IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 20.02.2023

JUDGMENT DELIVERED ON: 25.05.2023

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

S.A.No.659 of 2017

Thirunavukkarasu,
S/o. S.P.Rajagopal ... Appellant

Versus

1. C.Saravanan,
   S/o. Late Chinnusamy

2. Natesan (deceased)

3. E. Ganesan,
   S/o. Eswara Chettiar

4. E.Muthiyal,
   S/o. Eswara Chettiar

5. Rajammal
   W/o. P.K.Subramani,

6. E.Dayalan,
   S/o. Eswara Chettiar

7. A.Neela,
   W/o. Amirthalingam

8. D.Prema,
   W/o. Devakarai

9. C.Saravanan,
   S/o. Chinniya Chettiar

10. Sarasu,
    W/o. Late Chinnaiya Chettiar

11. C.Vasantha,
    D/. Chinnaiya Chettiar

12. C.Santhi,
    D/o. Chinnaiya Chettiar

13. Janaki,
    W/o. Late Srinivasan

14. Vijaya,
    D/o. Late Srinivasan

15. Vinotha,
    S/o. Late Srinivasan

16. Balu,
    S/o. Late Kumar

17. Gopi,
    S/o. Late Kumar

18. Shyamala,
    W/o. Babu

19. N.Palaniammal
    W/o. Late N.Natesan

20. M.Umarani,
    D/o. Late N.Natesan

21. N.Kannan,
    S/o. Late N.Natesan

22. N.Geetha,
    D/o. Late N.Natesan

(RR19 to 22 brought on record as the LRs of deceased 2nd respondent viz., Natesan, vide order of court dated 16.12.2020 made in C.M.P.No.12408 of 2020 in S.A.No.659 of 2017) ... Respondents

Prayer: Second Appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 19.07.2017 made in A.S.No.54 of 2014 on the file of 1st Additional District Judge, Salem in confirming the Judgment and decree dated 31.01.2014 made in O.S.No.380 of 1995 on the file of 1st Additional Subordinate Judge, Salem.

For Appellants	: Mr.N.Manokaran
For Respondent-1	: Mr.C.Jagadish R2, R3 and R5 – died (Vide order dated 06.10.2020)
For Respondents 4 and 6 to 22	: Not ready in Notice

JUDGEMENT

This Second appeal is directed against the concurrent judgments passed by the Courts below in a suit filed by the 1st respondent herein for declaration of his title to the suit properties and for permanent injunction restraining the defendants, their men, agents, coolies etc., from in any way interfering with his peaceful possession and enjoyment of the suit properties. The suit was thereafter amended and the relief for recovery of possession was sought in the place of the relief for permanent injunction.

2.The suit schedule consists of 2 items of properties. The 21st defendant in the above suit is the appellant before this Court. The parties, for the ease of understanding, are referred to in the same array as before the 1st Additional Subordinate Judge, Salem.

3.The plaintiff had filed the above suit O.S.No.380 of 1995 originally before the file of the Vacation Civil Judge (Subordinate Judge) Salem, which was later heard by the I Additional Subordinate Judge, Salem.

4. Plaintiff's case:

(i) It is the case of the plaintiff that he had purchased the suit schedule properties from the 4th defendant, Chinnaiya Chettiar under two registered sale deeds dated 15.09.1994 and 01.02.1995. The plaintiff had been in possession and enjoyment of the suit properties since then. The 4th defendant had handed over the decrees and judgments passed in his favour in respect of the suit schedule properties. The Town Survey Land Record (TSLR) in respect of the suit schedule properties stand in the name of the 4th defendant, which has since been mutated in the name of the plaintiff, by proceedings of the Deputy Tahsildar, Salem dated 19.08.1994. It is the further case of the plaintiff that the 3rd defendant, Easwara Chettiar had purchased the properties from one Syed Hyder Sahib. At the time of his purchase, the vacant site had been leased out to the 4th defendant on a monthly rental of Rs.7/-, upon which, the 4th defendant had put up a superstructure. The 3rd defendant had filed a suit against the 4th defendant for ejectment, in which, the 4th defendant had filed an application under Section 9 of the Madras City Tenants Protection Act. The matter had gone up to this Court and ultimately, by judgment and decree of this Court in S.A.No.334 of 1982, the 4th defendant had obtained the Sale Deed in his favour by filing execution proceedings. The Court had executed a Sale Deed dated 20.01.1993 in favour of the 4th defendant. The 2nd defendant is the wife of the 3rd defendant.

(ii) While so, the 1st defendant had fabricated an Agreement of Sale dated 11.06.1992 alleged to have been executed between defendants 2 to 4 and one Ramasamy on one hand and the 1st defendant on the other hand. The plaintiff would submit that this Agreement of Sale was not signed by the 4th defendant. On the strength of the forged and fabricated agreement dated 11.06.1992, the 1st defendant had filed a suit O.S.No.701 of 1992 against defendants 2 to 4 herein and Ramasamy for specific performance. No summons were served on the 4th defendant. However, a learned counsel had entered appearance on his behalf. It appears that some other persons had impersonated the 4th defendant and got the vakalat signed by Mr.S.Sekar and Mr.S.Srinivasan, Advocates. They had appeared on behalf of the 4th defendant. The 4th defendant herein had been arrayed as 3rd defendant in O.S.No.701 of 1992. A Memo was filed by the learned Counsels submitting to a decree.

(iii) As soon as the 4th defendant had come to know about this fraud, he has initiated a complaint before the Bar Council of Tamil Nadu against the said two advocates. The Bar Council of Tamil Nadu dismissed the said complaint, against which, an appeal was preferred before the Bar Council of India. Mr.S.Sekar, Advocate had appeared and stated that he had not seen the person who had executed the vakalat and that he was ready to give evidence in the suit. On this undertaking, the appeal before the Bar Council of India was dismissed and settled. The plaintiff would submit that therefore, the decree in the suit O.S.No.701 of 1992 is one obtained by fraud and is therefore a nullity. The plaintiff would trace his title to the property as follows:-

The vacant site of the suit properties originally belonged to Syed Hyder Sahib with whom the 4th defendant, Chinnaiya Chettiar had entered into a lease agreement on 09.07.1952, Pursuant to this, he had put a superstructure on the properties. The said Chinnaiya Chettiar was running a hand loom factory and was also residing therein. Thereafter, the 3rd defendant/Easwara Chettiar had purchased the property on 15.04.1956 from Syed Hyder Sahib and had filed a suit O.S.No.1160 of 1962 on the file of the District Munsif Court, Salem against the 4th defendant for delivery of possession of the properties. The 4th defendant had filed an application in I.A.No.57 of 1963 under Section 9 of the Madras City Tenants Protection Act to enforce his right to purchase the properties. The said I.A was dismissed by the learned Additional District Munsif, as against which, an appeal was filed before the learned District Judge, Salem, which was later transferred to the file of the Subordinate Court, Salem and taken on file in A.S.No.114 of 1964. The suit in O.S.No.1160 of 1962 was decreed, against which, an appeal was filed before the District Court, Salem and later, it was transferred to the Subordinate Court, Salem and taken on file in A.S.No.204 of 1964. The said Appeals were dismissed. Against the judgment and decree in A.S.No.204 of 1964, the 4th defendant / Chinnaiya Chettiar had filed S.A.No.1064 of 1965 before this Court. Against the judgment and Decree in

A.S.No.114 of 1964, a civil revision petition in C.R.P.No.54 of 1966 was filed. S.A.No.1064 of 1965 was allowed by this Court by judgment and decree dated 31.10.1969 and consequently, the suit in O.S.No.1160 of 1962 was dismissed. I.A.No.57 of 1963 against which C.R.P.No.54 of 1966 filed, was allowed and this Court had directed the learned District Munsif, Salem to take further proceedings in the application filed under Section 9 of the City Tenants Protection Act. By orders in I.A.No.1748 of 1979, the learned District Munsif, Salem had executed a registered Sale Deed dated 20.01.1993 in favour of the 4th defendant herein. Consequently, the 4th defendant had acquired right and title both upon the vacant land as well as the superstructure. The 1st defendant had fabricated an Agreement of Sale dated 11.06.1992 allegedly executed by defendants 2 to 4 and one Ramasamy in favour of the 1st defendant. It is the specific case of the 4th defendant that he has not signed this Agreement of Sale and has not entered into an agreement with them. Thereafter, the 1st defendant had filed O.S.No.701 of 1992 against defendants 2 to 4 and the said Ramasamy for specific performance of the Agreement of Sale dated 11.06.1992. The Advocates, Mr.S.Srinivasan and Mr.S.Sekar, had entered appearance on behalf of the 4th defendant and it appears that a Memo submitted to the decree, was also filed. All these proceedings had taken place without the express consent or knowledge of the 4th defendant. On the basis of this fraudulent decree, the 1st defendant had initiated further proceedings in execution and got the sale deed executed by the Court. It is the specific case of the 4th defendant that he had not received summons both in respect of the suit as well as the vacant site. Since the defendants were attempting to interfere with the peaceful possession and enjoyment of the suit properties and were asserting right over the same, the plaintiff had come forward with the present suit for declaration and for injunction in respect of the two items of the suit schedule properties.

3. Written statement of the 1st defendant:

The 1st defendant had filed a written statement *inter-alia* denying the contentions in the plaint that the decree was obtained by mis-representation and by abuse of process of Court. The 1st defendant would submit that the plaintiff was never in possession and enjoyment of the properties and that the allegations to the contrary are absolutely false. The decree in O.S.No.701 of 1992 was not obtained by practising fraud as claimed by the plaintiff. He would submit that the decree in O.S.No.701 of 1992 is binding upon the plaintiff, since the 4th defendant has submitted himself to a decree therein. The 1st defendant would submit that he is in possession and enjoyment of the suit properties as its true owner.

4. Written statement of the 21st defendant:

The 21st defendant has filed a written statement denying the plaintiff's case that he had purchased the suit properties under two sale deeds dated 15.09.1994 and 01.02.1995 from Chinnaiya Chettiar. It is his case that Chinnaiya Chettiar had no right to execute the sale in favour of the plaintiff, since the suit for specific performance filed by the 1st defendant was already pending. The 1st defendant would further submit that the possession that was alleged to have been taken in R.E.P.No.39 of 1993 is not a lawful one and the allegations to the contrary are false. He would once again reiterate that the decree obtained by the 1st defendant in O.S.No.701 of 1992 is not a fraudulent decree and that it was valid and binding decree. The 21st defendant had further pleaded that the plaint has not been valued properly. The suit was hit by non-joinder of parties, inasmuch as the 4th defendant, viz., Ramasamy in O.S.No.701 of 1992 had not been impleaded in the proceedings.

5. Trial Court and Appellate Court:

(i) The learned trial Judge on considering the evidence on record had framed the following issues:

> *(i). Whether the plaintiff has purchased the suit property under two sale deeds dated; 15.09.94, 01.02.95 from the 4th defendant?*
>
> *(ii). Whether the plaintiff is in possession and enjoyment of the suit property or not?*
>
> *(iii). Whether the Plaintiff has enjoyed and possed the suit property as per the sale deed dated 20.01.93 executed by the District Munsif, Salem?*
>
> *(iv). Whether the 2 defendant has got any right over the suit property in pursuance of a document 10.10.1956?*
>
> *(v). Whether the 2nd defendant has ever enjoyed and possessed the suit property?*

(vi).Whether the first defendant is in possession and enjoyment of the suit property as per the sale deed dated 27.04.95 executed from the court?

(vii).Whether the first defendant has entered into any agreement with the 2nd defendant in respect of the suit property?

(viii).Whether the suit in 0.S.701/92, for the relief of Specific performance was decreed on 01.11.1992 in favour of the first defendant?

(ix).Whether the first defendant has recovery the possession of suit property as per order in E.P.39/95 dated; 27.04.95 following the decree in 0.S.701/92 dated; 01.12.1992?

(x). Whether the suit is barred by limitation?

(xi).Whether the plaintiff is entitled for the relief of declaration as prayed for?

(xii).Whether the plaintiff is entitled to the relief of recovery of possession as prayed for?

(xiii). Whether the plaintiff is entitled to any other reliefs?

The following additional Issues were framed on 28.07.2010 and

13.06.2012:

1.Whether the fourth defendant in 0.S.No.701/2012 in the necessary party in the suit?

2.Whether the plaintiff is entitled to the delivery of vacant portion of suit property?

The following additional issue was framed on 9.6.2013 :

Whether the decree in 0.S.701/92 dated; 1.12.92 from the file of Sub Court, Salem was obtained by fraud and non-est and void?

(ii) O.S.No.380 of 1995 was tried along with the suit OS.No.620 of 2001, which was a suit filed by the 1st defendant against Chinnaiya Chettiar and others including the plaintiff for a declaration that the Sale Deed dated 15.09.1994 executed by Chinnaiya Chettiar in favour of the plaintiff was invalid and for permanent injunction restraining the 2nd defendant from in any manner creating any alienation or encumbrance over the suit properties.

(iii) The plaintiff had examined himself as P.W1 and the two counsels, who are alleged to have entered appearance on his behalf in suit O.S.No.701 of 1992, were examined as P.Ws.2 and 3 and Exs.A1 to 41 were marked. The 1st defendant had examined himself as D.W1 and 21st defendant has examined himself as D.W2 and Exs.B1 to B3 were marked.

(iv).The learned I Additional Subordinate Judge, Salem, on considering the evidence, arguments and pleadings, decreed the suit O.S.No.380 of 1995 filed by the plaintiff and dismissed the suit O.S.No.620 of 2001 filed by the 1st defendant. Aggrieved by the judgment and decree in O.S.No.380 of 1995, the 21st defendant had alone preferred an appeal in A.S.No.54 of 2014 on the file of the 1st Additional District and Sessions Judge, Salem. No appeal was filed against the judgment and decree in O.S.No.620 of 2001. The learned

I Additional District and Sessions Judge had ultimately proceeded to dismiss the appeal, against which, once again, the 21st defendant has alone filed this second appeal.

6. At the time of admitting the above Second Appeal, only notice was ordered by this Court.

7. Submissions:

(i) Mr.N.Manokaran, learned counsel appearing for M/s.M.Rakhi, learned counsel for the appellant / 21st defendant would at the outset, submit that when the suit was originally filed in the year 1995, the allegations regarding the fraud, were not set out. The same have been inserted only in the year 2004 by filing an amendment petition in I.A.No.345 of 2004. The allegations in paragraphs 6(a) and 6(b) that the decree has been obtained by fraud has been pleaded only then. Further, the relief of permanent injunction was subsequently amended as the one for recovery of possession, once again by filing an amendment petition in I.A.No.479 of 2006. The plaint as it was originally filed, did not contain any of the averments regarding the fraud or that the plaintiff is entitled to the possession, and it is only 11 years later that the same has been introduced. He would contend that the plaintiff has come to the Court originally with a case that he is in possession of the properties and that he has purchased the properties from the true owner. The burden of proof lies entirely upon the plaintiff to prove his case. Even assuming without admitting that the 1st defendant is not able to prove his case, even then it is for the plaintiff to prove his case. In support of this argument, the learned counsel would rely upon the judgment of the Hon'ble Supreme Court reported in ***2014 (2) SCC 269 [Union of India and Others Vs.Vasavi Cooperative Housing Society Limited***

and Others]. The learned counsel would draw the attention of this Court, particularly to paragraphs 15 to 19, wherein, it has been clearly held that in a suit for declaration of title, the burden is always upon the plaintiff to make out and establish a clear case for declaration and not to rely upon the weakness of the defence. The weakness in defence without proof by the plaintiff would not be a ground for granting the said relief. He would further submit that the plaintiff has deliberately suppressed the suit O.S.No.701 of 1992 and the decree passed therein and the Sale Deed dated 27.09.1994 (Ex.B3) that has been executed pursuant to orders in R.E.P.No.39 of 1993 in O.S.No.701 of 1992. The suit filed without seeking a declaration to declare or cancel the Sale Deed is not maintainable.

(ii) That apart, the learned counsel for the appellant would submit that the suit is barred by limitation, inasmuch as the period of limitation would run from the date on which the right to sue first accrues. To support his argument, he would rely upon the judgment of the Hon'ble Supreme Court reported in ***(2011) 9 SCC 126 [Khatri Hotels Pvt. Ltd. And Another V. Union of India and Another].*** In these circumstances, till such time as the decree in O.S.No.701 of 1992 (Ex.A18) and the Sale Deed dated 27.09.1994 (Ex.B3) are not challenged and contested in the manner known to law, the same would operate against the plaintiff, since the 4th defendant is a party to the said proceedings. The learned counsel for the appellant would draw support for the above proposition from the judgment of th Hon'ble Supreme Court reported in ***(2013) 3 SCC 182 [Board of Trustees of Port of Kandla Vs.Hargovind Jasraj and Another]*** with particular reference to paragraphs 21 to 30.

(iii) The suit O.S.No.380 of 1995 was originally filed for permanent injunction stating that his possession was disturbed by the defendants on 27.04.1995, for which, police complaints under Exs.A31 and 32 have been filed. However, this claim has been given up during his cross examination. It is an admitted fact that the vendor of the 21st defendant had taken possession of the properties pursuant to the orders of the Executing Court in R.E.P.No.39 of 1993 in O.S.No.701 of 1992 on 27.04.1995. The cause of action does not arise from the order effecting delivery of possession through Court. The learned counsel would submit that any challenge to the decree has to be made within reasonable time and cannot await eternity. He would submit that the suit has been filed on an illusionary cause of action. That apart, it is also the case of the plaintiff that he is a pendente-lite purchaser when the suit for specific performance is pending. Therefore, whatever the rights that his vendor had alone would enure to him as on the date of the sale in his favour, namely on 15.09.1994 and 01.02.1995. The 1st defendant had already initiated execution proceedings in O.S.No.701 of 1992. Therefore, the sale in favour of the plaintiff is definitely hit by *lis-pendens.* Further, it is also his argument that despite questioning the validity of Exs.A1 and A2 sale deeds, the plaintiff has not taken steps to examine the witnesses to Exs.A1 and A2, nor the defendants 11 to 20 who are the legal heirs of the deceased 4th defendant. He would further plead that there is a collusion between the 4th defendant and the plaintiff. The learned counsel would also question the credibility of the evidence of P.Ws 2 and 3 and also contend that the suit insofar as it relates to the 21st defendant is barred by limitation. The 21st defendant had purchased the properties under Ex.B1 dated 16.03.2003. He would submit that he had purchased the properties on 16.03.2003, whereas he has been impleaded much beyond the period of limitation. Therefore, on this argument also, the suit has to be dismissed. The learned counsel would further submit that non-filing of an appeal against the judgment and the decree in O.S.No.620 of 2001 would operate against the appellant. However, a reading of the judgment therein would show that the discussions in paragraphs 6 to 37 and 39 were made in O.S.No.380 of 1995 and no discussion was made in O.S.No.620 of 2001 except for recording the dismissal in paragraph No.38. Further, the plaintiff has impleaded the appellant only in the suit in O.S.No.380 of 1995 and since he is not a party in O.S.No.620 of 2021, it would not operate against the appellant. Therefore, it is his submission that the plaintiff' has made challenged only the judgment and decree in O.S.No.701 of 1992 and not with reference to the present suit. He would also submit that the vendor of the plaintiff, namely, the 4th defendant had filed the suit O.S.No.621 of 1995 to cancel the decree for specific performance granted in O.S.No.701 of 1992, which is introduced by Ex.A26. However, the same has been dismissed for default, by judgment dated 15.07.2004 and no steps have been taken to restore the same. He would also submit that the plaintiff had filed R.E.A.No.442 of 1995 in R.E.P. No.39 of 1993 in O.S.No.701 of 1992 not to record the delivery, which was dismissed on 29.04.2004 and there is no challenge to the same. He would sum up his arguments as follows:

(a) The delivery has been effected through Court on 27.04.1995. The relief for injunction had been subsequently amended as one for recovery of possession only in the year 2005 and therefore the suit is barred by limitation.

(b) The plaintiff's vendor had challenged the sale and in the said suit, namely, O.S.No.621 of 1995,

which was dismissed for default and not restored. In that suit, there is a mention about the decree in O.S.No.701 of 1992. Therefore, the plaintiff is very much aware about all the earlier proceedings and has not chosen to file appeal in respect of any of the earlier proceedings.

(c) As per the provisions of Order VI Rule 4 of C.P.C, the plaint should contain all particulars especially when a plea of fraud has been raised initially and has been introduced thereafter.

(iv) In support of the above argument, the learned counsel would rely upon the following judgments:

Sl.No	Citation
1	***(2019) 10 SCC 695*** *[General Manager, Electrical Vs. Sri Giridhari Sahu and Others]*

Sl.No	Citation
2	(***2022) 2 SCC 573*** *[Electrosteel Castings Ltd Vs UV Asset Reconstruction Company Limited and Others]*

(v) Per contra, Mr.C.Jagadish, learned counsel appearing on behalf of the 1st respondent/plaintiff would submit that the person under whom the 1st defendant claim's title, namely Easwara Chettiar had filed a suit O.S.No.884 of 1956 against Chinnaiya Chettiar for ejectment. The suit was dismissed, since no notice was given, however, giving liberty to file a fresh suit and the other suit O.S.No.1160 of 1992 filed thereafter was decreed, against which, the 4th defendant had filed an appeal in A.S.No.204 of 1964, which was also dismissed. Challenging the same, the 4th defendant had filed S.A.No.1094 of 1965, which was allowed by this Court. Subsequent to the decree in O.S.No.1160 of 1962, the plaintiff had filed I.A.No.1748 of 1989 under Section 9 of the Madras City Tenants

Protection Act, 1921. By order dated 30.04.1990, the said I.A. was allowed, against which, the said Easwara Chettiar had filed C.R.P.No.367 of 1992 before this Court and the same was dismissed and the said Easwara Chettiar was directed to execute the sale deed in favour of Chinnaiya Chettiar. However, he failed to do so. Therefore, the Principal District Munsif, Salem, by order dated 20.01.1993 in R.E.P.No.334 of 1990 had executed the sale deed. He would further submit that when the Sale Deed in favour of the said Chinnaiya Chettiar has been executed in his favour only on 20.01.1993, the alleged agreement of sale deed dated 11.06.1992 would not have come into existence, since at that time, the parties were contesting before this Court. He would submit that the agreement of sale has been strongly denied outright by the 4th defendant and on the basis of this agreement of sale, the 1st defendant had filed O.S.No.701 of 1992 even before the Sale Deed was executed in favour of the said

Chinnaiya Chetiar.

(vi) The 4th defendant's categoric case is that he has not received summons in the suit and further, the Advocates who have entered appearance on his behalf, were never engaged by him. This statement has been clarified in the evidence of P.Ws.2 and 3, who are the Advocates, who had entered appearance on behalf of the 4th defendant and they have deposed that they have not seen the said Chinnaya Chettiar and it was only an Advocate Clerk, who had identified someone as Chinnaiya Chettiar. Despite the categoric denial of the agreement of sale dated 11.06.1992, vakalat and the consequent Memos, the 1st defendant did not deem it fit to have the signatures sent for comparison with the admitted signatures of the 4th defendant. He would submit that once the plaintiff is able to establish the fraud, the fraud vitiates all the proceedings and therefore, the contentions now raised by the plaintiff with reference to pleadings etc., would pale into insignificance.

(vii) He would further submit that the agreement of sale-Ex.A13 is a fraudulent one. This is clearly evident from the fact that the description of the property shows the property as a vacant site, whereas the property in question had a superstructure even on the date of the alleged agreement of sale. In the agreement of Sale dated 11.06.1992, the signature of the 4th defendant in Ex.A13 is a forged one. The Vakalat in O.S.No.701 of 1992 was not signed by Chinnaiya Chettiar. Further, the Memo under which the parties had submitted to decree, does not also contain the signature of Chinnaiya Chettiar. Immediately, on coming to know about the fraudulent suit, Chinnaiya Chettiar had initiated the proceedings against the Counsels before the Bar Council of Tamil Nadu. In the suit O.S.No.620 of 2001 filed by the 1st defendant, once again, the counsel who has entered appearance on behalf of the 4th defendant, was not engaged by the 4th defendant and the signature in the vakalat is not that of the 4th defendant. He would also draw the attention of this Court to the evidence of D.W1, wherein, he had deposed that he did not know Chinnaiya Chettiar till he filed suit O.S.No.701 of 1992, which is yet another pointer that Chinnaiya Chettiar would not have signed the Ex.A13-Agreement. The suit for specific performance was not preceded by any notice calling upon the parties to adhere to the terms of the agreement by executing the Sale Deed. He would also draw the Court's attention to the evidence of D.W1 to show that the decree in O.S.No.701 of 1992 was obtained collusively by the defendants, who have acted in unison. Easwara Chettiar, the 3rd defendant, who had lost in the earlier proceedings before this Court in S.A.No.1160 of 1992, has colluded with the 1st defendant to take away the property from Chinnaya

Chettiar. He would further submit that the possession which had been handed over pursuant to decree in R.E.A.No.39 of 1993, has exceeded the scope of the decree. The decree was only with reference to the vacant site and there was no direction with respect to the superstructure, since the agreement of sale is only with reference to the vacant site. That being the case, the possession which has been recorded in R.E.P.No.39 of 1993 would definitely not confer any title upon the 1st defendant and consequently, the 21st defendant who claims under Easwara Chettiar who had lost title to the property as early as on 30.04.1990 has no right to enter into an agreement of sale - Ex.A13. Therefore, in the agreement of sale, all rights are claimed by defendants 1 to 3, the 21st defendant has purchased the property from persons, who as on that date, had no right to the property. The signature of Chinnaiya Chettiar has been clearly and categorically stated to be a forged signature and despite the same, steps have not been taken to have the signatures examined. He would therefore submit that the plaintiff has clearly and cogently traced his title to the property through Chinnaiya Chettiar that too after Chinnaiya Chettiar had purchased the property through the orders of this Court dated 20.01.1993 in C.R.P.No,367 of 1992. In the suit O.S.No.701 of 1992, none of the earlier proceedings find a mention, this is nothing but fraud being played on Court. He would submit that the appellant/21st defendant, who is a pendente-lite-purchaser, is not entitled to any relief. He would rely upon the judgment of this Court reported in ***2015 (1) MWN (Civil) 308 [Jayalakshmi and Others Vs.Mohankumar and Others]*** in support of his contention that no man can convey the better title than what he has to question. Easwara Chettiar himself having lost his title on 30.09.1990, had no right to the suit property on the date on which the agreement of sale was entered into. In support of his argument that the judgment or decree obtained by fraud be treated as nullity, he would rely upon the judgment of the Hon'ble Supreme Court reported in ***(1994) 1 SCC 1 [S.P.Chengalvaraya Naidu(Dead) by LRs Vs.Jagannath (Dead) by LRs and Others].***

8. Upon hearing the arguments and on its basis the following substantial questions are framed for consideration:

1. *Whether the suit is barred by limitation in as much as the relief has been amended seeking recovery of possession only in the year 2005 when delivery has been effected on 27.04.1993?*
2. *Whether in the light of decree in O.S.No.621 of 1995 the present suit O.S.No.380 of 1995*

would be barred by the principles of res judicata?

3. *Whether the decree in O.S.No.701 of 1992 having been brought about fraudulently will be binding upon the plaintiff?*

10. Discussion:

(i) The appellant / 21st defendant claims a right to the property through the Agreement of Sale dated 11.06.1982-Ex.A13 and thereafter, by virtue of the decree in O.S.No.701 of 1992, followed by the execution proceedings in R.E.P.No.39 of 1993. In order to appreciate the case of the plaintiff in the instant suit O.S.No.380 of 1995, it is necessary to touch upon the facts, which have proceeded till the execution of the alleged agreement of sale-Ex.A13. The property in question belonged to one Syed Hyder Sahib, who had inducted the 4th defendant as the tenant in respect of the vacant site in the year 1952 granting him permission to put up a superstructure. Accordingly, the 4th defendant had put up a superstructure in the suit properties, where he was carrying on the business of weaving. The said Syed Hyder Sahib had sold the vacant land to Easwara Chettiar under Sale Deed dated 15.04.1956. Thereafter, in the year 1956, Easwara Chettiar had filed O.S.No.884 of 1956 on the file of the District Munsif Court, Salem seeking recovery of possession and for arrears of rent. The suit was dismissed on technical grounds and subsequent suit filed on the file of the Additional District Munsif Court, Salem, was also dismissed on technical grounds. The appeal filed thereon in A.S.No.54 of 2014 was also dismissed and confirmed right up to this Court in S.A.No.334 of 1962. The second appeal was dismissed holding that the notice issued under Ex.A5 in the suit O.S.No.520 of

1958, was not in accordance with law and did not specify the requirements of Section 11 of the Madras City Tenants and Protection Act. Thereafter, Easwara Chettiar filed O.S.No.1160 of 1962 on the file of the Additional District Munsif, Salem. In that suit, the 4th defendant, Chinnaiya Chettiar filed I.A.No.57 of 1963 invoking the provisions of Section of 9 of the Madras City Tenants and Protection Act. The said O.S.No.1160 of 1962 was decreed and the application filed by the 4th defendant in I.A.No.57 of 1963 was dismissed. Both judgments were challenged by Chinnaiya Chettiar by filing appeals in A.S.No.204 of 2004 and A.S.No.114 of 2004 on the file of the Subordinate Judge, Salem. These appeals also ended in dismissal. Chinnaiya Chettiar had preferred S.A.No.1094 of 1965 against the decree in O.S.No.1160 of 1962, as confirmed in A.S.No.204 of 1964. Similarly, Chinnaiya Chettiar had filed C.R.P.No.54 of 1966 against the order of dismissal in A.S.No.114 of 2004, which confirmed the order in I.A.No.57 of 1963. The second appeal and the civil revision petition were held in favour of Chinnaiya Chettiar by judgment and decree dated 30.10.1969, in and by which, Chinnaiya Chettiar's right to have the sale deed executed in his favour as per the provisions of the City Tenants and Protection Act, had been confirmed. Thereafter, the value of the property was fixed. It

is seen that the sale amount directed to be deposited by the Court had also been deposited. Thereafter, I.A.No.1748 of 1989 in O.S.No.1169 of 1962 was filed by the 4th defendant on the file of the District Munsif, Salem for a direction to Easwara Chettiar to execute and register the Sale Deed in his favour. The said I.A was allowed on 30.04.1990 (Ex.A7). Since Easwara Chettiar did not come forward to execute the Sale Deed, Chinnaiya Chettiar had filed E.P.No.334 of 1990 for having the sale deed executed in his favour. By order dated

20.01.1993, the Principal District Court, Salem had directed the sale to be executed in favour of the said Chinnaiya Chettiar. It is pertinent here to mention that Chinnaiya Chettiar had already been in possession of the property as tenant, which is the admitted case, since Easwara Chettiar had filed the suit for ejectment. Therefore, by reason of the judgement and decree-Exs.A5 and A6, the order in I.A.No.7487 of 1999-Ex-A7 and the Sale Deed-Ex.A8, Chinnaiya Chettiar's right to the entire properties, had been confirmed. The claim of Easwara Chettiar stood rejected.

(ii) While so, it is rather surprising that after obtaining the right to the properties, after such serious contest and even after the sale deed being executed in favour of the 4th defendant, the claim that the 4th defendant had entered into an agreement of Sale-Ex.A13 appears to be shrouded with suspicion, more particularly, when the 4th defendant had denied its execution. Under Ex.A13, only a vacant site is sought to be conveyed, whereas on the date on which the agreement of sale has been executed, the property therein contained a superstructure as well. The 4th defendant has clearly and emphatically denied the execution. Based upon this fraudulent agreement of sale, the suit O.S.No.701 of 1992 is instituted on the file of the Subordinate Court, Salem when the 4th defendant had not even got the sale deed in respect of the property executed in his favour and E.P.No.334 of 1994 was pending execution of sale by Easwara Chettiar in his favour. Therefore, even at that stage, the 4th defendant was contesting the right of Easwara Chettiar to the properties, particularly, the superstructure.

(iii) In the above background, the execution of Ex.A13, agreement of Sale clearly smacks of fraud. The filing of the suit even before the agreement of sale was executed in favour of Chinnaiya

Chettiar would also add to the suspicion. The agreement of sale is totally silent about any of the proceedings as also the suit O.S.No.701 of 1992.

(iv) To give credence to his claim in O.S.No.701 of 1992, the plaintiff therein had engaged counsels to appear on behalf of the 4th defendant without notice being served on him and Exs.A15 to A17 Memos have been filed in the suit O.S.No.701 of 1992 to show that defendants 1 to 4 respectively have agreed to submit to a decree. The recitals in the Memos, make interesting reading. The memos read that the entire sale consideration has been paid by the plaintiff to the defendants. If that statement is true, then, there is no necessity to submit to a decree and the parties could have straight away executed a sale deed after such memos being filed into Court. The sale deed is obtained much later by filing execution proceedings in E.P.No.90 of

1943 and the Court executes the Sale Deed under Ex.B3. Even before that the 4th defendant had already executed a Sale Deed in favour of the plaintiff under Ex.A1 and later, Ex.A20 on 02.01.1995. The Advocates, who had entered appearance on behalf of the 4th defendant in O.S.No.701 of 1992 and O.S.No.620 of 2001 have both deposed that they had not seen the 4th defendant and it is only the Advocate Clerk, who had brought the person stating that he was Chinnaiya Chettiar. The evidence of P.Ws 2 and 3 have not been shaken by the 1st defendant or by the 21st defendant. Therefore, all other proceedings thereafter are tainted with fraud and they do not convey right, title or interest upon the 1st defendant or the 21st defendant claiming under them.

(v) The argument with reference to the absence of the pleading etc, which have now been raised by the learned counsel appearing for the appellant / 21st defendant, cannot be countenanced for the simple reason that the very claim of the 1st defendant rests on fraud. Therefore, in the light of the observations of the Hon'ble Supreme Court in its judgment reported in ***1994 (1) SCC Page 1*** **(cited supra),** and the judgment in ***2022 LiveLaw (SC) 806 (Ram Kumnar Vs. State of Uttar Pradesh and others)*** as well as 2***012 (11) SCC 574 (Badami (deceased) by her Legal representatives)***, the claim of the 1st defendant and the 21st defendant has to definitely fail. In the judgment in ***1994 (1) SCC Page 1***, the Hon'ble Supreme Court has opened with the following words:

> *“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.

Ultimately, the learned Judges have observed in paragraph 6 as follows:

> *"6....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.*

(vi) The learned Judges have further observed that the principle of finality of litigation cannot be pressed. These words squarely apply to the facts of the instant case.

(vii)Therefore, I see no reason to interfere with the concurrent findings of the Courts below. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed if any.

25.05.2023

Index : Yes/No
Speaking order/non-speaking order
Neutral Citation : Yes/no
srn

To

1. The 1st Additional District Judge, Salem.
2. The 1st Additional Subordinate Judge, Salem.
3. The Section Officer, V.R.Section, High Court, Madras.

P.T.ASHA, J.,

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Pre-delivery Judgment in
S.A.No.659 of 2017

Judgment delivered on 25.05.2023