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C.R.P.No.1304 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 10.04.2023

Delivered On: 22.12.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.1304 of 2021

and

C.M.P.No.9152 of 2021

Ganesh

... Petitioner

Vs.

1.Ramathal

... 1st Respondent/Plaintiff

2.S.Chinnammal

3. K.Mohanambal

4.S.Deepa

5.R.Rani

6. Abisheikchandran

... Respondents 2-6/Defendants 1 to 5

7. Bank of Baroda

Represented by its manager,

696, Kamarajar Road,

Tiruppur Main Branch,

Tiruppur

8. M/s.Sasuri Arts

Rep. by R.Rani

3/6 Sakthi Nagar

Mannarai Post,

Tiruppur.

... Respondents



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PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the judgment and decree made in O.S.No.257 of 2018 dated 18.12.2018 on the file of the District Munsif Court, Avinashi

For Petitioner : Mr.S.Vijaya Kumar
Senior Counsel for
Mr.G.Bharadwaj

For Respondent1 : Mr.A.V.Raja

For R2 and R4 : No appearance

For R3 : Notice not ready

For R5 : Mr.N.Manoharan

For R6 : Mr.M.Sudhan

For R7 : Mr.P.Elaya Rajkumar for
M/s.Ramalingam Associates

ORDER

The learned Senior Counsel for the Revision Petitioner submitted that as per the dates and events, based on which Bank of Baroda have filed O.A. at Coimbatore. In continuation of the same, the property mortgaged by the fifth Respondent herein was brought to sale by public auction. The Revision



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Petitioner has emerged as successful bidder in public auction, and who had purchased the property in the public auction. The sale certificate was issued on 29.10.2018 in favour of the Revision Petitioner. Two months, thereafter on 04.12.2018 one Ramathal filed a Suit in O.S.No.257 of 2018 against Chinnammal and others on the file of the learned District Munsif, Avinashi, impleading one Rani and her husband Abishikchandran. Summons were issued to the Defendants to appear on 09.01.2019. The parties have received the summons and approached the learned District Munsif Court, Avinashi on 06.12.2019 and filed an advance hearing Petition in I.A.No.1733 of 2018 in O.S.No.257 of 2018 for recording the alleged compromise memo. Accordingly, the learned District Munsif, Avinashi had advanced the hearing of the Suit from 09.01.2019 to 06.12.2019 and referred the matter to Lok Adalath. Before the Lok Adalath, compromise was recorded and based on which a Decree was passed by the learned District Munsif Court, Avinashi and granting partition. Since, there was a fraud played upon the Lok Adalath as well as the Court of District Munsif, Avinashi, the person who had mortgaged the property with the fifth Defendant in the Suit, the Petitioner herein had approached this Court by way of the present Civil Revision Petition seeking to set aside the Lok



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Adalath Order.

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2. The learned Senior Counsel for the Petitioner submitted that earlier Hon'ble Mr.Justice M.S.Ramesh passed an order in C.R.P.No.3868 of 2017, based on which, compromise was recorded by the Lok Adalath and the decree passed by the District Munsif Court, Avinashi. Pursuant to the settlement recorded between the parties before the Lok Adalath is to be set aside and the public auction purchaser who was issued with sale certificate, which was registered on the file of the Sub Registrar, Avinashi, has to be protected by this Court.

3. The learned Senior Counsel for the Petitioner submitted that though the sale certificate was registered on the file of Sub Registrar Office, Avinashi, neither Bank of Baroda nor auction purchaser has been impleaded as parties. Therefore, this Civil Revision Petition is allowed, as the Respondent had played fraud on the auction purchaser by filing a Suit for partition, the auction purchaser has to be protected by this Court.



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4. The learned counsel for the seventh Respondent submitted that the Bank of Baroda had approached the Debt Recovery Tribunal to obtain an order, and the orders passed by the Debt Recovery Tribunal, Coimbatore, the possession was given to the public auction purchaser. The sale certificate was also issued to the auction purchaser on 29.10.2018, which was registered as Document No.4034 of 2018 on the file of the Sub Registrar, Avinashi. The learned counsel for the seventh Respondent seeks to protect the order of sale certificate and allow this Civil Revision Petition.

5. The learned counsel for the first Respondent submitted that the first Respondent and other Respondents belong to the same family and they had filed a Suit not only for this property but for other properties as well. One of the properties is the subject matter in the Civil Revision Petition. Therefore, he seeks to dismiss the Civil Revision Petition with the direction to the auction purchaser to work out his remedy before the Civil Court.

6. The learned Counsel for the 5th Respondent would submit that the one Ramathal had filed a suit in O.S.No.257 of 2018 before the learned District Munsif, Avinashi, seeking relief for partition in which 5th



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Respondent is the 4th Defendant in the suit. There were many items of the properties. The subject matter of the suit was referred for mediation. In the mediation, there was amicable settlement between the parties whereby, the Mediation Centre attached to the Trial Court had passed an award granting final decree to the 5th Respondent and other Defendants in the suit.

7. If the Petitioner's contention is to be accepted except subject property, all other properties are not related to the subject matter of this Civil Revision Petition. The Petitioner herein had alleged to have purchased the property in public auction only one item of the property (B schedule property). He cannot seek to set aside the Lok Adalat award passed by Taluk Legal Service Committee, Avinashi dated 18.12.2018.

8. As per the provisions of the Legal Service Authority Act, any award passed by the Lok Adalat or Mediation Centre can be challenged only by way of a writ petition or by filing a suit. Here, the Revision Petitioner claims that the 5th Respondent had played fraud along with other Respondent's. The allegation of fraud has to be proved in a Court by filing a suit who committed fraud, what was the fraud committed is to be stated by way of



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pleadings by invoking either Article 227 of Constitution of India by filing a writ petition or by invoking powers of this Court under Article 227 of Constitution of India. The Petitioner cannot seek remedy. It is to be contested and proved before the Trial Court by adducing evidence regarding the same. This petition is not maintainable under Article 227 of Constitution of India seeking to set aside the decree passed in the Lok Adalat on the allegation of fraud played by the 5th Respondent and other Respondents. Therefore, the learned Counsel for the 5th Respondent seeks to dismiss this petition since the petition is not maintainable under Article 227 of Constitution of India.

9. In support of his contentions, the learned Counsel for the 5th Respondent had relied upon the following rulings which are as follows:-

(i) **2012 (1) MWN (Civil) 701** in the case of ***K.Ponnamal Vs V.Thayanban.***

(ii) **(2014) 6 SCC 508** in the case of ***Jacky Vs Tiny Alias Antony and others.***

(iii) **(2019) 9 SCC 538** in the case of ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Others Vs Tuticorin Educational Society and Others.***



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(iv) **(2022) 10 SCC 477** in the case of ***Mohamed Ali Vs V.Jaya and Others.***

10. The learned Counsel for the Respondents 1 to 4 would submit that they are adopting the submissions of the learned counsel for the 5th Respondent .

11. Point for consideration:

Whether the Lok Adalat award passed in O.S.No.257 of 2018 dated 18.12.2018 in favour of the Respondents 1 to 6 and 8th Respondent is to be set aside?

12. The learned Senior Counsel for the Revision Petitioner would submit that the rulings cited by the learned Counsel for the Respondents is not at all applicable to the facts of the case. In the reported ruling **(2014) 6 SCC 508 [Jacky Vs Tiny Alias Antony and others]**, it was with regard to the grant of injunction in a suit for declaration and injunction wherein, the Trial Court had granted injunction against which, the Respondent before the Trial Court in which the tenant had filed a writ petition under Article 227 and 226 of Constitution of India. Based on which, the High Court had



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quashed the plaint or suit proceedings which was set aside by the Hon'ble Supreme Court stating that the party to the dispute have approached the Trial Court under Article 227 and 226 of Constitution of India cannot be invoked to quash the plaint or suit proceedings. Here, this is a case where the Plaintiff and Defendants in O.S.No.257 of 2018 on the file of the learned District Munsif, Avinashi, Coimbatore had played fraud upon the Revision Petitioner who is not at all a party to the proceedings before the Trial Court. It is the contention of the learned Counsel for the Revision Petitioner that the 5th Respondent herein had mortgaged the property and obtained loan from the 7th Respondent/Bank of Baroda. She had not repaid the loan and therefore, the Bank of Baroda which granted the loan after following the due procedures under the SARFAESI Act, 2002 had brought the property to public auction. The Revision Petitioner herein, as successful bidder was declared as a auction purchaser and sale certificate was issued by the Bank of Baroda favoring the Revision Petitioner which was also registered with the Sub-Registrar concerned. Therefore, the 5th Respondent, who had mortgaged the property cannot claim ignorance of the proceedings ending up in issuing of sale certificate. Further, if the intention of the Respondents 1 to 6 and 8th Respondent had been bona fide, they should have impleaded the



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auction purchaser of the property as Defendant in the suit. They had not done so. Therefore, the Revision Petitioner herein cannot be forced to file a suit and wait for the trial proceedings and face the rigours of the trial. This is a fit case under Article 227 of Constitution of India to set aside the Lok Adalat award passed favoring the Respondents.

13.The learned Senior Counsel also submit that the reported ruling in ***(2019) 9 SCC 538 [Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Others Vs Tuticorin Educational Society and Others]*** is a case where the Plaintiff had filed suit for declaration that the notice issued by the 6th Defendant in the suit convening the general body meeting and the Executive Committee meeting on the same day as illegal and for permanent injunction restraining the Defendants 5 and 6 from convening the meeting of the General Body and Executive Committee. In the suit, the Trial Court had granted interim injunction against which the Civil Revision Petition filed without exhausting the remedy available under Order 43 of CPC. Despite objections to the maintainability of the Civil Revision Petition, the High Court had allowed CRP and set aside the order of injunction granted by the Trial Court which was set aside in this reported ruling. In this case, before



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this Court the facts are different. The respondents had filed a suit for partition suppressing the fact that one of the items of the property was brought to public auction by sale after following due procedures under SARFAESI Act, 2002 by the Bank of Baroda/7th Respondent herein. When the Revision Petitioner is not a party to the suit proceedings and he had been a successful bidder in the public auction, he has no other remedy than to approach this Court under Article 227 of Constitution of India. Therefore, reported ruling will not help the Respondents herein.

14. In the reported ruling **(2022) 10 SCC 477 [Mohamed Ali Vs V.Jaya and Others]** that was a case where the Defendant who had suffered the decree had filed a petition under Order 9 Rule 13 CPC seeking to set aside the *ex parte* decree along with the petition to condone the delay in filing application to set aside the *ex parte* decree. The said application was dismissed. Instead of filing an appeal, he had approached the High Court in exercising its power under Article 227 of Constitution of India had erroneously commented upon the illegality of the *ex parte* decree as if it was exercising the appellate jurisdiction against the *ex parte* decree passed by



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the Trial Court. Therefore, the order of the High Court was set aside.

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15. Here, the facts of the case are different. It is the case where the Revision Petitioner is the successful bidder and auction purchaser of the property. He was issued with the sale certificate by Bank of Baroda which was duly registered with the Sub-Registrar. While so, the Respondents herein had filed a suit for partition suppressing the fact that one of the items of the property is the subject matter of mortgage with the Bank of Baroda which was sold in public auction. Thereby, the Respondents herein obtained a decree behind the back of the auction purchaser. Here is a case where Respondents are alleged to have suppressed the fact that one of the items of the property included in the partition suit in O.S.No.257 of 2018 before the learned District Munsif, Avinashi, Coimbatore District was mortgaged by the 5th Respondent with the 7th Respondent/Bank of Baroda and obtained loan. The 5th Respondent had not repaid the loan. Therefore, the 7th Respondent/Bank of Baroda had brought the property to sale by public auction as per the SARFAESI Act, 2002. The Revision Petitioner, being the auction purchaser of the property for valuable consideration, he was issued with sales certificate by the 7th Respondent/Bank of Baroda. Further, the 7th



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Respondent had registered the sales certificate issued to the Revision Petitioner herein. While the conduct of the Respondents 1 to 6 in filing the suit for partition by suppressing the fact with the 7th Respondent/Bank of Baroda had brought the property to public auction is found to be unacceptable and unreasonable in the eyes of law. Therefore, the claim of the Revision Petitioner is that the Respondents 1 to 6 had played fraud on the Petitioner as well as the Court is found justified.

16. Therefore, the Petitioner, who is not at all a party before the learned District Munsif, Avinashi, Coimbatore in the suit cannot file any appeal or revision. Therefore, he is forced to file a CMP seeking permission of the Court to approach this Court under Article 227 of Constitution of India. CMP.No.9152 of 2021 has been filed seeking to grant leave to institute the Civil Revision Petition under Article 227 of Constitution of India and CMP.No.9150 of 2021 has been filed by the petitioner to accept the cause title. In both the CMP's, notice was ordered to all the Respondents. Only after issuance of the notice to the Respondents and after hearing them, the Civil Revision Petition was admitted. The learned Senior Counsel for the Revision Petitioner, during the Course of his arguments placed reliance on



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the ruling of this Court reported in **1998 (1) CTC 470** in the case of **J.Sivasubramanian and another Vs A.N.Govindarajan and another** which is an earliest judgment on similar facts of the present case particularly relied on Paragraph No.8 and 13 of the judgment which is extracted hereunder:-

“8.Learned counsel for first respondent/plaintiff submitted that he has obtained a valid decree against the second respondent and the same is not liable to be impeached by third parties, petitioners herein, and their remedy is only either by filing a separate suit to declare their possession or to file an impleading application in the suit already filed with an application to set aside the decree. It is further contended that merely getting a concession or consent to pass a decree, is not fraud, nor can it be construed as collusion. If the second respondent agrees that he has no interest or agrees to pass a decree, a third party cannot challenge the same. At any rate, remedy under Art. 227 of the Constitution of India cannot be invoked”.

“13. I feel that all these decisions will show that a duty is cast on the litigant to plead, pray and get relief by placing all materials before Court. By suppressing facts and without impleading the necessary parties, a collusive decree is obtained. In the case on hand, the collusion is apparent. A person who has no right in the property concedes the right of the plaintiff to get a decree, and that too within 49 hours of filing of the suit. The result of this is getting unfair advantage over the rights of the petitioners and to deprive them of their properties. Both the respondents were aware that the petitioners are in possession on the basis of documents. They themselves (i.e. parties to the suit) admit the possession of the petitioners. But, without disclosing any of these documents, the power of attorney (agent) filed the suit against the principal and gets a decree, by consent. I have already stated as to what is the legal effect, i.e., the second respondent (defendant) himself is the plaintiff and defendant. It will be unjust to accept the contention of the respondents. Such a collusive decree also cannot



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be allowed to stand. After coming to know of these facts, if any Court shuts its eyes to realities, it will cease to be a Court of Justice. By invoking the judicial supervisory jurisdiction, I declare that the decree in O.S.No.7631 of 1997, on the file of XV Assistant Judge, City Civil Court at Madras is a nullity and on the basis of the said decree, possession of the petitioners shall not be disturbed. I further find that since the suit is filed fraudulently, the same is liable to be quashed, and I do so. O.S.No.7631 of 1997 is struck off from the file of the lower Court. The Civil Revision Petition is allowed with costs. Advocate's fee Rs. 2,500 (Rupees Two thousand five hundred). CMP. No. 17556 of 1997 for stay is closed.

17. He also relied upon the ruling of Hon'ble High Court of Andhra Pradesh reported in **MANU/AP/0554/2009** in the case of ***Batchu Subba Lakshmi and Others Vs Sannidhi Srinivasulu and Others*** particularly relied paragraph No.7 of the judgment which is extracted hereunder:-

“7. Under Section 21(1) of the Act an award of Lok Adalat shall be deemed to be decree of a Civil Court and under Section 21(2) of the Act every award made by Lok Adalat shall be final and binding on all the parties. No appeal shall lie to any Court against the award, and therefore, ordinarily a writ petition challenging award is also barred. But there may be situations where there being no compromise or settlement as envisaged under Section 20(3) and (5) of the Act, Lok Adalat may have passed an award. In other words, what would be the position if Lok Adalat passes an order even without parties arriving at a compromise or settlement among themselves. In such a situation, it cannot be said that there is an award of Lok Adalat, which can be enforced by a Civil Court as a decree. There may be yet another situation where in the absence of the parties to the lis or in the absence of one of the parties to the lis, award of Lok Adalat may have been obtained by



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impersonation, misrepresentation or fraud. Even in such cases, there being no valid award, Section 21(1) of the Act is not attracted. Having regard to the language of Article 226(1) of [Constitution of India](#), which empowers the High Court of a State to issue writs, orders or directions against any public authority or against authorities discharging public functions, the High Court can entertain a writ petition against an award of Lok Adalat. The phrase 'for any other purpose' appearing in Article 226(1) of Constitution, in our opinion, is broad enough to take within its purview the situations where a statute contains 'no Certiorari clause'. It is well settled that 'no Certiorari clause' in a statute does not bar the Constitutional Court from entertaining a petition for redressal of grievance and issue an appropriate order ex debito justitiae. Therefore, in either of the situations or any such other situations, a writ petition would lie.

Who can file writ petition challenging the Lok Adalat Award”.

18. The learned Counsel for the Revision Petitioners had also relied upon the rulings of this Court by Hon'ble Mr.Justice M.S.Ramesh reported in **CRP(NPD).No.3868 of 2017** particularly relied on Paragraph Nos.4, 22, 23, 26 which are extracted hereunder:-

“4.The learned Senior counsel for the petitioner submitted that the entire suit as well as the subsequent terms entered between the parties was a gross abuse of process of law, since there was collusion between the parties. According to him, the suit property, though was originally owned by Syed Kasim Ali in the year 1893, had been properly and legally conveyed to various persons through registered conveyances and by a Sale Deed dated 21.11.2012, the respondents 30 to 50 herein had lastly executed a Sale Deed in favour of the petitioner herein for a valid sale consideration. The learned Senior counsel submitted that the plaintiffs had suppressed all the encumbrances that took place in



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the suit property after 1893 and by colluding with the defendants, had obtained an award before the Lok Adalat. Such an act of suppression and collusion in order to deprive the petitioner herein from his title over the suit properties, amounts to playing fraud on the Court and also a gross abuse of process of law. As such, he would rely upon various decisions of this Court and prayed for setting aside the award of the Lok Adalat”.

"22.The issue as to whether the revision petitioner, who was not a party to the suit, can seek to set aside an award obtained by fraud or misrepresentation is also no more res-integra in view of the following decisions:

1) 1998 (1) CTC 470 [J.Sivasubramanian V. N.Govindarajan],

“1. A person who is not a party to the suit, but who is aggrieved by the decree, has come to this Court, under [Art. 227](#) of the Constitution of India, alleging fraud and collusion in obtaining the decree.

13. I feel that all these decisions will show that a duty is cast on the litigant to plead, pray and get relief by placing all materials before Court. By suppressing facts and without impleading the necessary parties, a collusive decree is obtained. In the case on hand, the collusion is apparent. A person who has no right in the property concedes the right of the plaintiff to get a decree, and that too within 49 hours of filing of the suit. The result of this is getting unfair advantage over the rights of the petitioners and to deprive them of their properties. Both the respondents were aware that the petitioners are in possession on the basis of documents. They themselves (i.e. Parties to the suit) admit the possession of the petitioners. But, without disclosing any of these documents, the power of attorney (agent) filed the suit against the principal and gets a decree, by consent. I have already stated as to what is the legal effect, i.e., the second respondent (defendant) himself is the plaintiff and defendant. It will be unjust to accept the contention of the respondents. Such a collusive decree also cannot be allowed to



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2) *Manu/AP/0554/2009 [Batchu Subba Lakshmi V. Sannidhi Srinivasualu]*

“7. Under Section 21(1) of the Act an award of Lok Adalat shall be deemed to be decree of a Civil Court and under Section 21(2) of the Act every award made by Lok Adalat shall be final and binding on all the parties. No appeal shall lie to any Court against the award, and therefore, ordinarily a writ petition challenging award is also barred. But there may be situations where there being no compromise or settlement as envisaged under Section 20(3) and (5) of the Act, Lok Adalat may have passed an award. In other words, what would be the position if Lok Adalat passes an order even without parties arriving at a compromise or settlement among themselves. In such a situation, it cannot be said that there is an award of Lok Adalat, which can be enforced by a Civil Court as a decree. There may be yet another situation where in the absence of the parties to the lis or in the absence of one of the parties to the lis, award of Lok Adalat may have been obtained by impersonation, misrepresentation or fraud. Even in such cases, there being no valid award, Section 21(1) of the Act is not attracted. Having regard to the language of Article 226(1) of [Constitution of India](#), which empowers the High Court of a State to issue writs, orders or directions against any public authority or against authorities discharging public functions, the High Court can entertain a writ petition against an award of Lok Adalat. The phrase 'for any other purpose' appearing in Article 226(1) of Constitution, in our opinion, is broad enough to take within its



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purview the situations where a statute contains 'no Certiorari clause'. It is well settled that 'no Certiorari clause' in a statute does not bar the Constitutional Court from entertaining a petition for redressal of grievance and issue an appropriate order ex debito justitiae. Therefore, in either of the situations or any such other situations, a writ petition would lie.

Who can file writ petition challenging the Lok Adalat Award

“8. The parties to the compromise or settlement, which is the basis for award of Lok Adalat, no doubt entitled to challenge the award on any of the grounds referred to herein above grounds. Ordinarily, a third party cannot challenge the award in a writ petition even if such award causes prejudice. The remedy of such party would be to institute a separate suit or proceeding for necessary redressal and seek appropriate decree of declaration by filing a suit within the period of limitation prescribed under law. Under Section 34 of the [Specific Relief Act, 1963](#), any person entitled to legal character or any right as to any property, may file a suit for declaration. Under this provision, any person can even institute a suit for declaration that the decree passed by Civil Court in an earlier suit is not binding on him. When a civil Court can even declare that an earlier decree of the Court is not binding on the party before it, we do not see any objection for a third party to institute a suit in a civil Court seeking a declaration that the award of Lok Adalat is not binding on him/her subject to the law of limitation. We however hasten to add that there may be extraordinary cases where a third party is meted with injustice at the behest of two or more conniving and colluding parties, who may have obtained an award of Lok Adalat by fraud or misrepresentation only to defeat the rights of such third party. In such cases within a reasonable period such third party may maintain a writ petition. But in such cases, there should be prima facie evidence of fraud or misrepresentation or collusion in obtaining the award of Lok Adalat. Even if such allegations are made and the question involves complicated questions of fact requiring voluminous evidence, third party should be left to seek remedy in a civil Court rather than preferring extraordinary remedy under Article 226 of Constitution. 13.Reverting to the facts



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of this case, there is no dispute that respondents 1, 2 and 4 are partners in 3rd respondent firm. There is also no dispute that respondents 1 and 2 filed O.S. No. 1 of 2004 against third respondent and its Managing Partner, the fourth respondent, for dissolution of firm and rendition of accounts. On 07.2.2004, plaintiffs and defendants therein signed memorandum of compromise and settlement whereunder they agreed to withdraw from the firm and fourth respondent was permitted to continue the business till 31.3.2008, failing which it shall be open to first respondent to execute the decree and recover possession of vacant site used as stockyard for the business of third respondent. The award passed by Lok Adalat on 07.2.2004 was signed by respondents 1 and 2. Fourth respondent signed on his behalf and also on behalf of third respondent firm. Either on the date of award of Lok Adalat or during pendency of suit before District Court, Nandyal, allegation of reconstitution of third respondent firm with petitioners and fourth respondent as new partners was not revealed. There is also no dispute nor it can be denied that partnership deed dated 01.4.2003 was executed by petitioners and fourth respondent on the stamp papers which had been produced (sic. purchased) by third respondent firm on 27.3.2001 long prior to disputes arose among respondents 1 to 4. This creates any amount of doubt on the case put up by petitioners. This doubt becomes strong when we realised that the petitioners 1 to 3 are stepmother, wife and grandfather respectively of fourth respondent and they are all living under the same roof. The allegation made by respondents 1 and 2 in their counter affidavit remains uncontroverted. These lend support to the submissions made on behalf of respondents 1 and 2 and we do not see strong reasons to discredit those submissions.”

3)2013 (6) CTC 166 [P.Subramani V. A.Periyasamy]

“21.In the present case, the entire proceedings relating to delivery of possession are vitiated by fraud. When an order is obtained by resorting to fraud, all the subsequent proceedings thereto will also render it vitiated. In this context, I am fortified by the decision of this Court reported in (J. Sivasubramanian and



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another vs. N. Govindarajan and another) 1998 1 CTC 470 relied on by the learned counsel for the revision petitioner. In that case, this Court took note of the fact that the suit was filed by suppressing material facts and by not impleading the proper and necessary parties. This Court held that fraud and collusion are palpable and that the decree was obtained by power of attorney agent as against his own principal thereby depriving his right over the property, which was purchased by him from the original owner. As the power agent filed the suit by suppressing the material facts, this Court held that "...in such cases, it is the duty of the Court to see that the suit itself is wiped off from the file." It was also held by this Court that in such circumstances the revision petition under Article 227 of the Constitution of India is very much maintainable. In that case, this Court, relying on the decision of the Honourable Supreme Court reported in S.P. Chengalvaraya Naidu (dead) by Lrs vs. Jagannath (dead) by Lrs and others, 1994 (1) SCC 1 culled out the legal propositions as follows:-

"12. In S.P. Chengalvaraya Naidu (dead) by LRs. v. Jagannath (dead) by LRs. and others, their Lordships have decided as to what is meant by 'fraud'. In paragraph 6, Their Lordships have held thus:- "... A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage 14 of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage..." Their Lordships have further said thus:- "A litigant who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side, then he would be guilty of playing fraud on the Court as well as on the opposite party." In the earlier portion of that Judgment, their Lordships have held thus:- "... We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation." The effect of such a decree obtained in such cases is also stated in that judgment thus:- "... The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants.



The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands.... A judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decreed by the first Court or by the highest Court has to be treated as a nullity by every Court, whether superior or inferior. It can be challenged in any court even in collateral proceedings." In Mahboob Sahab v. Syed Ismail and others, of the judgment, Their Lordships declared thus:- "... The reason is that fraud is and extrinsic collateral act, which vitiates the most solemn proceedings of courts of justice. If a party obtains a decree from the Court by practicing fraud or collusion, he cannot be allowed to say that the matter is res judicata and cannot be reopened. There can also be no question of res judicata in a case where signs of fraud or collusion are transparently pregnant or apparent from the facts on record." In paragraph 10, Their Lordships further declared thus:- "... Section 44 of the Evidence Act envisages that any party to a suit or proceeding may show that any judgment, order or decree, which is relevant under Sections 40, 41 or 42 has been obtained by fraud or collusion. Under Section 40, the existence of the judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such court ought to take cognizance of such suit or to hold such trial." In Indian Bank v. Satyam Fibres (India) Pvt. Ltd., it was declared thus:- "The authorities, be they constitutional, statutory or administrative, (and particularly those who have to decide a lis) possess the power to recall their judgments or orders if they are obtained by fraud as fraud and justice never dwell together (Fraud et jus nunquam cohabitant). Fraud and deceit defend or excuse no man (Fraud et dolus nemini patrocinari debent). The judiciary in India also possesses inherent power, specially under Section 151, CPC., to recall its judgment or order if it is obtained by fraud on court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers which are resident in all Courts, especially of superior jurisdiction. These powers spring not



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from legislation but from the nature and the constitution of the tribunals or courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rule, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Court's business. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the court and also amounts to an abuse of the process of court, the courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court.”

“23.On a overall appreciation of the observations in the aforesaid decisions, I am of the view that the award before the Lok Adalat was obtained by fraud and collusion exercised by the parties to the suit and as such, the award itself has no validity and deemed to be non-est. It is a settled law that fraud vitiates all solemn acts and an award obtained by playing fraud is nullity. Hence, this Court would be justified in setting aside the award by exercising its power under Article 227 of the Constitution of India”.

“26.In view of the fraud played by the respondents 1 to 35 by abusing the process of law and causing serious prejudice to the petitioner herein, these respondents have not only attempted to grab the valuable lands illegally but had also havoc on the petitioner's valuable land and put him under threat of losing his lands. Such illegal and nefarious acts requires to be dealt seriously and strictly and therefore, in the opinion of this Court, an exemplary costs of Rs.1 lakh can be imposed on these respondents”.

19. It is the contention of the learned Senior Counsel for the Revision Petitioner that here also the suit was filed for partition suppressing the fact that one of the items of the property was mortgaged by the 5th respondent



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herein who is the 4th Defendant in the Trial Court. When the suit was posted for appearance of Defendants, the Defendants had entered appearance on 06.12.2018 and filed a petition to advance the hearing along with the petition for referring the suit dispute to the Lok Adalat for amicable settlement and as rightly pointed out in the reported ruling **1998 (1) CTC 470 [J.Sivasubramanian and another Vs A.N.Govindarajan and another]** within a day, the Lok Adalat award was passed behind the back of the petitioner herein, who is the auction purchaser of the one of the items of the property in whose favour sale certificate was issued and it was registered with the Sub Registrar. Further, the 5th respondent and other Respondents belonging to same family, they cannot claim ignorance. Under those circumstances, the contention of the learned Counsel for the 5th Respondent which was adopted by the other Respondents except the 7th Respondent/Bank of Baroda can not at all be accepted that the Petitioner herein has to approach the very same Trial Court by filing a suit to declare the award passed by the Lok Adalat on 18.12.2028 as null and void and not binding on the Revision Petitioner herein .

20. Also the contention of the learned Counsel for the 5th respondent



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that the Petitioner herein has to plead in the plaint. What is the fraud played and who had played the fraud and has to prove it through proper evidence during trial which are treated as forcing the Revision Petitioner herein to face the ordeal of the trial for decades together. Thereby, to cause harassment to him which can not at all be accepted. Therefore, the rulings cited in (i) **2012 (1) MWN (Civil) 701**(ii) **2014 6 SCC 508** (iii) **2019 9 SCC 538** (iv) **2022 10 SCC 477** by the learned counsel for the 5th respondent is not at all applicable to the facts of this case and hence rejected. A party who is defeated by a fraud played upon him by the Respondents by suppressing the fact of having purchased a property through public auction conducted by the bank under the SARFAESI Act, 2002 cannot be forced to face the rigours of the trial, for no fault of his, for having played fraud on the party. He has to necessarily invoke the extraordinary powers of this Court under Article 227 of Constitution of India to seek the relief. Therefore, it is an apt case to exercise discretion under Article 227 of constitution of India. If Article 227 is not applicable to the facts of this case, then in no other case it can be exercised.

21. If the Petitioner herein had been impleaded as Defendant had the



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chance to agitate his rights before the Trial Court or before the Lok Adalat in which case, he would not have approached this Court under Article 227 of Constitution of India. Having obtained a decree or order behind the back of the Revision Petitioner by suppression and playing fraud, the 5th Respondent cannot be allowed to argue that Article 226 and 227 of Constitution of India cannot be invoked in this case and the revision petition is to be dismissed with a direction to Petitioner to approach the Trial Court by filing a suit pleading the fraud played against him by the Respondent's and also proving it through proper evidence regarding the fraud played upon.

22. In the light of the above, the arguments of the learned Counsel for the 5th Respondent is rejected. Therefore, the other Respondents adopted the arguments of the learned Counsel for the 5th Respondent is also rejected.

23. In the course of the arguments, the Respondents 1 to 6 also made an argument that they are ready to settle amicably with the Petitioner herein and ready to pay the amount paid by him for purchase of the property.

24. Having obtained an order behind the back of the Revision



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Petitioner, the submission of the learned Counsel for the Respondents 1 to 6 that they are ready to settle the dispute cannot be accepted as they have lost the *locus standi* by unfair and illegal method.

25. In the light of the order passed by the learned Single Judge of this Court in C.R.P.No.3868 of 2017 dated 18.12.2018, **this Civil Revision Petition is allowed** by imposing heavy cost of Rs.3,00,000/- (Rupees Three Lakhs only) on the Respondents 1 to 6. The Respondents 1 to 6 are directed to pay the cost of Rs.3,00,000/- (Rupees Three Lakhs only) to the Petitioner within a period of four weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

22.12.2023

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order
nr

To

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1. The District Munsif Court, Avinashi.

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2. Section Officer,
V.R.Section,
High Court, Madras.

SATHI KUMAR SUKUMARA KURUP, J.

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Pre-delivery Order made in
C.R.P.No.1304 of 2021



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22.12.2023