



C.R.P. No.2954 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.04.2023

Pronounced on : 28.04.2023

CORAM : JUSTICE N.SESHASAYEE

C.R.P. No.2954 of 2021
and CMP.No.21145 of 2021

1.D.Harish
2.D.Rajesh

... Petitioner / 3rd Parties

Vs

1.Champalatha
2.Mr.C.Vasanthkumar

... Respondents / Plaintiff, Defendant

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the final decree passed by the IV Additional District and Sessions Judge, Thiruvallur at Ponneri dated 22.10.2021 in O.S.No.189 of 2020.

For Petitioners : Mr.P.H.Arvind Pandian, Senior Counsel
for Mr.C.V.Shailandhran

For Respondent : Mr.T.R.Rajagopalan
Assisted by Ms.Aswini Devi.K &
K.S.Kamakshi for R2



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Mr.P.Chandrasekar for R1



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ORDER

This is a petition under Article 227 of the Constitution through which the revision petitioners seek the setting aside of a compromise decree passed in O.S.No.189 of 2020 on the file of the IV Additional District and Sessions Court, Tiruvallur at Ponneri, as a product of fraud. The revision petitioners are not parties to the suit.

2. The dispute is a duel between the petitioners and the respondents over succession to the estate of certain Chakrapani. Neither side are his direct legal descendants, as Chakrapani and his wife Mythili died issueless. And, what is the source or basis of their claim? While the revision petitioners, who are nephews of Chakrapani (they being the children of his brother Dayalan) stake a claim to his estate based on his alleged Will dated 24.08.1979, their opponents, who are the children of Chakrapani's brother-in-law Gajapathi (brother of Mythili) assert title to the same estate on the basis of a registered Will dated 10.04.1980, said to have been executed by Chakrapani's widow Mythili. This is the setting. To this certain additional facts may be provided for completion of narration:



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- a) Chakrapani, whose estate has now generated this dispute, was born to Bakthavatalu Naidu and Kannammal. As indicated above he had married Mythili. And, he had one brother Dayalan. (Besides Dayalan, he had other siblings, but reference to them is not very germane for deciding this case.)
- b) Within about few months since the execution of the Will dated 24.08.1979, in favour of the revision petitioners, Chakrapani died, to be precise on 08.03.1980. He predeceased his parents. And on the 34th day post his demise, on 10.04.1980, his widow Mythili is said to have executed a registered Will in favour of the children of her brother Gajapathi. Vasanthkumar and Champalatha, the respondents herein, are the children of Gajapathi. And, she barely lived for another five months and died on 16.09.1980. In 1990, Chakrapani's mother Kannammal died almost after a decade of the former's death.
- c) Be that as it may, both Vasanthkumar and Champalatha, joined to institute C.S.No.563 of 1981 on the file of this Court, for partition of the very estate which is the subject matter of the Will referred to above. They



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were minors then. This suit was laid, *inter alia*, against (a) Chakrapani's parents Bakthavatalu Naidu and Kannammal and (b) Chakrapani's brother Dayalan. The suit was later transferred to the IV Additional City Civil Court, Chennai, owing to change in the pecuniary jurisdiction of this Court, and renumbered as O.S.No.3403 of 1997. On 17.10.2000, this suit was dismissed for default.

d) Thereafter, Vasanthkumar and Champalatha together took out two applications, one in I.A.No.23148 of 2006 for restoration of O.S.No.3403 of 1997 under Order XI Rule 9 CPC, and I.A.No.4224 of 2007 for condonation of delay in filing it. On 13.12.2007, these two applications were dismissed for default. Subsequently another set of applications in I.A.No.7867 and 7868 of 2008 were taken out for restoration of the earlier mentioned two applications. By an order dated 04.02.2010, the trial Court dismissed these applications. This order has since become final.

e) It is in this backdrop, Champalatha has laid a suit before IV Additional District Court, Ponneri, in O.S.No.189 of 2020 against Vasanthkumar for



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partition of her half share on the strength of the Will of Mythili. That suit ended in a consent decree passed by the trial court on 22.10.2021. What is significant is that, unlike the earlier suit in O.S.No.3403 of 1997, none of the defendants to that suit or their successors in title/interest were made parties to O.S.No.189 of 2020. It is alleged that on the strength of this decree, the revenue records (which hitherto said to have been in the name of the revision petitioners based on the Will of Chakrapani) were mutated in the names of the respondents.

3. Contending that the decree obtained in O.S.No.189/2020 amounted to a deliberate act of fraud and deception played on the Court, Thiru. Arvind Pandian, the learned Senior Advocate for Thiru. C.V.Shailandhran, argued:

- It is an admitted fact that both the plaintiff and the defendant in O.S.No.189/2020, who as among themselves are sister and brother, along with their father Gajapathi had laid C.S.No.563/1981 (later O.S.3403/1997). In that suit Dayalan, the father of the revision petitioners, was arrayed as 1st defendant. He had filed his written statement, and in paragraph Nos.19 and 20 thereof, he had disclosed the



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Will of Chakrapani dated 24.08.1979 executed in favour of the revision petitioners. It is now not in dispute that this suit was later allowed to be dismissed for default.

- Despite the fact that the Will of Chakrapani was disclosed in the written statement of Dayalan in O.S.3403 of 1997, with pretended innocence, Champalata, the first respondent, had laid a suit for partition in O.S.No.189/2020 against her brother, the second respondent, on the strength of the alleged Will of Mythili dated 10.04.1980, but without impleading either of the revision petitioners, nor their father Dayalan. The certified copy of the registered Will of Mythili was produced as Document No.4 in the plaint in O.S.189 of 2020. A perusal of the Registry endorsement in this copy indicates that it was applied and obtained from the concerned Sub Registry by Vasantakumar, which his sister Champalata had made use of for her to lay the suit in O.S.189 of 2020 to obtain a collusive and fraudulent decree therein, behind the back of the revision petitioners herein as well as their father Dayalan.
- Assuming Chakrapani had died intestate, then his mother Kannammal would be entitled to half of the share in his estate along with his widow



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Mythili. And, on the demise of Kannammal and Mythili, Chakrapani's brother Dayalan would be the successor-in-interest to the estate of Chakrapani as a Class-II heir. This sequence however, is interrupted by Chakrapani's Will. Despite knowing these facts, and despite being informed about Chakrapani's Will, neither Dayalan nor the revision petitioners, who would have acquired a share in the entire estate of Chakrapani, were not impleaded in O.S.No.189/2020. *Ex facie* the decree is collusive and it was brought into existence with the sole object of defeating the just rights of the revision petitioners.

- To add strength to their case in O.S.189 of 2020, the respondents herein have relied on a legal heir certificate of Chakrapani, dated 12.05.1980. In his legal heir certificate, only Mythili, the widow of Chakrapani, was shown as his heir, whereas his mother Kannammal, who was alive as his another Class I heir was omitted. If that is so, even if it is assumed that the Will dated 10.04.1980, alleged to have been executed by Mythili is genuine, the entire estate of Chakrapani cannot devolve on the respondents, but only half share.
- Now on the strength of this collusive and fraudulent decree, these



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respondents not only had mutated the patta in their names, but also had instituted another suit in O.S.No.581 of 2022 for setting aside several transactions as against 64 defendants including the revision petitioners before the Principal District Judge, Tiruvallur, and this suit was transferred to IV Additional District Court, Tiruvallur at Ponneri, and is pending.

- So far as the purported Will of Mythili, it was executed in Chennai and was registered at Periamet Sub Registry which is within the limits of Chennai. In terms of Sec. 213 read with Sec. 57(a) of the Indian Succession Act, 1925, it is mandatory that a Will executed within the ordinary original civil jurisdiction of the High Court of Madras, must be probated, but in the instance case, the alleged Will of Mythili was not probated. The trial Court committed a fundamental error in acting on unprobated Will of Mythili contrary to the ratio in ***Kanta Yadav Vs. Om Prakash Yadav and others*** [AIR 2019 SC 5556 : AIROnline 2019 SC 749]; ***Ravinder Nath Agarwal Vs. Yogender Nath Agarwal and Others*** [2021 (3) CTC 310]; ***Ganshamdoss Narayandoss Vs. Gulab Bi bai*** [AIR 1927 Mad 1054 : (1927) 26 LW 697 (FB)], and egregiously



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erred in countanancing the blatant violation of few substantial provision of law as was held in *Annapoorni Vs. Janaki* [1995-I- LW 141 = 2013 (2) MWN (Civil) 847]. It went wrong in accepting the consent that the defendant had offered as part of operation-collusion, and overlooked the need to pass a well formulated judgement as was insisted in *R.S.Sornam Vs. Rathinam and others* [2019(6) CTC 427] and *Abdul Rashid Sahib Vs. Ramachandran* [2022 (3) CTC 667].

That apart, any decree based on a cryptic non-speaking judgement, and obtained by inducing the trial Court to commit a fundamental defect calculated to defeat the right of a third party to the suit amounts to miscarriage of justice, and this Court might have to exercise its plenary jurisdiction under Article 227 of the Constitution, and restore status quo ante as was prior to the passing of the decree. Placing reliance on the ratio in *Achutananda Baidya Vs. Prafulla Kumar Gayen and Others* [(1997) 5 SCC 76], *Satluj Jal Vidyut Nigam Vs. Raj Kumar Rajinder Singh (Dead) Through Legal Representatives and Others* [(2019) 14 SCC 449]; *K.P.Natarajan and Another Vs Muthalammal and others* [(2021) 5 MLJ 527 (SC) = LNIND 2021 SC 200] *J.Sivasubramanian and another Vs N.Govindarajan and another* [1988 (1) CTC 470];



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N.Maheswari Vs. Mariappan and others [2013(2) CTC 388], ***Ranipet Municipality, Rep. by its Comer. and Special Officer, Ranipet Vs. M.Shamsheerkhan*** [1998 (1) CTC 66]; ***Varada Reddiar and another Vs. Jayachandran and others*** [1996 (II) CTC 611], ***Dr.Anbuchelvi Appulingam Vs. District Collector, Kancheepuram District*** [2021 (5) CTC 335], the learned counsel argued that anything done by manipulating the judicial process with the intent to defeat the justful right of third parties cannot be allowed to stand.

4. Leading the arguments for the respondents, Shri.T.R.Rajagopalan, the learned Senior Counsel, submitted:

- While the revision petitioners place reliance on the Will executed by Chakrapani dated 24.08.1979, it is yet to be produced in any court of law. The grand attempt of the revision petitioners has stopped with the mere production of a photostat copy of an alleged Will of Chakrapani, but the original Will has never been produced anywhere, nor has it been ever subjected to any forensic scrutiny as to its genuiness.
- So far as the decree in O.S.189 of 2020 goes, inasmuch as the revision



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petitioners are not parties to the suit, the decree passed therein cannot bind them, and in law their only option is to institute a fresh suit challenging the decree, and they cannot complain that they are aggrieved by the decree which as between the respondents was validly made, since they cannot termed as parties aggrieved by the decree in O.S.189 of 2020.

Reliance was placed on the ratio in *Ponnalagu Ammani Vs. State of Madras* [1966 L.W.136]; *V.N.Krisna Murthy and Another Vs. Ravikumar and Others* [(2020) 9 SCC 501]; *Pharez John Abraham (Dead) by Legal Representatives Vs. Arul Jothi Sivasubramaniam K. and Others* [(2020) 13 SCC 711]; *Banwari Lal Vs. Chando Devi* [1993) 1 SCC 581]; *Maneck Gustedji Burjarji Vs. Sarafazali Nawabali Mirza* [(1977) 1 SCC 227]; *Varanasaya Sanskrit Vishwavidyalaya and another Vs. Dr.Rajkishore Tripathi and Another* [AIR 1977 SC 615]; *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Ors. Vs. Tuticorin Educational Society and Ors.* [2020-2-L.W.256 : (2019) 7 MLJ 721] and *Abdul Rashid Sahib Vs. Ramachandran* [2022(3) CTC 667].



Discussion & Decision:

5.1 Facts roam within a narrow space and the material aspects are *either admitted or undisputed or indisputable*. They are now summed up as under:

- a) A certain Chakrapani died on 08.03.1980. The revision petitioners claim right to his estate under a Will dated 24.08.1979, alleged to have been executed by him. The respondents, who as between themselves are brother and sister, stake a claim to the same estate of Chakrapani but under a Will alleged to have been executed by his widow Mythili on 10.04.1980. The Will of Mythili was executed on the 34th day of Chakrapani's death. Within about few months, on 16.09.1980 Mythili died.
- b) The legatees under the Will of Mythili along with their father had laid C.S. No.563 of 1981 before this Court. (There is some dispute as to the nature of this suit. While the revision petitioners claim that it was laid for partition as was projected by the plaintiffs therein in one of their affidavits filed there, the respondents herein claim that it was an administrative suit, for administering that part of the estate of Chakrapani which are not included in the Will of Mythili. The nature of the suit, in



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the context of this case however, is not very relevant.) This suit was later transferred to the City Civil Court and was taken on record as O.S.3403/1997, and was dismissed for non-prosecution. This is not disputed. What however, is contextually significant is that the father of the revision petitioners herein had earlier filed his written statement wherein he had disclosed the Will of Chakrapani dated 24.08.1979. This implies that the respondents herein knew or at least ought to have known by default that the revision petitioners are claimants to the estate of Chakrapani.

- c) Then commences phase II of the strategy of the respondents. One of the legatees under the alleged Will of Mythili namely Champalata had laid a suit in O.S.189 of 2020 for partition against her brother, the other legatee under the same Will with a certified copy of the Will obtained by the very defendant and supported by a legal heir certificate of Chakrapani issued exclusively in the name of his widow Mythili, but without the name of former's mother Kannammal, who in law is a Class – I heir along with Mythili. It must be added that this Will was executed within the bounds of Chennai City, and hence is required to be probated in terms of



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Sec.213 read with Sec.57 of the Indian Succession Act. However, this Will was not probated, yet the trial court proceeded to pass a final decree by compromise because the defendant had consented to it. It makes evident, that the trial court had short-circuited the settled legal principles which has now exposed it to an avoidable embarrassment of a scrutiny by this Court now.

- d) The moment the consent decree was obtained, on its strength, the revenue records were mutated in the names of the respondents, which according to the revision petitioners were in their name up till then.

5.2 The facts narrated *supra* bear a striking resemblance to the facts in ***J.Sivasubramanian and another Vs N.Govindarajan and another*** [1988 (1) CTC 470]. In that case, a learned Single Judge of this Court exercised the power of superintendence under Article 227 and struck down the decree on the ground that a consent decree was obtained by suppression of material facts and without impleading parties necessary for an effective, if not complete adjudication of dispute, with the sole objective of taking possession of the property from those who are not parties to the suit, and that it amounted to fraud



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on court. Here too there is a consent decree obtained without the revision petitioners in the array, when they had already disclosed their claim to the properties of Chakrapani on the basis of latter's Will.

5.3 To cap it, the Will relied on by the respondents is neither probated, nor it takes into account the share of Chakrapani's mother Kannammal. And, this Court has not ignored the fact that Chakrapani's Will, his death, his widow's Will and her death have happened within a span of a year. And, if the Court is the conscience keeper of a testator – any testator for that matter, then the pattern shown by the sequence will disturb its conscience till any of the Wills involved herein are proved to be genuine. The point is, should this Court now repeat what has been actively done by the Court on several earlier instances as seen in many of the authorities cited by the revision petitioners, and set aside the decree?

6. Here, the fact that an unprobated Will (which in law is required to be probated) had formed the basis for the decree in O.S.189 of 2020 itself is adequate to upset the same, for the decree is an illegality and is non-est in the



eye of law. See: *Annapoorni Vs Janaki* [1995-1-LW 141]. But this, in the estimate of this Court, is only part of a larger plot to defraud the judicial processes.

7.1 The respondents mount an unoffensive, if not a non-violent defence laced with pretended innocence. Not one allegation made against them is denied. Their response is, *'after all the revision petitioners are not bound by the decree, and hence they cannot be termed as parties aggrieved by the decree passed in O.S.189 of 2020, and hence they lack the locus standi to challenge the decree under Article 227 of the Constitution.'* With their anticipated line of defence, the respondents find themselves in a familiar turf. Indeed their strategy may have even won them the day, but for three facts:

- a) They knew about the Will of Chakrapani and the likely resistance they would have had if the revision petitioners were arrayed as defendants in O.S.189 of 2020 (Here, this Court finds it difficult to keep aside the dismissal of O.S.No.3403/1997, which the revision petitioners had resisted with the Will of Chakrapani);
- b) Obtaining a partition decree without probating the alleged Will of



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Mythili; and

c) Ignoring the half share of Chakrapani's mother Kannammal in Mythili's alleged Will.

7.2 Are they not suggestive of a deliberate design to obtain a decree by bypassing the claim of those who would have been the natural heirs to the estate of Chakrapani in the absence of the Will of Mythili? If Chakrapani had left a Will as claimed by the revision petitioners which the respondents knew, has not the format of the suit in O.S.189 of 2020 been fashioned to out-manoeuvre the former's claim? The game-plan is far too obvious that it does not require a Sherlock Holmes to unravel it. The second part of the respondents' strategy is even more disturbing. They walked into Court with an un-probated Will, and induced the Court to pass a decree through the consent offered by the defendant, a ploy that has evidently worked its way to distract the Court. That the trial Court has not applied its mind is apparent, but it is unlikely that it could have fallen into a trap but for the respondents setting up a litigation with a mock contest. Could there be any other view or inference possible? The respondents had their plan in place, executed it to perfection, and had manipulated the



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judicial process to obtain an unmerited decree, and had the revenue records of Chakrapani's estate mutated in their names. If these aspects do not disturb the conscience of this Court, what else can?

8. The respondents' response is partly true: the revision petitioners surely are not bound by the decree which one respondent had obtained against the other in O.S.189 of 2020 as they are not parties to it. As indicated earlier, even de hors the aspect of its ability to bind the revision petitioners, the decree is still bad in law, as it gave an expression to an unprobated Will. But the larger issue is were the respondents fair?

9. Fairness sheaths the rule of law and ensures its abidance. If the rule of law is understood as a body of rules conforming to which inter se balance amidst conflicting rights are obtained (on its way to establish peace and justice), the doctrine of fairness may be stated as ancillary to the rule of law. It may be stated as a mental attitude¹ which by its nature brings the points of conflict towards a

¹ The legal positivists are instantly allergic to anything that may be considered as an aspect of mind. They tend to equate it to subjectivity and arbitrariness, and if only it has to be accommodated in law, it must be so declared by law, such as far instance in Sec.3 of the Evidence Act where fact is defined to include a state of mind of which a person is conscious of. Notwithstanding their objection or reservation, the fact remains that there is a mental element in everyone, which either guides one to abide by rule of law, or to violate it. This mental element which voluntarily pushes a person to obey the rule of law is the quintessence of rule of fairness.



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point of convergence by a spontaneous agreement. Rule of law commands obedience and mandates it, whereas fairness volunteers obedience. To be fair means to respect the rule of law. Rule of law thrives the most where fairness to abide by it is optimum.

10. In the context of judicial proceedings in adversarial jurisprudence, fairness as a doctrine may have to be understood contextually. It often reflects as an aspect of processual or procedural fairness, paving way for the acceptance of that which the judicial process produces, and grants it the credibility for its manifestation as substantial justice. Here fairness asserts itself more as an aspect of equality.

11. Breach of fairness occurs when the rules of acceptance (for rules of fairness are that which bring acceptance) are violated by any one of the party to a dispute, or both, to gain an unmerited advantage, unintended by the rules that constitute it, affecting the balance between rights and liabilities as between the parties to a dispute, or third parties.



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12. Fairness is thus the cornerstone of the Rule of Law. It is the fountain head of justice and the vital force of its command. It is the dark matter in the cosmos of jurisprudence that holds justice and the judicial process together. Inherently fragile, it displays immense susceptibility for easy manipulation in the boundless ocean of human greed and temptations. Conscious that the courts are to this reality, they coerce themselves to optimise their vigilance in guarding it. It is hence, in ***Epuru Sudhakar Vs Govt. of A.P.***, [(2006) 8 SCC 161], the Hon'ble Supreme Court elevated fairness as an integral part of rule of law, when it declared:

“The Rule of Law is the basis for evaluation of all decisions. The supreme quality of the Rule of Law is fairness and legal certainty.”

13. Fairness as a concept cannot be particularized. John Rawls himself has layered it while evolving fairness as a concept, but he confined his understanding of Justice as Fairness to a political ideal to balance liberty and equality. But its silent presence cannot be confined to specifics. Dictionaries generally define fairness as treating people equally. This is more about optics of being fair, but an understanding of fairness, as described above travels beyond it. It is a voluntary submission or acceptance to anything fair.



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14. Elsewhere Rudolf Stammler, the German jurist of the 19th century, advocated justice as peace, but that was more in an esoteric sense and as an idea of the natural law school. To him, it “*consists in the conception of the absolute whole of all human endeavours... there is in this idea of complete harmony...*”² distinguished it between formally correct judgement (of the Court) and objectively just. Accordingly, “*decision in question should be based not merely upon a positive statute, but also upon righteousness as a principle,*”³ à la the due process doctrine. He considers it as ‘*a feeling of right,*’⁴ and proceeds to develop his concept of justice as peace, which is more an anthology of moral and religious precepts that he believed.

15. While it may be considered that fairness the way Rawls has conceived, and Justice as Peace as Stammler believed, walk in different lanes, a fusion or synthesis between the two is not an impossibility, if fairness of Rawls theory is allowed to play its full role in understanding Stammler's statement on Justice as Peace. It works in the following way: anything fair produces voluntary

2 *The Idea of Justice* by Rudolf Stammler, translated from the German to English by Isaac Husik, published in the University of Pennsylvania Law Review, Volume 7¹ Number 4, May, 1923.

3 *supra*

4 *supra*



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acceptance, and voluntary acceptance produces peace, and peace manifests as justice. It is therefore, evident that fairness transcends beyond the moral precepts of Stammler and political idealism of Rawls. Fairness exists, or must exit in the very nature of man. Remove fairness from the hearts of men, there can be no justice. Justice reigns where peace reigns, and peace leaves when fairness vacates.

16. The legal system and the judiciary (of which the latter is a part) provide a level playing field for both the sides, and require everyone who volunteers to access it to use the facility they offer in a manner that none acts unfairly to disturb the balance between the rights and liabilities except in a manner that law approves. It is hence, Courts as neutral arbiter tolerate neither any pitch-tampering by one nor ball-tampering by the other nor match-fixing by both. Anything which is obtained through an ambitious and unfair use of judicial process, necessarily sets off a domino effect with a compelling response from the Courts to unsettle the castle of cards carefully conceived by the wrongdoer, and to restore the *status quo ante*.



17. If the facts of this case when spread on the plane of the principles herein above stated, they lead to an irresistible conclusion that the respondents have breached the rule of fairness when they attempted to gain an advantage through the judicial process by keeping those (read, the revision petitioners) who would be affected by it, away from the Court by their deliberate non-impleadment. This violence to the rule of fairness has led to a plain abuse of judicial process. And, that this strategy involved deception through an unprobated Will has made it all the more worse.

18. Can the absence of fairness be a ground to exercise jurisdiction under Article 227 of the Constitution? In ***Abdul Rashid Sahib Vs. Ramachandran*** [2022(3) CTC 667], I had an occasion to examine the scope of Article 227, and had held that exercising the power of superintendence is powered by the need to protect the public confidence in the institution of Courts. The relevant passage reads:

“10.1 The power of superintendence of the High Court which the Constitution speaks of is more an aspect of duty than an idea of authority. Courts may have been a creation of the Constitution and the statutes, but the force that sustains their vitality and institutional relevance is defined not by the authority which are vested in them by



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the sources of their creation, but by the public trust in them. If rights are wronged, then the Courts, as an impartial arbiter, assure the aggrieved that the wrong would be set right. It is a promise they hold for justifying their establishment, and is the consideration they pay the public for investing its trust in them.....The power of superintendence, nay the duty to supervise which the Constitution has enjoined this Court with under Article 227 of the Constitution, in essence, is intended to secure and sustain the public faith in the judicial system. It may be understood as a duty to drone-cam the functioning of the courts subordinate to it to ensure that the quality of its functioning is effective and is worthy of sustaining the trust of the litigant public.

The idea of fairness informs that public confidence in the legal system cannot exist in negation of fairness inbuilt in the judicial process.

19. “Both the parties know the truth; and it's the Judge who is on trial ”, so said J.R. Midha, J, in his farewell speech when he demitted office as the judge of the Delhi High Court couple of seasons ago. Impressive that it is as a quotable quote, but it conceals a poignancy over the onset of an unhealthy attitude seeping into the psyche of a section of the litigants, rampantly on the increase, which with unrestricted temerity treats the Courts as casinos to gamble on its process and time. The respondents herein, surely have gambled on the



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judicial process. The precedents through which the Courts have spoken show that they have zero tolerance to fraud and abuse of its process.

20. Should this Court now plead helplessness to mitigate the wrongful effect of an unfair litigious practice of the respondents perpetrated on its process because those who were affected thereby were not bound by the decree, a contention that the respondents have advanced? The respondents are now told that what they contend may be appropriate to a situation where the litigation is fairly contested between the two, but its consequence may have unwittingly impacted the right of a third party, and not when the strategy to litigate itself is tailored to defraud the judicial process. It will be Constitutionally abhorrent if the litigants are allowed the licence to approach the Court without any realisation that their right of access to the Courts is not preconditioned by any duty to be mutually fair, and fairer to the judicial process. This obligations shadows the litigants from the moment they enter the orbit of the legal system and it continues to travel with them till they leave the orbit, lest it may destroy the balance between rights and liabilities in a manner law approves, and consequently will destroy the rule of law and justice as peace.



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21. Over four centuries ago, Sir Edward Coke famously remarked that “*fraud and justice never dwell together.*” Having found that fraud had entered the precincts of the Court of Justice, and had tainted its processes and its decree, the time has now come for this Court to exercise its power of superintendence to unseat the unwelcome, if not the unwanted visitor, and to show it the exit door: the decree in O.S.189 of 2020 shall now go.

22. This Court, however, hastens to add that breach of fairness as a doctrine can invite interference under Article 227 of the Constitution only if it upsets the substantial rights of a party who is victimised by such breach, thereby leading to miscarriage of justice. In ***Abdul Rashid Sahib's case*** it is held:

“10.4 When Article 227 is invoked, this Court scans the judicial process applied in a litigation to ascertain the quality of processual justice and evaluates the consequences produced. Not all the mishandled procedure affects the substantive right to litigate or defend or produce unfair results, as many may fall within the domain of the discretionary space made available to the courts subordinate to this Court. Where the procedure is mishandled, or manipulated (commonly understood as abuse of judicial process or fraud on court) to produce an unfair result adverse to one of the litigants with the potential to impair the litigant's



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faith in the Court, it will be a clarion call for this Court to step in. This Court's claim that it is a sentinel on the qui vive in protecting the rights of the citizens will then go hollow and weather beaten, if it compromises its Constitutional conscience, and forsakes its duty to correct a wrong in exercise of its powers under Article 227 of the Constitution. This is the soul of its supervisory power: of identifying a wrong which holds the potential to imperil the public faith in the judiciary or challenges its own purity and effectiveness of its functioning, and then following it with curial measures.... Fraud on court empowers the same court as well as this Court to interfere in appropriate cases under Article 227 of the Constitution of India..."

23.1 In conclusion, this revision is allowed. The judgment and decree dated 22.10.2021 passed in O.S.No.189 of 2020 on the file of IV Additional District Court, Thiruvallur at Ponneri, is set aside.

23.2 This Court suo motu impleads the revision petitioners as defendants 2 and 3 in O.S.189 of 2020 on the file of IV Additional District Court, Tiruvallur at Ponneri, along with their father Dayalan as the 4th defendant. The trial court is also required to ascertain all those who would be a successor-in-interest to the estate of Chakrapani in the absence of any of the Wills disclosed so far in this case, and is directed to implead them as well. Once it is done, the newly



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impleaded defendants are required to file their written statement, whereupon the trial Court is required to dispose of the suit on merits, uninfluenced by any of the observations made against the respondents in this order, and in accordance with law. Both sides are entitled to all the procedural rights available to them in prosecuting or defending the suit, as the case may be. No costs. Consequently connected miscellaneous petition is closed.

28.04.2023

Index : Yes / No

Speaking order / Non-speaking orders

To:

1.The IV Additional District Judge
Tiruvallur @ Ponneri.

2.The Section Officer
VR Section, High Court, Madras.



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N.SESHASAYEE.J.,

ds

Pre-delivery order in
CRP.No.2954 of 2021

28.04.2023