



W.A.No.2170 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 10.04.2023

Judgment Pronounced on : **13.04.2023**

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.2170 of 2022
and
CMP.Nos.16158 & 16155 of 2022
and
CMP.No.4641 of 2023

1.Mr.R.Vetri

2.Mr.N.Sivaraman

... Appellants

Versus

1.The District Collector,
Collectorate, Rajaji Salai,
Chennai – 600 001.

2.The Corporation of Chennai,
Rep. by its Commissioner,
Ripon Buildings,
Chennai - 600 003.

... Respondents



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Writ Appeal filed under Clause 15 of the Letters Patent Act, to set aside the order dated 04.08.2022 passed by the Learned Judge in Review Application No.166 of 2021.

For Appellants :: Mr. T.Thiageswaran,
for M/s.Waraon and Sai Rams

For Respondents :: Mr.R.Shunmugasundaram, Advocate General,
Assisted by Mr.Edwin Prabhakar,
Special Government Pleader, and
Ms.A.G.Shageena. (for R1)

:: Mr.A.Arun Babu,
Senior Counsel, for Corporation of Chennai.
(for R2).

JUDGMENT

D.BHARATHA CHAKRAVARTHY, J.,

This appeal is filed by the Writ Petitioners aggrieved by the order of the learned Single Judge, allowing the Review Application and consequently, passing the order of setting aside the earlier order dated 21.09.2021 passed in W.P.No.15507 of 2021 and declaring the Judgment and Decree made in A.S.No.122 of 2011, dated 03.01.2013, as a nullity and *non-est* in the eye of law and also further directing to initiate



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proceedings against the four persons, who had utilized the forged and fabricated the order, dated 15.04.1976 and dealt with the properties in S.Nos.6/8, 60/4, 88/5 and 89/1.

2. The appellants herein had originally come to this Court by way of W.P.No.15507 of 2021. It was the contention of the appellants that they are the absolute owners in respect of the property measuring an extent of Ac.1.05 cents, having been purchased by them by a registered Sale Deed dated 06.01.1990. Earlier, when "*Uzhavar Sandhai*" was sought to be established by the State Authorities over the said land, they had filed a suit in O.S.No.528 of 2000 seeking for declaration that they are the owners of the said property and consequently seeking for permanent injunction. Even though the said suit was dismissed, on an appeal preferred by them in A.S.No.122 of 2011 by Judgment and Decree dated 03.01.2013, the appeal suit was allowed and decree was granted that they are the owners of the property and also permanent injunction restraining the State Authorities from interfering with the above said land. In the teeth of the said decree, the respondents were taking steps to establish "*Micro Compositing Centre*"



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in the same lands and therefore, in the said Writ Petition they prayed that the respondent should consider their representation dated 23.02.2018 and 17.07.2020 and remove the shed, equipment and solid waste lying in the said property owned by them.

3. Considering the fact that the Competent Civil Court had decreed the suit, the learned Single Judge, by order dated 21.09.2021 allowed the Writ Petition by directing that the respondent cannot to go forward and construct the Micro Compositing Centre in the property and they have to necessarily consider the representations and steps must be taken to remove the structures already put up by them.

4. Thereafter, the District Collector, Chennai, filed the present Review Application No.166 of 2021, subsequently placing certain materials on record and praying to review the above order passed. Learned Single Judge after considering the facts placed in the review application, firstly, found that the suit which was decreed by the Appellate Court is primarily based on *Ex.A-3*, being the copy of 'A' register. The said 'A'



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register shows that in respect of S.No. 138/2 at Column No.11, the name of one *Rathinavelu* was written in hand, who is the predecessor in title of the writ petitioners. However, in respect of the type of the land use in Column 12, it is mentioned as "*Anadheenam*". Therefore, the Learned Single Judge found that on the face of it **Ex.A-3**, stood self redundant, as the name of the individual is entered in Column No.11, and "*Anadheenam*" in Column No.12 cannot go together.

5. Therefore, on a perusal of **Ex.A-3**, by itself speaks that unauthorized and incorrect interpolation was made. That apart, the Learned Single Judge took into consideration, the original 'A' register which was produced in the review and which did not contain the said name, *Rathinavelu*. The pictures of both the original and fabricated 'A' register themselves are a part of the Judgment of the Learned Single Judge. In view of the above, the Learned Single Judge, firstly found that **Ex.A-3**, which was the basis of the grant of a decree, is a forged and false document.



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6. This apart, *Ex.A-4*, which is claimed to be a *Ryotwari Patta* issued in the name of the said *Rathinavelu*, by the Assistant Settlement Officer, by order dated 15.04.1976, was again found to be a completely bogus document. The Learned Judge went thorough the order dated 15.04.1976 in which reference was made to two other orders dated 24.07.1975 and 17.07.1975. Upon verification of the originals of both the said orders, it is found that the same does not relate to either the subject matter of the property or to the vendor of the writ petitioners.

7. Therefore, it was clear and categorical, that the said *Ryotwari Patta*, which is claimed to be the basis of the title was also found to be bogus. In that view of the matter, the Learned Single Judge found that the decree of the Civil Court is only a result of the fraud played on the Court and the decree obtained by the writ petitioners is *non-est* in the eye of law and it can be set aside, even in the collateral proceedings and accordingly, not only reviewed and set aside the earlier passed in W.P.No.15507 of 2021, but declared the Judgment made in A.S.No.122 of 2011, dated



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03.01.2013, as nullity and *non-est* and also directed further action on the persons who committed fraud and forgery. Aggrieved by the same, the present Writ Appeal is filed before this Court.

8. *Mr.T.Thiageswaran*, Learned Counsel appearing on behalf of the writ petitioners would firstly submit that whether the 'A' register produced before this Court in the review application is true and correct can be tested only by giving an opportunity of cross-examination. Unless a review application filed in the civil suit and the genuineness or otherwise of the documents are re-examined, in the writ proceedings under Article 226, the Learned Single Judge ought not to have taken whatever has been averred in the review application as truth and without providing an opportunity to the writ petitioners ought not to have passed the orders.

8.1 Learned Counsel further relied upon the Judgment of the Hon'ble Supreme Court of India, in *State of Tamil Nadu Vs. Ramalinga Samigal Madam and Ors.*¹, would submit that even though *Ryotwari*

¹ AIR 1986 SC 794



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Patta was issued by the Assistant Settlement Officer is found to be invalid, still the Civil Court has the jurisdiction to consider the possessory title, and therefore, so long as the Civil Court Judgment remains final, the Learned Single Judge ought not to have passed the order under Appeal.

8.2 Learned Counsel also relied upon the Judgment, in ***Srinivasan and Ors., Vs. Sri Madhyarjuneswaraswami and Ors.***², for the proposition that the Civil Court can go into the question as to the title of the parties. Learned Counsel relied upon the Judgment of the Hon'ble Supreme Court of India, in ***Union of India (UOI) and Ors., Vs. K.C.Sharma & Co., and Ors.***³, to contend that in the present Writ Petition, the correctness of the decree in the suit cannot be gone into. He would contend that the fraud has to be proved by proper means and for the said proposition, learned Counsel further relied upon the Judgment, in ***Harjas Rai Mahikja (D) thr. L.Rs., Vs. Pushparani Jain and Ors.***⁴,. Learned Counsel also relied upon the Judgment of the Hon'ble Supreme Court of India, in ***S.Madhusudhan***

² MANU/TN/0123/1998

³ MANU/SC/0588/2020

⁴ MANU/SC/0002/2017



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Reddy Vs. V. Narayana Reddy and Ors.⁵, to contend that the Learned Single Judge went beyond the scope of the writ petition and the powers of review in passing the orders under appeal. Learned Counsel also placed reliance of the Judgment in **Radhey Shyam and Ors., Vs. Chhabhi Nath and Ors.⁶**, to contend that this Court cannot set aside the Judgment of the Civil Court in exercise of the powers under Article 226 of the Constitution of India.

9. Per *contra*, *Mr.R.Shunmugasundaram*, Learned Advocate General, appearing for the first respondent, taking this Court through the original records would demonstrate that firstly, the 'A' register which was marked as **Ex.A-3**, was a fabricated one. Secondly, the *Ryotwari Patta* alleged to have been given by the Assistant Settlement Officer was also completely a bogus document. As a matter of fact, the District Collector had found the documents to be completely bogus and had even passed an order to that effect.

⁵ MANU/SC/1013/2022

⁶ MANU/SC/0200/2015 : (2015) 5 SCC 423



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9.1 Learned Advocate General would submit that as a matter of fact, the petitioners challenged the said order of the collector but, the challenge was rejected, but, however, only with the observation that the civil suit is pending, where the rights can be agitated. However, the civil suit is decreed based on the self-same bogus document. Therefore, he would submit that the Learned Single Judge has rightly allowed the review application.

9.2 In support of his submissions, the Learned Advocate General relied upon the Judgment, in ***Ram Kumar Vs. State of Uttar Pradesh and Ors.***⁷, to contend that a decree obtained by fraud is to be treated as a nullity. Learned Advocate General also relied upon the Judgment, in ***Satluj Jal Vidyut Nigam Vs. Raj Kumar Rajinder Singh (Dead) through LR's., and Ors.***⁸, to contend that the fraud committed by the appellants cannot be overlooked or ignored on technical grounds and that fraud vitiates every solemn proceeding.

⁷ 2022 SCC OnLine SC 1312

⁸ (2019) 14 SCC 449



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10. We have considered the rival submissions made on either side and perused the material records of this case.

11. We are completely in an agreement with the Learned Single Judge, firstly that **Ex.A-3 'A'** register produced by the appellants in the suit is a manipulated and forged document. It is not necessary for any cross-examination or extensive trial in that regard as the said document speaks for itself. While the name of *Rathinavelu*, the predecessor in title is found in Column No.11, Column No.12, stands unaltered as "*Anadheenam*". "*Anadheenam*" means a land which is not standing in the name of any person. Therefore, if in the previous Column if the name of *Rathinavelu* is officially entered, as a natural corollary Column No.12 would have also been altered as the relevant use, namely, *Punja* or *Nanja* or House site, belonging to the said *Rathinavelu*. Therefore, the contention of the Learned Counsel for the appellants is that no opportunity was given to them in determining the issue is totally without any merits and on the face of it **Ex.A-3 'A'** register, is forged and manipulated document. Further, no



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equivalent records for the entry of the name of *Rathinavelu*, is also found or produced before this Court. The Collector, in his earliest order, has categorically mentioned that there are no equivalent proceedings or files to enter the name of the said *Rathinavelu*. While this being the position in respect of *Ex.A-3*, *Ex.A-4*, is again a bogus document on the face of it as clearly noted down by the Learned Single Judge and the original files have also been produced before us. We can see that the orders referred in the document, namely, the orders dated 24.07.1975 and 17.07.1975 absolutely relate to some other persons and property, and thus, *Ex.A-4*, is also a fictitious document. Therefore, no further trial or opportunity is necessary to come to such a conclusion. It is also strange that when the title is claimed to the vendor of the appellants through *Ryotwari Patta* granted under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, at the same stretch, it is also claimed that a regular *Patta* in *Ex.A-2*, is also issued in the name of the father of the said *Rathinavelu*. Therefore, the case smacks falsity by itself.



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12. Therefore, the decree of Civil Court is a result of fraud and thereafter using the same before this Court in the writ petition amounts to further perpetration of fraud.

13. It goes without saying that fraud vitiates every solemn proceeding and no right can be claimed by the fraudsters on the ground of technicality. When the Judgment obtained by playing fraud on the Court is *non-est* in the eye of law, the petitioners cannot take umbrage under the technical arguments that separate proceedings ought to have been initiated against the suit proceedings by filing an appeal or for exercising the power under Article 227 of the Constitution of India. When the land which is meant for public use is grabbed with utmost contempt to the law of land, by creating false records, it cannot be perpetuated or saved by application of any equitable doctrine or technical arguments. The said position has been clearly laid down by the Hon'ble Supreme Court of India, in ***Satluj Jal Vidyut Nigam Vs. Raj Kumar Rajinder Singh (Dead) through LR's., and Ors., case*** cited Supra, more particularly Paragraph No.71 of the Judgment, which is extracted hereunder:-



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“ 71. In *Ram Chandra Singh v. Savitri Devi* [*Ram Chandra Singh v. Savitri Devi*, (2003) 8 SCC 319] , it was observed that fraud vitiates every solemn act. Fraud and justice never dwell together and it cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*. This Court observed as under : (SCC pp. 327-29, paras 15-18, 23 & 25)

“15. Commission of fraud on court and suppression of material facts are the core issues involved in these matters. Fraud, as is well known, vitiates every solemn act. Fraud and justice never dwell together.

16. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter.

17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.

18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.



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23. *An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous.*”

13.1 This apart, the Hon'ble Supreme Court of India, in ***S.P.Chenalvaraya Naidu Vs. Jagannath***⁸, in paragraph No.5 has held as follows:

“5..... 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. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.”

⁸ (1994) 1 SCC 1



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14. Thus, we find no merits in the Writ Appeal filed by the appellants and the appeal stands dismissed. No Costs. Consequently, the connected miscellaneous petitions are closed.

(T.R.,A.C.J.) (D.B.C, J.)
13.04.2023

Index : Yes
Speaking Order
Neutral citation : Yes

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To

- 1.The District Collector,
Collectorate, Rajaji Salai,
Chennai – 600 001.
- 2.The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai - 600 003.



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**THE HON'BLE ACTING CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.,**

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Pre -Delivery Judgment in

W.A.No.2170 of 2022
and
CMP.Nos.16158 & 16155 of 2022
and CMP.No.4641 of 2023

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