into the contract:—



- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;*
- (2) the active concealment of a fact by one having knowledge or belief of the fact;*
- (3) a promise made without any intention of performing it;*
- (4) any other act fitted to deceive;*
- (5) any such act or omission as the law specially declares to be fraudulent.*

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

Illustrations

(a) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.

(b) B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

(c) B says to A—"If you do not deny it, I shall assume that the horse is sound." A says nothing. Here, A's silence is



equivalent to speech.

(d) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B."

Therefore, fraud should always involve two elements, i.e., deceit and injury to the person deceived. Fraud has been defined as an act of deliberate deception with a design of securing something by taking unfair advantage of another. It has been further stated in the above judgment that fraud is a deception in order to gain by another's loss. In other words, it is a cheating intended to get an advantage. Fraud is a conduct either by letters or words or by an act inducing the other to take a definite determinative stand as a response to the conduct of the former with an intention to deceive. A fraudulent misrepresentation is called deceit and an act of fraud or collusion or conspiracy with a view to deprive the right of other in relation to a property would render a transaction void *ab initio*. It is established that fraud is proved when it is shown that a false representation has been made knowingly, recklessly, without any belief in its truth just to deceive the person deceived. Suppression of material documents or any other serious



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fact to get an order from Court may be construed as an act of fraud on Court. It is only in those cases where a judgment or order of Court is obtained by playing fraud, Courts have held that fraud unravels everything by holding that no judgment or order of Court can be allowed to stand if it has been obtained by fraud.

38. In the present case, this Court has no reason to doubt the *bona fides* of father Sri Lakshmiah Chetty in approaching the Court for the reliefs prayed for in C.S.No.480 of 1948. It is only by virtue of the compromise decree, the father could retrieve the properties from his brother Sri Achanna Chetty. The object behind the litigation in C.S.No.480 of 1948 is only to protect the interest of both father and minor Chebrolu Thayaramma, the 1st plaintiff in the present suit. It is true that it is not known whether the application in A.No.1745 of 1949 is an application intended for the benefit of minor. Since the order in A.No.1745 of 1949 and the files relating to A.No.1745 of 1949 are not traceable, this Court cannot jump into conclusions on the basis of mere statements without specific pleading.



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39.It is surprising to note that the 1st plaintiff has not even come forward with a specific plea of fraud or collusion, satisfying the requirement of Order VI Rule 4 CPC. Order VI Rule 4 CPC requires that, wherever fraud, misrepresentation or willful default or undue influence is pleaded, the plaint should contain the particulars that are necessary to constitute such a serious allegation. Allegations of fraud must be clear, definite and specific and it has been held in several cases that general allegations of fraud, however strong the language in which they are referred to, are insufficient to constitute fraud if unaccompanied by particulars.

40.As regards fraud, there is no averment in the pleading as to how the fraud was accomplished. In the present case, if we have to consider the plea of fraud to give rise to a cause of action, absolutely, there is no material averment. Not even a story has been spun to consider the probability of fraud while getting an order for the sale of the 1st Item of suit A-Schedule property by public auction. When there is clear evidence to show that the consideration received by the public auction was utilised for earning interest



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@ 6.5% on the value of property, this Court, having regard to the money value and other factors, is unable to find any foul play or fraud or misrepresentation. It is true that a reversioner can file a suit for recovery of property alienated by a limited owner. The present suit is filed by a reversioner for recovery of property alienated by her father who had limited right, after the lifetime of father. However, the fact remains that the plaintiff has questioned the Court proceedings and the public auction, four decades after the confirmation of sale. There is a presumption under Section 114 of Indian Evidence Act that Court may presume the existence of any fact having regard to the common course of natural events, human conduct and public and private business. Illustration (e) to Section 114 of Evidence Act goes to show that every official act, if proved to have been done, can be presumed to have been regularly done. Though the presumption is rebuttable, it is intended to uphold every official, judicial acts rather than to render them inoperative. In the present case, the absence of any specific allegation of fraud with material particulars, this Court is unable to countenance the submissions of learned counsel appearing for the appellants on the plea of fraud without basic material particulars being pleaded.



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41.As regards collusion, a general allegation of collusion without involving parties on either side of the proceedings can be termed as incomplete. In the present case, the plaintiff can allege collusion only by showing that her father has brought the property for Court auction for his personal gains in collusion with any stranger. In this case, the purchaser of Court auction sale is a third party and against her, there is no allegation. In such circumstances, the allegation of collusion does not convey any meaning in the absence of particulars involving a third party apart from plaintiff's father.

42.In *Embassy Hotels Private Limited v. Gajaraj and Company and others* reported in *(2015) 14 SCC 316*, it has been held that judgment of a competent Court cannot be ignored by another Court in collateral proceedings on mere suspicion of fraud or collusion. It has been specifically held that there must be direct challenge to alleged proceedings of competent Court on the ground of fraud or collusion by instituting a suit or other appropriate legal proceedings and that fraud or collusion must be



proved by the party alleging them. This Court is of the view that the following passage of the judgment is relevant in this context :

“17.No doubt, if a fraud is alleged and proved, it can be sufficient to get rid of most solemn of proceedings including court proceedings. But in case of order of a court of competent jurisdiction, this must be done only by throwing a direct challenge to the proceedings by instituting a suit for that purpose or through any appropriate legal proceeding which may permit such direct challenge. Judgments of courts cannot be ignored by another court in a collateral proceeding and that also on mere suspicion of fraud or collusion, as has been done in this case.

18.Learned counsel for the appellant has rightly placed reliance for this purpose on paragraph 76 of a recent judgment of this Court in the case of Union of India vs. Major S.P. Sharma, 2014 (6) SCC 351. Paragraph 76 of the judgment reads as follows:

“76. A decision rendered by a competent court cannot be challenged in collateral proceedings for the reason that if it is permitted to do so there would be 'confusion and chaos and the finality of proceedings would cease to have any meaning'.”



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43. In the case of ***R.Rathnasabapathi Chettiar v. Ammakannammal and others*** reported in ***LW (1929) Vol XXX Pg.914***, a Division Bench of this Court has held that a pleading containing charges involving anything in the nature of fraud should be established specifically with particulars necessary.

44. The Constitution Bench of Hon'ble Supreme Court in the case of ***Bishundeo Narain and another v. Seogeni Rai and others*** reported in ***AIR 1951 SC 280*** has made a distinction between a case where minor can never be able to consent and case where minor is properly represented before the Court. It is held that in the latter case, the decree is binding on minor, unless the minor establishes fraud or collusion on the part of guardian. In the same judgment, the Constitution Bench has expressed the following view on the requirement of pleadings under Order VI Rule 4 CPC in the following lines :

“25.It is also to be observed that no proper particulars have been furnished. Now if there is one rule which is better established than any other, it is that in cases of fraud, undue



influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion. See Order 6, rule 4, Civil Procedure Code.”

45.Again, a Three Member Bench of Hon'ble Supreme Court in the case of ***Varanasaya Sanskrit Vishwavidyalaya and another v. Rajkishore Tripathi and another*** reported in ***AIR 1977 SC 615*** stresses the requirement of specific allegation of collusion implying some kind of fraud, when a Court procedure is challenged, in the following lines :

“9.We do not think it is enough to state in general terms that there was "collusion" without more particulars. This Court said in Bishundeo Narain & Anr. v. Seogeni Rai & Ors., 1951 SCR 548 (at p.556) = (AIR 1951 SC 280 at page 283) as under:

"General allegations are insufficient even to amount to an averment of fraud of which any Ct. ought to take notice, however strong the language in which they are couched may be, and the same applies to



undue influence and coercion".

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We have already set out the general allegations of alleged collusion by which the plaintiff-respondent seemed to imply some kind of fraud. He indicated no reason for this and made no specific allegation against any particular person."

46. Recently, in ***Biraji alias Briraji and another v. Surya Pratap and others*** reported in ***(2020) 10 SCC 729***, the Hon'ble Supreme Court has reiterated the requirement of specific pleading and has reiterated the principle that no amount of evidence will help a party in the absence of specific pleading. It is to be pointed out that the principle that was settled by the Privy Council in ***Siddik Mahomed Shah v. Mt. Saran*** reported in ***AIR 1930 PC 57 (1)***, that no amount of evidence can be looked into upon a plea which was never put forward, has been followed and reiterated in several judgments of this Court and Hon'ble Supreme Court.

47. The object of pleadings and purpose of pleadings with reference to the procedure is reiterated by Hon'ble Supreme Court in the case of ***Bachhaj Nahar v. Nilima Mandal and another*** reported in ***(2008) 17 SCC***



491 in the following lines :

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“12.The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.

13.The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim



or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.”

48.The 1st plaintiff's father, who is a limited owner, is also the guardian of 1st plaintiff and therefore, he is competent to represent the 1st plaintiff in the suit and the proceedings which culminated in the sale of property. In all fairness, the 1st plaintiff has to admit that her father was acting as her guardian to protect her and her property. Therefore, the plaint cannot be simply treated as one where a reversioner challenges the sale by the limited owner. The father of 1st plaintiff, being the guardian, is entitled to represent the minor and the 1st plaintiff, who is *eo nomine* party to the



proceedings, cannot file a suit for recovery of property merely on the allegations that her father, as a limited owner, has no right to sell the property. When plaintiff is *eo nomine* party and father Sri Lakshmiah Chetty has acted as a guardian to sell the property with the permission of Court, the 1st plaintiff cannot question the sale or alienation by her father as guardian, who acted with the permission of the Court, without even a prayer to set aside the order of Court and then to set aside both the alienations.

49.Learned Senior Counsel appearing for the 1st respondent referred to Clause 17 of Letters Patent, which reads as follows :

“And we do further ordain that the said High Court of Judicature at Madras shall have the like power and authority with respect to the persons and estates of infants, idiots and lunatics within the Presidency of Madras, as that which is now vested in the said High Court immediately before the publication of these presents.”

Learned Senior Counsel submitted that, by virtue of above clause, the Madras High Court is vested with *parens patriae* jurisdiction to deal with estate of the minor. Learned Senior Counsel relied upon the judgment of the Constitution Bench of Hon'ble Supreme Court in ***Central Potteries Ltd.,***



Nagpur v. State of Maharashtra and others reported in (1963) 1 SCR 166 :

AIR 1966 SC 932, wherein, the Hon'ble Supreme Court has observed as follows :

“7.In this connection it should be remembered that there is a fundamental distinction between want of jurisdiction and irregular assumption of jurisdiction, and that whereas an order passed by an authority with respect to a matter over which it has no jurisdiction is a nullity and is open to collateral attack, an order passed by an authority which has jurisdiction over the matter, but has assumed it otherwise than in the mode prescribed by law, is not a nullity. It may be liable to be questioned in those very proceedings, but subject to that it is good, and not open to collateral attack. Therefore even if the proceedings for assessment were taken against a non-registered dealer without the issue of a notice under Section 10 (1) that would be a mere irregularity in the assumption of jurisdiction and the order of assessment passed in those proceedings cannot be held to be Without jurisdiction and no suit will lie for impeaching them on the ground that Section 10 (1) had not been followed. This must a fortiori be so when the appellant has itself submitted to jurisdiction and made a return. We accordingly agree with the learned Judges that even if the registration of the appellant as a dealer under



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Section 8 is bad that has no effect on the validity of the proceedings taken against it under the Act and the assessment of tax made thereunder.”

Therefore, this Court is convinced that High Court had competent jurisdiction to permit sale of minor's property and the sale pursuant to the order of Court of competent jurisdiction cannot be ignored as null and void without specific averments to render the sale as null and void either on the ground of fraud or collusion. The sanctity attached to a Court auction sale is stressed on a different perspective in ***Janak Raj v. Gurdial Singh and another*** reported in ***AIR 1967 SC 608***, wherein, it is held as follows :

“27.For the reasons already given and the decisions noticed, it must be held that the appellant-auction purchaser was entitled to a confirmation of the sale notwithstanding the fact that after the holding of the sale the decree had been set aside. The policy of the Legislature seems to be that unless a stranger auction-purchaser is protected against the vicissitudes of the fortunes of the suit, sales in execution would not attract customers and it would be to the detriment of the interest of the borrower and the creditor alike if sales were allowed to be impugned merely because the decree was ultimately set aside or modified. The Code of Civil Procedure of 1908 makes ample provision for the protection of the



interest of the judgment-debtor who feels that the decree ought not to have been passed against him. On the facts of this case, it is difficult to see why the judgment-debtor did not take resort to the provisions of Order 21 Rule 89. The decree was for a small amount and he could have easily deposited the decretal amount besides 5 per cent of the purchase money and thus have the sale set aside. For reasons which are not known to us he did not do so.”

50.The next question is about the private sale in respect of Item 2 of A-Schedule. We have already seen that the sale in favour of Kesavan was by the father Sri Lakshmiah Chetty along with the 1st plaintiff, who was then a minor, represented by her father as guardian. Document Ex.D15 dated 22.08.1949 is the sale deed executed by Sri Lakshmiah Chetty and Chebrolu Thayaramma, the 1st plaintiff represented by her father and guardian. The sale deed honestly discloses the source of title for the vendors and refers to the Court proceedings. It is categorically stated in the document that the vendors were in need of funds for family expenses and that absolutely there is no income from the land described in the Schedule. It is therefore stated that the vendors have decided to sell the land for a sum of Rs.300/- for legal



necessity. This Court cannot dwell into the issue whether the sale was for the benefit of minor. Law is well settled that the private alienation of a guardian on behalf of minor where minor is *eo nomine* party cannot be ignored. The suit to recover property thus alienated by guardian on behalf of minor, has to be filed within three years from the date of minor attaining majority, with a specific prayer to set aside the sale. In the present case, under Ex.D15 dated 22.08.1949, Sri Lakshmiah Chetty and 1st plaintiff represented by her guardian sold the property to one Kesavan. The said Kesavan executed a sale deed under Ex.D16 dated 30.11.1956 in favour of 1st defendant. It has been reiterated by Hon'ble Supreme Court that the alienations which are voidable at the instance of minor or on his behalf are required to be set aside before relief for possession can be obtained. The suit filed by 1st plaintiff without seeking prayer to set aside the sale is improper and cannot be decreed.

51.In the case of *Palaniappa Gounden v. Nallappa Goundan and others* reported in *AIR 1951 Madras 817*, this Court has held as follows :

“12.An alienation by a 'de jure' or lawful guardian of the



property of the ward in excess of his powers as a guardian is treated differently from an improper alienation by a Hindu widow or the manager of a joint Hindu family for purposes of the Limitation Act. The transfer by the guardian is not void as against the minor, but only voidable at his instance & the minor must sue to set aside the unauthorised transfer within the three years limited by Article 44 or lose his title to the property. As I have already stated, the law regards the minor as being a party to the alienation through his guardian, & Article 44 allows only a period of three years for setting aside the transfer, the same period being allowed under Article 91 for a man who seeks to set aside his own deed. But, if a 'de facto' manager of a minor's estate improperly alienates his property, the alienation is one to which the minor is not a party through his legally authorised representative & does not require to be set aside within the period limited by Article 44. The minor can sue for recovery of possession within the period 12 years allowed by Article 142 or Article 144. The word 'guardian' in Article 44 must be interpreted as meaning only a lawful or 'de jure' guardian & not as including a 'de facto' manager of the property of a Hindu minor, whatever be the effect of an alienation by a 'de facto' guardian or manager under the Hindu law.”



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The words “void” and “voidable” are loosely used in different contexts by several Courts. However, in all the judgments, it is held that a transfer by a guardian is only voidable. When a minor who also *eo nomine* party to the transaction challenges a voidable transaction, there must be a specific prayer to set aside the same.

52.The Full Bench of Allahabad High Court in the case of ***Rameshwar Prasad v. Ram Chandra Sharma and others*** reported in ***ILR 1952 Vol I Allahabad Pg.420***, has ruled that a decree obtained against a minor is not void but voidable, even if the guardian appointed by the Court has been guilty of gross negligence.

53.Learned counsel appearing for the appellants, during the course of arguments, pointed out that the learned Single Judge relied upon the provisions of Hindu Minority and Guardianship Act, 1956, particularly Section 8 of the Act and the judgments on the interpretation of Section 8 of the said Act. Stating that the alienations in the present case and the Court auction sale was much prior to the commencement of Hindu Minority and



Guardianship Act, 1956, the learned counsel submitted that the findings of the learned Single Judge are vitiated. This Court has reiterated the same principle followed by this Court in several judgments prior to the commencement of Hindu Minority and Guardianship Act, 1956. Under Section 7 of Guardians and Wards Act, 1890, the power of Court to make an order as to guardianship is absolute. In the present case, there is no dispute that father was appointed as a guardian of 1st plaintiff as per compromise decree. Sections 29 and 30 of Guardians and Wards Act are relevant and therefore, extracted hereunder:

“29.Limitation of powers of guardian of property appointed or declared by the Court.

Where a person other than a Collector, or than a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court,--

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of his ward, or

(b) lease any part of that property for a term exceeding five years or for any term extending more than one year



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beyond the date on which the ward will cease to be a minor.

30.Voidability of transfers made in contravention of section 28 or section 29.

A disposal of immovable property by a guardian in contravention of either of the two last foregoing sections is voidable at the instance of any other person affected thereby.”

In the present case, the transfer by sale was with the permission of Court and the sale was by Court auction insofar as substantial portion of Item 1 of plaint A-Schedule. Therefore, the sale is well within the power of guardian and saved. Even the private sale is only voidable and therefore, all the judgments which are relied upon by the learned Single Judge and cited before this Court by the learned Senior Counsel appearing for the 1st respondent hold good.

54.As regards limitation, provisions under Article 44 of Limitation Act, 1908, corresponding to Article 60 of Limitation Act, 1963, are applicable to the facts of present case and the suit to set aside the alienation should be filed within three years from the date of minor attaining majority.



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55. In the case of ***Koya Ankamma v. Konaganchi Kameswaramma and others*** reported in ***ILR Vol. LIX Madras Pg.549***, a Division Bench of this Court has applied Article 44 of Indian Limitation Act and in the said case similar to the present case, the Division Bench of this Court held that the suit which was instituted three years after the plaintiff attaining majority, though within twelve years of the alienation, is barred by limitation.

56. Same position is reiterated even earlier by a Division Bench of this Court in ***Raja Ramaswami (dead) and others v. Govindammal and others*** reported in ***LW (1929) Vol XXIX Pg.169***. It is held that a suit by transferee from a minor to set aside the sale made by the minor's guardian must be brought within three years from the date of attainment of majority by the minor.

57. Learned counsel appearing for the appellants relied upon a judgment of the Hon'ble Supreme Court in ***United India Insurance Co. Ltd. v. Rajendra Singh and others*** reported in ***AIR 2000 SC 1165***, wherein, the



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Hon'ble Supreme Court, following the maxim that “*fraud and justice never dwell together*” and the observation of Lord Denning that “*no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything*”, has reiterated the principle that Courts have inherent powers to set aside the order obtained by fraud practiced upon Court. However, this judgment has no application to the facts of the present case, where there is no specific pleading or material particulars to satisfy the requirement of fraud as defined under Section 17 of Contract Act.

58.Learned counsel relied upon a judgment of Hon'ble Supreme Court in the case of ***Asharfi Lal v. Smt.Koili (dead) by LRs*** reported in ***AIR 1995 SC 1440*** for the proposition that Section 44 of Indian Evidence Act would be attracted if fraud or collusion against the decree obtained against the minor is proved. However, on a careful reading of the said judgment, Section 44 will be attracted only if inference of fraud or collusion could be drawn from gross negligence. Though it is permissible for a minor to avoid a judgment or decree by invoking Section 44 without taking resort to a



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separate suit for setting aside the decree or judgment if a judgment is vitiated by fraud, only when an inference can be drawn from the gross negligence on the part of guardian of the minor in conducting the earlier suit, it may be possible in a collateral proceeding to avoid a decree of a Court alleged to have been obtained by fraud or collusion. In the present case, absolutely there is no plea or material particulars so as to infer that the decree or order or transfer was obtained by fraud as defined under Section 17 of the Indian Contract Act.

59.Learned counsel relied upon another judgment of Hon'ble Supreme Court in ***Gram Panchayat of Village Naulakha v. Ujagar Singh and others*** reported in ***AIR 2000 SC 3272*** for the proposition that a decree obtained by collusion would not operate as *res judicata* and that filing of separate suit for declaration that the decree was collusive is not a condition precedent for raising such a plea. The said judgment cannot be applied in the factual matrix of this case, where there is neither particulars to constitute a plea of fraud nor an allegation against a person to accomplish collusion.



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60. Similarly, the judgment of Hon'ble Supreme Court relied upon by the learned counsel appearing for the appellants in ***S.P.Chengalvararaya Naidu (dead) by LRs v. Jagannath (dead) by LRs and others*** reported in ***AIR 1994 SC 853*** cannot be applied in the present case. It is true that the Hon'ble Supreme Court, in the said case, has considered the act of fraud by a litigant withholding vital document relevant to the litigation. Finding that the conduct amounts to fraud on Court, Hon'ble Supreme Court held that a litigant obtaining preliminary decree for partition of property without mentioning as to his having executed a release deed before filing of suit in favour of his employer should be thrown out as the decree is vitiated by fraud. However, the said judgment is not applicable to the facts of the case on hand.

61. Learned counsel appearing for the appellants relied upon a judgment of Hon'ble Supreme Court in the case of ***Official Trustee, West Bengal and others v. Sachindra Nath Chatterjee and others*** reported in ***AIR 1969 SC 823*** for the proposition that an order which is outside the



jurisdiction of Court is not merely a wrong order or illegal order but it is an order which the Court had no competence to make. The Hon'ble Supreme Court, in the said case, has held that an order without jurisdiction or competence is a void order. This Court is unable to understand how the said judgment is relevant to the present case, where the order was obtained on an application in exercise of the power conferred on the Original Side of this Court in terms of Original Side Rules.

62.Learned counsel then relied upon a judgment of Hon'ble Supreme Court in the case of ***Ashok Kumar Kapur and others v. Ashok Khanna and others*** reported in ***2007 All SCR 1300***, wherein, it is held as follows :

“22.The provisions of Section 34 of the Act must be given its literal meaning. The court cannot exercise a jurisdiction which is not vested in it. A court can exercise jurisdiction, provided it is vested therewith. An order without jurisdiction over the subject-matter would render the decision a nullity.”

Hon'ble Supreme Court, in the said case where the learned Single Judge and Division Bench of High Court refused to exercise their discretionary jurisdiction under Section 34 of Indian Trusts Act, 1882 on the ground that



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it had no jurisdiction to entertain application under Section 34 of Indian Trusts Act, confirmed the order of High Court holding that the jurisdiction of Court in relation to the subject matter is limited and that the decision rendered by it would be nullity if it does not fall within the limited jurisdiction. The general dictum that principle of *res judicata* will have no application to such order without jurisdiction, cannot be applied in the present case where the facts are entirely different.

63. Similarly, the judgment relied upon by the learned counsel appearing for the appellants in the case of ***Chief Justice of A.P. and another v. L.V.A. Dikshitulu and others*** reported in ***1979 AIR SC 193*** has no application to the facts of this case.

64. Learned counsel appearing for the appellants also relied upon a judgment of this Court in the case of ***A. Venkatesan v. Padmavathi and others*** [S.A.No.1396 of 2001, dated 12.01.2018], where, this Court has observed as follows :



“26.In the light of the above discussions, it is found that the suit laid by the plaintiff is not barred by limitation and it is further found that the claim of the defendants that they had perfected title to the suit property by adverse possession, as such, cannot be accepted and also found to be not established as the suit had been laid by the plaintiff within the period allowed by law, from the date on which she is entitled to make claim to the suit property. It is further found that the execution of Exs.A2/B12 would not in any manner revoke or cancel the settlement deed Exs.A1/B10 and Exs.A2/B12 having been executed by the person having no right in the suit property and is invalid and the settlee under the said document could not acquire any valid title to the suit property so as to defeat the right of the plaintiff. It is further seen that Ex.A2 cannot be termed as a family arrangement, as rightly determined by the first appellate Court and it is further seen that Ex.B26, settlement Will, claimed to have been executed by Govindaraj Iyengar, being only a life estate holder, would not in any manner affect the plaintiff's vested remainder right over the suit property and therefore, it is seen that the same is also not valid and binding upon the plaintiff. Accordingly, the substantial questions of law formulated in this second appeal are answered in favour of the plaintiff and against the defendants.”



It has been specifically held by this Court that the plaintiff is not a party to Ex.A2 nor even *eo nomine* party to the same. Therefore, it is held that it is not necessary for the plaintiff to seek cancellation of the document. The same is not the position here, where the plaintiff is *eo nomine* party not only to the Court proceedings, but also to the private sale that was effected by the 1st plaintiff's father as guardian of 1st plaintiff.

65.In view of the conclusions which we have reached on the analysis of overall facts and issues, precedents relied upon by both the sides, this Court finds that the suit in C.S.No.985 of 1993 for recovery of possession is not maintainable in the absence of a prayer to set aside the Court auction sale and private sales, in favour of defendants, on the ground of fraud, and the suit is also barred by limitation. Under Section 27 of Limitation Act, the right of plaintiff is extinguished. Therefore, the learned Single Judge is right in deciding the preliminary issue as against the plaintiff and dismissing the suit. This Court also finds that the father of 1st plaintiff had every right to alienate the property in suit A-Schedule as a guardian of 1st plaintiff, and therefore, the alienations made by the father of plaintiff are saved.



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Accordingly, all the points raised in this Appeal are answered against the appellants/plaintiffs.

66.As a result, this Court finds no merit in this appeal and hence, this Original Side Appeal is dismissed with costs.

**(S.S.S.R., J.) (C.K., J.)
13.07.2023**

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S.S. SUNDAR, J.
and
C.KUMARAPPAN, J.

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Judgment in
O.S.A.No.191 of 2008

13.07.2023