



WEB COPY

C.R.P.(MD)



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.06.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P. (MD) No.1938 of 2022

and

C.M.P. (MD) No.8812 of 2022

D.Udhayakumar

.. Petitioner / 5th Defendant

Versus

1.K.Chinnadurai

... 1st Respondent / Plaintiff

B.Ayyalu Chettiar (Died)

2.S.Vijaya

3.S.Sakunthala

4.A.Ramakrsihnan

.. Respondents 2 to 4 / Defendants 1 to 4

Prayer :- Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 02.08.2022, passed in I.A.No.93 of 2022 in O.S.No.108 of 2014, on the file of the District Munsif-cum-Judicial Magistrate Court, Natham.

For Petitioner : Mr.R.Devaraj

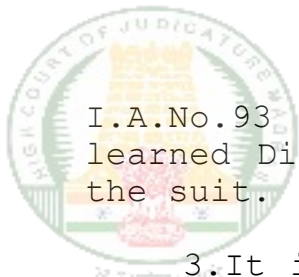
For R1 : Mr.P.Athimoolapandian

For R2 & R4 : No Appearance

ORDER

The petitioner is aggrieved by the fair and decreetal order dated 02.08.2022, passed in I.A.No.93 of 2022 in O.S.No.108 of 2014, on the file of the District Munsif-cum-Judicial Magistrate Court, Natham.

2.The petitioner is the fifth defendant in O.S.No.108 of 2014 before the District Munsif-cum-Judicial Magistrate Court, Natham. The above suit has been filed by the first respondent for a permanent injunction restraining the petitioner and the respondents 2 to 4 from interfering with the peaceful possession and enjoyment of the suit schedule property. In the said suit, the petitioner has also entered appearance and has also filed a written statement. After filing of the written statement, the petitioner had filed



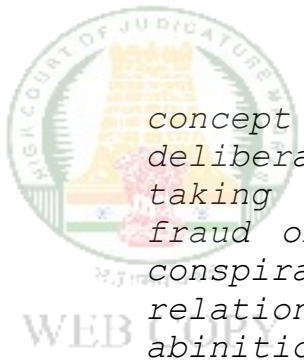
I.A.No.93 of 2022 under Section 151 of C.P.C. by exhortation of the learned District Munsif-cum-Judicial Magistrate, Natham, to dismiss the suit.

3.It is the case of the petitioner that he has obtained decree for specific performance against the fourth respondent herein, namely, A.Ramakrishnan and one S.Sakunthala, the third respondent herein with respect to the suit schedule property as early as 23.07.2009 in O.S.No.202 of 2002 from the Additional Subordinate Court at Dindigul. It is the further case of the petitioner that an appeal in A.S.No.29 of 2009 against the judgment and decree dated 23.07.2009, passed in O.S.No.202 of 2002, was dismissed by the learned Additional District Judge (FTC), Dindigul and a further appeal in S.A.(MD)No.19 of 2011 was also dismissed by this Court on 25.01.2011. Subsequently, the petitioner filed E.P.No.40 of 2011 for executing the decree dated 23.07.2009, before the Principal Subordinate Court, Dindigul, and thereafter, on 23.03.2015 a sale deed was also executed in favour of the petitioner.

4.It is the further case of the petitioner that he filed E.P.No.145 of 2015 for delivery of the suit properties and the first respondent herein/plaintiff filed E.A.No.32 of 2018 in E.P.No.145 of 2015 to implead himself as sixth respondent and the same was allowed on 24.07.2010 by the learned Principal Subordinate Judge, Dindigul. Aggrieved by the same, the petitioner herein filed C.R.P.(MD)No.465 of 2010 before this Court. This Court, by its order dated 30.07.2021, allowed the said Civil Revision Petition filed by the petitioner and thus, the order, dated 24.07.2010, passed in E.A.No.32 of 2018 in E.P.No.145 of 2015 in O.S.No.202 of 2002 was set aside. This Court has made the following observations while allowing the Civil Revision Petition filed by the petitioner herein.

"11. Considering the above, this Court has no hesitation to hold that the Judgment Debtors in collusion with the proposed party has created the unregistered lease deed, after the dismissal of the Second Appeal and managed to get orders from the Tenancy Record Officer fraudulently and that thereafter, filed the suit in O.S.No.108 of 2014 and lastly, the application under Order 1 Rule 10 CPC in execution proceedings.

12. Fraud and collusion vitiate everything. It is settled law that where a party gets an order by playing fraud upon the competent authority, such order cannot be sustained in the eyes of law. The Hon-ble Supreme Court in S.P. Chengalvaraya Naidu vs. Jaganath and others reported in AIR 1994 SC 853 has quoted the words of Chief Justice Edward Coke of Explerd, that fraud avoids all judicial acts, ecclesiastical or temporal. In another decision reported in AIR 1992 SC 1555 Shrisht Dhawan Vs. M/s. Shaw Brothers has held that fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a



concept descriptive of human conduct. Fraud is an deliberate deception with the design of securing something by taking unfair advantage of another. Generally, the act of fraud on Court is to be viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void abinitio.

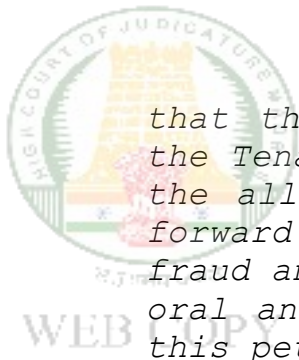
13. No doubt, this Court is aware that dealing with the alleged fraud and collusion is beyond the scope of the present revision, but, this Court in exercise of its power of superintendence under Article 227 of the Constitution of India can deal with, when such a fraud and collusion in the Subordinate Court proceedings was brought to the notice of this Court. The Judgment debtors, in collusion with the proposed party and through the above said fraudulent acts have been preventing the decree holder from realising the fruits of the decree, despite the fact that the Judgment and Decree in favour of the decree holder was confirmed by this Court in the Second Appeal in the year 2011 itself. Hence, this Court concludes that the impugned order allowing the impleading petition is not good~in~law and the same is liable to be set aside and that necessary directions have to be issued for the early disposal of the execution proceedings for delivery.

14. In the result, the civil Revision Petition is allowed and the impugned order passed in E.A.No.32 of 2018 in E.P.No.145 of 2015 in O.S.No.202 of 2002 on the file of the Principal Subordinate Court, Dindigul, is set aside and the Executing Court is directed to dispose of the Execution Petition for delivery within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.''

5.It is in this background, the petitioner has filed I.A.No.93 of 2022 under Section 151 of C.P.C. The Court below has dismissed the said I.A. with the following observation:-

'7. It is the rival contention of the 1st respondent/plaintiff that once the tenant is registered as cultivating tenant, the Civil Court has no jurisdiction to question the same and he shall not evict from the property. Also he submit that the obiter dictum of the Hon High Court does not binding upon us.

8. In this petition, it is admitted by the 1st respondent/plaintiff that possession of the property handed over to the petitioner but, he stated it is only a symbolic possession and not an actual possession. The petitioner stated



that the Hon'ble High Court in CRP(MD)No.465/2021 find the Tenancy records was obtained fraudulently. With respect to the allegations put forth by the petitioner he has not come forward to produce the documents relied by him. Further, the fraud and collusion can be decided only at the trial by way of oral and documentary evidences. Without evidence the suit or this petition cannot be decided.

9. Further, in the respondent side they argued that the civil court has no jurisdiction to question the registration of cultivating tenant. He also stated that, before the Hon'ble Madurai bench of Madras high court, the issue relating to cultivating tenant is not taken. The arguments of both side considered. At present, this suit is at the stage of this petitioner/5th Defendant side evidence. Hence, this court hereby instruct the petitioner to produce the documents to prove that the 1st respondent/plaintiff obtained the Tenancy record fraudulently. Further, in order to avoid multiplicity of proceedings in this suit, it is better to let in evidence by the petitioner in the main suit and decided the suit on merits. Therefore, this Court is not inclined to allow this petition and the petition is liable to be dismissed.

In the result, the petition is dismissed. No cost.'

6. A reading of the above passages indicate that having filed a written statement and participated in the trial all along, the petitioner is trying to short circuit the proceedings, by invoking Section 151 of C.P.C. At best, the petitioner could have filed an application for rejection of plaint under Order VII Rule 11 of C.P.C. in the light of the judgment and decree of the Trial Court, dated 23.07.2009, passed in O.S.No.202 of 2002, which was confirmed by this Court in S.A.(MD)No.19 of 2011, dated 25.01.2011.

7. Be that as it may, considering the fact that the trial has already been commenced, the learned District Munsif-cum-Judicial Magistrate, Natham, is directed to dispose O.S.No.108 of 2014, as expeditiously as possible, preferably, within a period of six months from the date of receipt of a copy of this order.

8. This Civil Revision Petition is dismissed with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS II)

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/07/2023

Sub Assistant Registrar(CS)



C.R.P.(MD)



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To

The District Munsif-cum-Judicial Magistrate,
Natham.

COPY TO:

THE REGISTRAR(JUDICIAL),
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.R.DEVARAJ, Advocate (SR-27492[F] dated 12/06/2023)

C.R.P. (MD) No.1938 of 2022
09.06.2023

MK/08.07.2023 5P 4C