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C.R.P. No.2902 of 2023 &
C.M.P.No.17968 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

**Civil Revision Petition No.2902 of 2023 &
C.M.P.No.17968 of 2023**

1. Ds.S.Sudhakaran
2. Aru Veerakumar
3. Benen Rajeshkumar

...Petitioners

Vs.

- Neelavathi (Deceased)
T.Suthanthiram (Deceased)
1. S.Mahendran
2. S.Kalaimamani
3. S.Perarasan
4. B.Kamalambal
Sundari (Deceased)
Santhanam (Deceased)
5. Nirmala
6. Kumaravel
7. Pace Builders
rep. By its Managing Director,
M.Krishnakumar
No.58, Annanagar East,
Chennai
8. Ben Foundation,
rep. By its Managing Director,
Mr.M.Rajan Der, South Park Road,
Anna Nagar West,
Chennai – 600 040
9. The Sub Registrar,
Villivakkam,
No.685, 11th Street, Anna Nagar
East, Chennai – 600 101
10. Vasu
11. Suresh
12. Sumitra



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13. Rani
14. Priyanka
15. Vidhayavathi
16. Shanthidevi
17. Umashankari
18. Manimegalai
19. Soundararajan
20. Krishnakumar

...Respondents

Civil Revision Petition filed under Article 227 of the Code of Civil Procedure to set aside the preliminary decree and Judgment made in O.S.No.195 of 2009 dated 24.08.2022 on the file of the learned III Additional District & Sessions Court, Thiruvallur @ Poonamallee.

For Petitioners : Mr.K.Sathishkumar

For Respondents : Mr.Saraswathi Muthiah
for R1 to R4, R12 to R14
Mr.Abudu Rajarathinam, Senior Counsel for
G.Krishnamumar for R7
Mr.T.Mathi for R16 to R20
Mr.Thomas T.Jacob for R8
R5, R6, R9 to R11 – No appearance

ORDER

The present petition has been filed to set aside the preliminary decree and Judgment made in O.S.No.195 of 2009 dated 24.08.2022 on the file of the learned III Additional District & Sessions Court, Thiruvallur @ Poonamallee by invoking Article 227 of Constitution of India.



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2. The petitioners, who are not parties to the suit, neither relatives to the plaintiffs or defendants, claim the right over the suit schedule properties. The present Revision petition is taken up for final hearing by consent on either side.

3. The brief facts of the suit in O.S.No.195 of 2009 is as follows:-

(i) The suit schedule properties, i.e., Survey Nos.224/1, 165, 249, 250/1 and 250/2A in Padi Village is the subject matter of the partition suit filed by one Neelavathy (died) and five others as against one Sundari [died] and 17 others in O.S.No.195 of 2009 claiming for partition in the schedule mentioned properties into five equal shares and to allot one share to the plaintiff by passing a preliminary decree and consequently prayed to allot such share to the plaintiffs by appointing Advocate Commissioner to divide suit schedule properties into four equal shares and to put the plaintiff in possession.

(ii) Originally the suit schedule property was in possession and enjoyment of forefathers of one Annamalai Naicker, father of the plaintiff and defendants 1 to 3, who after partition, inherited the suit schedule property and enjoyed and possessed along with his daughters and sons. Further, the said Annamalai Naicker along with daughters and son had executed a General Power of Attorney dated 18.04.1992 in favour of one



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Thirumurugan with regard to the suit schedule property. However, it is seen that Annamalai Naicker died during the year 1999 and his one of the daughter, one Malarvizhi, predeceased Annamalai Naicker in the year 1998, thereby the general power of attorney deed ceased to stand, since then, the plaintiff and defendants 1 to 3 have been jointly enjoying and possessing the vacant suit schedule property.

(iii) The plaintiffs states that she demanded the partition of the suit schedule property to which the defendants were not obliging and without the plaintiffs' knowledge, the defendants 1 to 3 sold part of the suit schedule property bearing Survey No.224/1 along with other properties in S.Nos.224/2 and 225 to one Kumaravel, who is arrayed as the 4th defendant in the suit. The plaintiff had initially sent a legal notice on 13.03.2009 to the defendants 1 to 4 seeking for partition of the suit schedule property and pleaded that the sales executed by the defendants 1 to 3 in sale deed document no.3705 / 2004 to the 4th defendant as null and void and sought for the partition of the suit schedule property. Pending the suit, the 4th defendant seems to have entered into a joint venture with the 5th and 6th defendants and hence they were made as parties in the suit and they were impleaded as per order dated 06.03.2013 made in I.A.No.730 of 2012. The court below dismissed the suit and passed a preliminary decree, as against the same, the petitioners, have come up with the present revision.



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4. Contrary to the said pleadings, the 5th defendant had filed a written statement before the District Court, Poonamalee by denying the very averments of title being held by Annamalai Naicker, father of the plaintiff, as there was no documentary evidence to show that Annamalainaicker possessed and enjoyed the suit schedule property and to which the plaintiffs and defendants 1 to 3 are entitled for the same.

5. Further, the 5th defendant also added that they were the power agent for Survey No. 224/1, measuring an extent of 2 acres 76 cents, S.No.224/2, measuring an extent of 10 cents and Survey No.225, measuring an extent of 14 cents, altogether measuring to an extent of 3 acres. The above mentioned survey numbers measuring an extent of 5 acres, originally belong to one Balammal, Thenmozhi, Dhanasekaran, Jayaram Naicker, Lingesan Naicker, Sundari, Santhanam, Nirmala and Sivaprakasam. It is further averred in the written statement that the said land was acquired by Tamilnadu Housing Board under the Award in 4/81 dated 06.11.1981 along with some other lands were acquired and that the property was taken over by the Executive Engineer, Tamil Nadu Housing Board on 23.01.1982 and the possession is with the Housing Board. The said land owners had approached the Government of Tamilnadu to reconvey the said lands, which were acquired, since there was no response, they filed the W.P.No.15248 of 2005 before this Court and by an



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order dated 29.04.2005, this Court directed the official respondents to reconvey the properties to the land owners, which was challenged by the official respondents by way of filing a Writ Appeal No.2430 of 1999 and the Hon'ble Division Bench of this Court directed the land owners to repay the compensation received by them together with an interest at the rate of 9% to the Housing Board.

6. Further, it is seen from the said order in W.A.No.2430 of 1999 that the Hon'ble Division Bench directed the land owners to repay the compensation amount together with 9% interest per annum within a period of two months from the date of receipt of copy of the order, failing which, the land owners were also directed to pay simple interest at 16% per annum till the repayment. After the repayment, the official respondents shall reconvey the properties to the land owners within a period of one month. Thereafter, contempt petition in Contempt Application no.94 of 2007 in W.A. No.324 of 2007 was filed for a direction to reconvey the land and before the Court could direct, the Government of Tamilnadu, as per the Letter Ms. No.305 Housing and Urban Development Department dated 28.09.2007 have directed the Tamil Nadu Housing Board to re-convey the lands to the said owners, as claimed by the 5th defendant.



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7. Thereafter, the said Balambal, Thenmozhi, Dhanasekar, Jayaram Naicker, Lingesh Naicker, Sundari, Santhanam and Nirmala and Sivaprakasam from whom the above said lands were acquired repaid the total award amount with interest, which was received by the Tamilnadu Housing Board and agreed to reconvey the property. The Board represented by the Executive Engineer had reconveyed the deed on 05.10.2007, which was registered as Doc.No.3703 of 2007 before the Sub Registrar, Villivakkam on 05.10.2007. Immediately after the re-conveyance was done in favour of the owners as claimed by the 5th defendant, six separate deeds of power of attorney have been executed in favour of the 5th defendant to develop the property into a multistoreyed building. Based on the said Power of Attorney, the 5th defendant had obtained an approval for the said building construction, on payment of charges and thereafter, they have also started the construction. According to the averments, the entire projects construction was over and completed and 300 flats have been sold out to different individuals, who are in occupation of the said flats.

8. When the matter stood thus, the present revision petitioners, who are the purchasers of the flats were served with a notice dated 23.04.2023 sent by the respondents 12 to 14 claiming that they have obtained 1/5th right under the preliminary decree passed in O.S.No.195 of 2009 dated



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24.08.2022 and in that notice, the respondents 12 to 14 have directed the individual owners of the flat to handover the vacant possession to them, failing which, they will initiate appropriate legal action. After receipt of the said notice sent by the respondents 12 to 14 to the individual flat owners, the petitioners came to know about the preliminary decree made in O.S.No.195 of 2009, dated 24.08.2022, to which neither the petitioners nor the other flat owners were made as parties and aggrieved by the said preliminary decree, the present Revision Petition has been filed by the petitioners obtaining leave from this Court, as 3rd parties to challenge the preliminary decree made in O.S.No.195 of 2009 dated 24.08.2022 by raising various grounds and the main ground is abuse of process of law.

9. The revision petitioners in the present Revision has stated that the petitioners were not aware of the preliminary decree as neither the builder nor the original owner from whom the builder or original owner have informed. Whether the parties to the suit, who have have entered into the joint venture property has any genealogical link, as claimed by the plaintiffs in the original plaint. That being case, the court below ought not to have granted the preliminary decree, which is perse illegal and the suit itself ought not to have been entertained for want of adding necessary parties to the suit, i.e., individual flat owners, who have purchased the flats from the 5th defendant.



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10. The learned counsel appearing for the petitioners, would further argue that the suit has been filed seeking for partition is bad in law when the plaintiffs claim for title, to which they seek partition is totally a different from the version of the 4th and 5th defendants in the suit and is absolutely an abuse of process of law and the suit itself be terminated. That apart, when the 5th defendant, who is the builder has acquired necessary approvals from the statutory authorities, only after producing all the documents relevant for grant of approval, the authorities having verified and convinced about the title, held by the 4th defendant and while granting approval, the authorities have clearly verified the title, which is essential for granting the building approval and based on which, the 5th defendant had put up more than 300 individual flats by towers and sold them to the respective flat owners, who are in possession and enjoyment till date from the date of purchase. These facts were known to the plaintiffs and the legal heirs, but the plaintiffs and defendants have not taken any steps to implead the subsequent purchasers, who had purchased the flats from the respective title holders. The question of partition when there are disputes with regard to the title to the third parties, the preliminary decree ought not to have been ordered in favour of the plaintiffs, as necessary parties were not heard.



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11. Moreover, the plaintiffs who had obtained preliminary decree as early as 24.08.2022, had not applied for any final decree proceedings, but the respondents 12,13, and 14 who are the daughters of the 10th respondent and ThiruVasu, had issued notice to the flat owners. The plaintiffs, who had obtained preliminary decree in 24.08.2022 itself, has not applied any final decree proceedings. Though in the partition suits, the defendants will also be the beneficiaries, the respondents 12,13 and 14 have issued a legal notice to all the flat owners, calling upon them to handover the possession. Hence for non-joinder of necessary parties, the decision rendered by the trial court is erroneous and has to be set aside.

12. The learned senior counsel appearing on behalf of the 5th defendant would also contend that when the title of the land, which is under partition is disputed, the question of partitioning the property and passing a preliminary decree when neither the plaintiffs nor the defendants 1 to 3 nor the legal heirs have produced any documents of title, which is claimed as the base documents for partition, is not valid. In the absence of any such title deed produced as document, supported with genealogical tree, the question of partitioning the property that too when dispute has been raised by the defendants 4 and 5 about the title to the property, does not arise. The question of passing preliminary decree in favour of the plaintiffs would not only have the adverse effect on defendants 4 and 5 but also on



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the 300 flat owners, who either purchase the same from the 4th or 5th defendants, for which, it is necessary to add all the flat owners as party defendants to the suit and the preliminary decree is bad in law and it has to be set aside for non-joinder of necessary parties.

13. In contrary to the said argument made, the learned counsel for the plaintiffs and the defendants 12, 13 and 14 in the suit would contend that the necessary documents have been filed to prove that the suit schedule property belong to Annamalainaicker, who is none other than the father of the plaintiffs and the defendants 1 to 3. Upon his death, the plaintiffs and the defendants 1 to 3 have become legal heirs entitled for 1/5th share. The defendants 4 and 5 have clandestinely executed bogus documents in their favour and they have developed the suit schedule property without the consent of other legal heirs of Annamalai Naicker and sold the properties by way of constructing flats to individual owners, which itself is illegal. She would also further contend that the present Revision has been filed by the petitioners, who are no way connected to the suit proceedings and cannot challenge the preliminary decree, which is a decree granted in partition suit filed among the family members and the Revision Petition has to be dismissed on the ground of non-maintainable.



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14. When the revision petition was heard at the admission stage, an order of status quo was granted by this Court. Further, when the respective counsels entered appearance, this Court was of the view that the matter could be settled by way of a mediation. Hence this Court appointed one Advocate, Mr.A.R.Ramanathan, as mediator, to mediate between the legal heirs of late Annamalai Naicker, who were the plaintiffs and defendants in the suit along with defendants 4 and 5 in the suit from whom more than 300 members have purchased the flats. The said advocate has sent a notice to the respondents through post as well as emails for their appearance on 09.09.2023, which was subsequently adjourned to 15.09.2023, which has been found in his report filed on 19.09.2023. The mediator in his report has expressed his view that all these efforts have been failed and he could not settle the issue and in the report, he has stated that there is no consensus arrived between the parties and the dispute could not be resolved and hence with the consent of the parties, the report was accepted and the main revision petition is again posted before this Court.

15. When the matter was taken up for final hearing on merits, this Court is of the view that there are three questions need to be answered in the Revision.



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“(i) Whether the present Revision filed by the third parties, is maintainable as against the preliminary decree between the family members?

(ii) Whether the suit is liable to be terminated for want of non-joinder of necessary parties?

(iii) Whether the preliminary decree granted by the trial court can be sustained when the dispute with regard to the title has been raised?.”

16. As far as Question Nos.1 and 2 are concerned, it is seen from the records that the suit has been filed in O.S.No.195 of 2009 which was originally filed by one Neelavathy, as plaintiffs and Sundari, Santhanam, one Nirmala, who claim to be the legal heirs of Annamalai Naicker, however, during the pendency of the suit, the 1st and 2nd plaintiffs died thereby impleading 3 to 6, as legal heirs of Neelavathy and Sudanthiram. The defendants 1 to 3 were also legal heirs of Annamalai Naicker and siblings of Neelavathy and Sudanthiram, However, defendants 1 and 2 also died, thereby the legal heirs of the defendants 1 and 2, as defendants 8 to 18 were brought on record. The claim made by the plaintiffs is that originally the suit schedule property belong to Annamalai Naicker and the said Annamalai Naicker during his life time had executed a general power of attorney along with the plaintiffs 1 and 2 and defendants 1 to 3 in favour of one Thirumurugan on 18.04.1992. As the said Annamalai Naicker died



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during the year 1999 and another daughter, viz., Malarvizhi also predeceased Annamalai Naicker, the general power of attorney executed by Annamalai Naicker on 18.04.1992, ceased and it has come to an end. Thereafter, the plaintiffs had sought for separate possession from the suit property from the defendants 1 to 3, which was not acted upon. Hence issued legal notice was issued to the defendants 1 to 4 for partition of the property and the claim was based on the fact that the property has been inherited property from her father, thereafter approached the Court for seeking partition. The other defendants have not filed any written statement. The 5th defendant through his written statement, claim title from Balammal, Thenmozhi, Dhanasekaran, Jayaram Naicker, Lingesa Naicker, Sundari, Santhanam, Nirmala, Sivaprakasam from whom the lands were acquired for Tamilnadu Housing Board and an award seems to have been passed in Award No. 4 of 1991, which is marked as Ex.A.12.

17. Subsequently, the above referred persons requested the Government for reconveyance for S.No.224/1 measuring to an 2 acre of 75 cents, S.No.224/2, measuring an extent of 10 cents and S.Nos.225 measuring an extent of 14 cents together 3 acres, to which the 5th defendant is holding power of attorney from their respective owners. Regarding the 5 acres, when the land is not re-conveyed, the writ petition was filed before this Court and this Court by an order dated 29.04.2005



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had directed the respondents to reconvey the lands in the above said survey numbers to the extent of 5 acres, as against which, Writ Appeal has been filed in W.A.No.2430 of 1999 and the Hon'ble Division Bench has directed the land owners to pay the compensation amount with 9% interest to the Tamilnadu Housing Board, which has been paid by them within the said period.

18. Since the orders have not been complied with, contempt petition has been filed and the government issued an order on receipt of the above amount with interest, the reconveyance deed was registered on 05.10.2007, on the file of SRO, Villivakkam in Document No.3703 of 2007 and it is only after the reconveyance, the power of attorney was executed in favour of the 5th defendant by the respective owners in six different power of attorney to develop the properties into multistoried building. Only thereafter, the 5th defendant has applied for plan approval by paying necessary charges and obtained the same in the year 2010 and when the same was in process, the suit in O.S.No.195 of 2009 was filed and the defendants 4 and 5 were made as parties and the plaintiffs were well aware of the development works being carried out by the defendants 4 and 5. The plaintiffs and the defendants 1 to 3 have not filed any application or made any other attempt to seek injunction against the 4th and 5th defendants from any manner dealing with the property or not alienating or



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encumbering the suit schedule property to any third parties. Also it is seen from the records that neither the plaintiffs nor the defendants who claimed right over the property has made any attempt to approach the Court, when the suit O.S.No.124 of 2009 was pending trial and the 5th defendant has proceeded further in constructing and developing the suit property into multistoried building.

19. It is further seen that the building and the joint venture agreement executed between the 4th and 5th defendants. The 4th defendant, who had developed the suit schedule property has made wide publication for sale of flats which was constructed in the suit schedule property even before the construction was made. The said publication was given inviting prospective buyers and the buyers had booked their flats upon payment of charges as specified in the advertisement by the 4th and 5th defendants. When the flat construction was completed in the year 2016, the same were handed over to the respective buyers, who already paid the charges. The suit was still pending and from the records, it is seen that the amendment of the plaint filed in the year 2022 with respect to the impleading of parties, ie., legal heirs of 1 and 2 plaintiffs and the defendants 1 and 2 in I.A.no.9 of 2022, on 28.06.2022, even at that point of time, knowing very well the final construction was also completed and purchasers have taken possession of their respective flats from 4th and 5th defendants, the plaintiffs have not taken any steps to get appropriate orders.



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20. It was brought to the notice of this Court that there are 6 towers altogether and 300 flats were constructed and completion have taken place in each tower in a phased manner and possession was handed over between 2013 to 2015 and final completion was done in the year 2016 and it is to be seen that construction cannot be done over night and the flats cannot be put up all of a sudden. Even when the publication was made by the 4th and 5th defendants, the plaintiffs have not objected or challenged the publication and subsequently, plan approvals and other statutory requirements were obtained by the 4th and 5th defendants, which were widely published and no objections were made by the plaintiffs and defendants, who are claiming right over the property. The suit was pending from the year 2009 seeking for partition and the parties have left the 4th and 5th defendants to develop the property, thereby creating 3rd party interest to come in. The 4th and 5th defendants sold the flats to more than 300 individuals and in fact, the 4th and 5th defendants is drawing the title over the property and appropriate legal opinion, based on which a title would be placed on record. But nowhere the plaintiffs nor the defendants 1 and 2 or the respective legal heirs has made any attempt to prove their case, this would show that the plaintiffs, defendants 1 and 2 and the legal heirs are attempting to gain the property, which is an abuse of process of law.



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21. On a perusal of the records it is seen that when the amendment was allowed as per I.A.No.9 of 2022 dated 28.06.2022, the flat owners were also occupying the respective flats in between the year 2013 to 2015, it was more than 8 years, they are in possession and occupation, that being so, when the legal heirs were brought on record only on 28.06.2022, nothing prevented the plaintiffs and the defendants 1 to 3 and the respective legal heirs to bring the flat owners on record before seeking the preliminary decree as they were all interested and necessary parties after the year 2013, on this ground, preliminary decree suffers and has to be set aside for non-joinder of necessary parties, especially when the plaintiffs, defendants 1 to 3 and the respective legal heirs are very well aware of the construction made and purchase made by the respective individuals. When these flat owners are not made as parties to the proceedings, behind their back, suppressing the actual facts, preliminary decree has been obtained on 24.08.2022, no steps have been taken by the plaintiffs for final decree proceedings, instead the defendants 10, 11 and 12 had issued individual notice through their counsel to the independent flat owners to handover possession to them, based on the preliminary decree dated 24.06.2022. Few members of the flat owners, who have received the notice had approached this Court questioning the preliminary decree and this Court after considering their plaint had granted leave and thus the present Revision has been filed.



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22. Though the plaintiffs as well as the defendants had approached the trial court seeking for partition as early as 2009, who had absolute knowledge of developments being carried out in the suit schedule property by the 4th and 5th defendants, the plaintiffs nor the defendants 1 to 3, who had claimed right over the suit property acted in a prudent manner known to law, however, they have left the 4th and 5th defendants to construct the towers and selling it to third parties, now the third parties interest has also crept in and more than 300 individual flat owners have purchased and the said sale has been conducted by the 4th and 5th defendants.

23. Under the above said facts and circumstances this Court holds that the preliminary decree without making the interested parties especially, the 300 individual flat owners, as to the parties to the suit, the preliminary decree suffers from non-joinder of necessary parties and as such, the parties who are interested and their grievance over the preliminary decree, if being agreed and satisfied, no prejudice would be caused to the other parties and hence the present Revision is maintainable under Article 227 Constitution of India, thereby question nos.1 and 2 are answered in favour of the petitioners.

24. As far as question no.3, 'Whether the preliminary decree is sustainable' is concerned, when a specific stand is taken by the 5th



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defendant as to the title upon which the plaintiffs claim right over the property, the trial court ought to have gone in detail permitting the parties to lead evidence on the title that too when either of the parties dispute the title. Until and unless the title is decided, the question of ordering preliminary decree is non-est in law. It is also to be pointed out that the Judgment referred by the learned senior counsel appearing for the 7th respondent in the Revision Petition relies on the decision of this Court reported in **1998 (1) CTC 470 [J.Sivasubramanian and Another Vs. N.Govindarajan and Another]** wherein at Paragraph nos.12 and 13, it is observed as follows:-

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

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

Their Lordships have further said thus:-

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

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

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

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



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

In paragraph 10, Their Lordships further declared thus:-

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

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

"The authorities, be they constitutional, statutory or administrative, (and particularly those who have to decide a lis) possess the power to recall their judgments or orders if they are obtained by fraud as fraud and justice never dwell together (Fraud et jus nunquam cohabitant). Fraud and deceit defend or excuse no man (Fraud et dolus nemini 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



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file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers which are resident in all Courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rule, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Court's business. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the court and also amounts to an abuse of the process of court, the courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court. Similarly, where the court is misled by a party or the court itself commits a mistake which prejudices a party, the court has the inherent power to recall its order."

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



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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.

25. It is also duty cast upon the litigant / parties to place all the details before the Court so that no order or a collusive decree shall be obtained suppressing the facts and without impleading necessary parties, this is a principle laid down by the **Hon'ble Supreme Court in S.P.Chengalvaraya Naidu (Dead) by Lrs., Vs. Jagannath (Dead) by Lrs., and Others] [(1994) 1 (Supreme Court Cases) 1]**, wherein at **Paragraph Nos. 3 and 5 and among other things at Paragraph No.4** it is averred as follows:-

"3. One Jagannath was the predecessor-in-interest of the respondents. He was working as a clerk with one Chunilal Sowcar. Jagannath purchased at court auction the properties in dispute which belonged to the appellants. Chunilal Sowcar had obtained a decree and the court sale was made in execution of the said decree. Jagannath had purchased the property in the court auction on behalf of Chunilal Sowcar, the decree-holder. By a registered deed dated November 25, 1945, Jagannath relinquished all his rights in the property in favour of Chunilal Sowcar. Meanwhile, the appellants who were the judgment-debtors had paid the total decretal amount to Chunilal Sowcar. Thereafter, Chunilal Sowcar, having received the decretal amount, was no longer entitled to the property which he had purchased through Jagannath. Without disclosing that he had executed a release deed in favour of Chunilal Sowcar, Jagannath filed a suit for partition of the property and obtained a preliminary decree. During the pendency of the suit, the appellants did not know that Jagannath had no locus-standi to file the suit because he had already executed a registered release deed, relinquishing all his rights in respect of the property in dispute, in favour of Chunilal Sowcar. It was only at



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the hearing of the application for final decree that the appellants came to know about the release deed and, as such, they challenged the application on the ground that non-disclosure on the part of Jagannath that he was left with no right in the property in dispute, vitiated the proceedings and, as such, the preliminary decree obtained by Jagannath by playing fraud on the court was a nullity. The appellants produced the release deed (Ex.B-15) before the trial court. The relevant part of the release deed is as under:-

Out of your accretions and out of trust vested on me, purchased the schedule mentioned properties benami in my name through court auction and had the said sale confirmed. The said properties are in your possession and enjoyment the said properties should henceforth be held and enjoyed with all rights by you as had been done:

So far. If any civil or criminal proceedings have to be conducted in respect of the said properties or instituted by others in respect of the said properties you shall conduct the said proceeding without reference to me and shall be held liable for the profits or losses you incur thereby. All the records pertaining the aforesaid properties are already remaining with you.

4.The High Court further held as under: -

From this decision it follows that except proceedings for probate and other proceedings where a duty is cast upon a party litigant to disclose all the facts, in all other cases, there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence. It would cut at the root of the fundamental principle of law of finality of litigation enunciated in the maxim 'interest republican sit finis litium' if it should be held that a judgment obtained by a plaintiff in a false case, false to his knowledge, could be set aside on the ground of fraud, in a subsequent litigation.

5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of



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"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."

26. The learned senior counsel for the 7th respondent also stated that the defendants 1 to 3 have not appeared and they have not filed any written statement and definitely it is a collusive suit. On going through the said judgments [referred supra] relied upon by the 5th defendant in the suit, it is clear that no party should be permitted to obtain any order for decree or judgment by playing fraud on the Court. Duty is cast upon the Court while examining partition as to whether the parties seeking for partition has genuinely approached the court or fraudulently played game on the court by not bringing necessary parties on record and besides that, the attitude of the parties, who had come before the Court should also be taken into account.

27. The case in hand is also typical example, the plaintiffs 1 and 2 have approached the trial court seeking for partition of the suit schedule



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property by involving defendants claiming right over the suit schedule property, there is a right derived from the father, viz., Annamalainaicker, knowing very well that the defendants 4 and 5 have made wide publication for construction of flats in the suit schedule property, neither the plaintiffs nor the defendants 1 to 3 or their respective legal heirs, who had got impleaded in the suit had taken any steps for obtaining any suitable order preventing or seeking injunction as against the defendants 4 and 5 for further proceeding construction in the suit schedule property or making further alienation in the suit schedule property.

28. It is to be seen that if at all the plaintiffs and the defendants 1 and 2 and the legal heirs of the plaintiffs and defendants have really title over the properties, they would be vigilant in approaching the Court by obtaining preliminary decree and thereafter issuing notice to all the flat owners and seeking / obtaining possession from them is nothing but allowing the developments to take place and thereafter, in a short cut method arm twisting the innocent flat owners. It is clear that the trial court instead of delving deep into the title that too when the two parties have different claim over the suit schedule property and one party is shying away from impleading the necessary parties and the preliminary decree dated 24.08.2022 has been granted in O.S.No.125 of 2009 and the same has to be set aside and the 3rd point raised is answered accordingly.



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29. Accordingly, the preliminary decree dated 24.08.2022 in O.S.No.195 of 2009 is set aside and the parties are at liberty to approach the court below by taking necessary steps to proceed further in the suit in the manner known to law. Though several other grounds are raised as against the maintainability of the suit, this Court leaves it open to the parties to raise all the grounds raised herein as to the maintainability of the suit by filing necessary / appropriate application before the court below in accordance with law.

In the result, the present Revision is allowed. Consequently, connected miscellaneous petition is closed. No costs.

14.12.2023

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order



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To

The III Additional District & Sessions Court,
Thiruvallur @ Poonamallee.



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V.BHAVANI SUBBAROYAN J.

ssd

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