



S.A.(MD).No.126 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 20.04.2023

Pronounced on : 26.04.2023

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.(MD).No.126 of 2017

and

C.M.P.(MD).No.2177 of 2017

C.Vivekanandan

... Appellant/Appellant/Third Party

Vs.

1.M.Dhanakumar

... 1st Respondent/1st Respondent/Plaintiff

2.Sundaralingam

... 2nd Respondent/2nd Respondent/Defendant

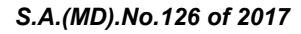
(2nd respondent is given up since he remained ex parte)

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 30.11.2016 passed in A.S.No.112 of 2012 on the file of the Principal District Judge, Trichy, confirming the judgment and decree dated 29.07.2004 passed in O.S.No.259 of 2004 on the file of the Principal Sub Judge, Trichy and allow the Second Appeal.

For Appellant : M/s.J.Anandhavalli

For R-1 : Mr.G.S.Asok Adithyan

For R-2 : Given up (Vide E.B)



This Second Appeal has been filed challenging the judgment and decree of the Lower Appellate Court, namely, the Principal District Court, Tiruchirappalli dated 30.11.2016 passed in A.S.No.112 of 2012. The Lower Appellate Court in its judgment and decree dated 30.11.2016 passed in A.S.No.112 of 2012 has confirmed the judgment and decree dated 29.07.2004 passed by the Trial Court, namely, Principal Sub court, Tiruchirappalli in O.S.No.259 of 2004. The appellant is a third party to the suit O.S.No.259 of 2004 on the file of the Principal Sub Court, Tiruchirappalli and he was not arrayed originally as a defendant in the said suit. The suit O.S.No.259 of 2004 was filed by the first respondent/plaintiff against the second respondent/defendant seeking for specific performance of an agreement of sale dated 14.05.1998 executed by one Natesan. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit O.S.No.259 of 2004 and the appellant, who is a third party, is described as “Appellant/Third party”.

2. The case of the plaintiff in the suit O.S.No.259 of 2004 is that the defendant is the adopted son of Natesan, who is the owner of the suit schedule property. According to the plaintiff, Natesan agreed to sell the suit schedule property under an agreement of sale dated 14.05.1998 for a sum of Rs.1,18,000/- and on the date of the agreement, a sum of Rs.75,000/- was paid



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as advance by the plaintiff to the said Natesan. It is further contended by the plaintiff that Natesan died and the defendant, who is the adopted son, on the very same day of the death of Natesan demanded from the plaintiff a further sum of Rs.15,000/- towards funeral expenses. According to the plaintiff, the same was also paid to the defendant and subsequently, further sums were also paid by the plaintiff towards the sale consideration for the purchase of the suit schedule property as agreed by Natesan under the agreement of sale dated 14.05.1998. According to the plaintiff, he has paid the entire sale consideration as per the agreement of sale dated 14.05.1998. He has stated that despite repeated reminders and demands, the defendant, who is the adopted son of Natesan who had entered into an agreement of sale dated 14.05.1998 with the plaintiff, did not come forward to execute the sale deed. In such circumstances, the suit O.S.No.259 of 2004 came to be filed by the plaintiff against the defendant seeking for specific performance of the agreement of sale dated 14.05.1998.

3. The defendant was set ex parte by the Trial Court and an ex parte decree dated 29.07.2004 came to be passed in favour of the plaintiff in O.S. No.259 of 2004 on the file of the Principal Sub Court, Tiruchirappalli and accordingly the relief of specific performance was granted in favour of the plaintiff.



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4. The appellant is a third party to the suit O.S.No.259 of 2004 on the file of the Principal Sub Court, Tiruchirappalli and was not arrayed as a party defendant in the said suit. The appellant/third party claimed that he is the absolute owner of the suit schedule property having got the same under a registered sale deed dated 13.06.1980 executed by Natesan in his favour. According to the appellant/third party, the plaintiff and the defendant are own brothers and suppressing the fact of the said relationship, the plaintiff has falsely alleged that the defendant is the adopted son of Natesan, the vendor who is also the vendor to the sale deed dated 13.06.1980 executed in favour of the appellant/third party, in the plaint filed in support of O.S.No.259 of 2004 on the file of the Principal Sub Court, Tiruchirappalli and has filed a false suit for specific performance on a fabricated agreement of sale.

5. The appellant/third party contends that he is the owner of the suit schedule property and is in possession of the same ever since his sale deed dated 13.06.1980 executed in his favour by Natesan. Since the appellant/third party was not a party to the suit O.S.No.259 of 2004, which resulted in an ex parte decree dated 29.07.2004 passed by the Principal Sub Court, Tiruchirappalli and since the plaintiff had attempted to take forcible possession from the appellant/third party based on the said ex parte decree, the appellant filed a Civil Revision Petition before this Court under Article 227 of the



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passed by the Trial Court, namely, the Principal Sub Court, Tiruchirappalli, in O.S.No.259 of 2004 on the ground that the said suit is a collusive suit and the ex parte decree obtained by the plaintiff is a fraudulent decree. This Court by exercising its powers under Article 227 of the Constitution of India permitted the appellant/third party to file a regular appeal after filing a leave application seeking permission of the Lower Appellate Court to file an appeal as the appellant was a third party. Pursuant to the liberty granted by this Court while exercising powers under Article 227 of the Constitution of India, the appellant/third party filed an application to file an appeal and the same was allowed by the Lower Appellate Court and the appeal filed by the appellant/third party was taken on file as A.S.No.112 of 2012.

6. Thereafter, the Lower Appellate Court by its judgment and decree passed in A.S.No.112 of 2012 dated 27.11.2012 allowed the appeal filed by the appellant/third party and remitted the case to the Trial Court for fresh consideration by the Trial Court. The Lower Appellate Court while remanding the matter permitted either of the parties to the appeal to file an application to implead the appellant as a party to the suit in O.S.No.259 of 2004 on the file of the Principal Sub Court, Tiruchirappalli. The plaintiff challenged the order of remand dated 27.11.2012 in A.S.No.112 of 2012 by filing an appeal before this Court in C.M.A.(MD).No.448 of 2013. This Court allowed C.M.A.(MD).No.



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merits. Pursuant to the order passed in C.M.A.(MD).No.448 of 2013, the appeal was once again taken on file and the applications for reception of additional evidence filed by the appellant/third party in I.A.Nos.59 of 2011 and 234 of 2012 were allowed and exhibits B1 to B7 were marked on the side of the appellant. The plaintiff also filed an application before the Lower Appellate Court for reception of additional evidence in I.A.No.230 of 2012 and the same was also allowed by the Lower Appellate Court and exhibits A4 to A11 were marked on the side of the plaintiff. By the impugned judgment and decree dated 30.11.2016 passed by the Principal District Court, Tiruchirappalli, the Lower Appellate Court in A.S.No.112 of 2012, the appellant/third party's appeal was dismissed by confirming the judgment and decree dated 29.07.2004 passed by the Principal Sub Court, Tiruchirappalli in O.S.No.259 of 2004.

7. This Court on 03.03.2017 admitted the Second Appeal by formulating the following substantial questions of law:

"(a) Is not the lower appellate Court committed an error in not going into the aspect of fraudulent decree obtained by the respondents?"

(b) Is not the judgment and decree of the lower appellate Court is liable to be set aside when there is no finding on the title of the appellant, which is one of the core issue to be decided?"

(c) Whether the lower appellate Court is right in confirming the decree of the trial Court without even



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adverting to the plea of collusiveness between the respondents?

(d) Whether the judgment and decree of the lower appellate Court is sustainable in law in overlooking the admission of the second respondent in earlier proceedings regarding the title of the appellant?

(e) When admittedly the original owner Natesan is dead, whether the suit for specific performance as against the second respondent who is not the legal heir is maintainable in law, more so in the absence of the only legal heir Dhayanithi not impleaded as a party to the proceedings?

(f) In the the absence of any documentary evidence to prove the possession or delivery of possession, the finding of the lower appellate Court accepting the xerox copies of the documents and confirming the decree on that basis whether sustainable in law?

(g) Whether the finding of the lower appellate Court that the appellant is debarred from challenging the decree, he having not challenged the execution proceedings is sustainable in law?"

8. The learned counsel for the appellant/third party would submit as follows:

a) The judgment and decree dated 29.07.2004 passed by the Principal Sub Court, Tiruchirappalli in O.S.No.259 of 2004 has been obtained through fraud by the plaintiff for the following reasons:



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(i) The appellant/third party is the absolute owner of the suit schedule property, having purchased the same under a sale deed dated 13.06.1980 executed by Natesan and therefore, the sale agreement dated 14.05.1998 allegedly entered into between the plaintiff and Natesan is a fraudulent document.

(ii) The defendant is the own brother of the plaintiff. But in the plaint filed in support of O.S.No.259 of 2004 on the file of the Principal Sub Court, Tiruchirappalli, the plaintiff has committed a fraud by pleading that the defendant is the adopted son of Natesan from whom the appellant/third party had purchased the property under a sale deed dated 13.06.1980.

(iii) The plaintiff has not proved through documentary evidence that the defendant is the adopted son of Natesan, whereas, actually, the plaintiff and the defendant are own brothers.

(iv) Only to snatch away the suit schedule property from the appellant/third party, the fabricated and fraudulent agreement of sale dated 14.05.1998 has been entered into between the plaintiff and the defendant.

(v) The appellant is the brother-in-law of Natesan, the original owner of the suit schedule property from whom the appellant had purchased the same under sale deed dated 13.06.1980. Natesan has married the appellant's sister, Dhayanithi. Dhayanithi and Natesan do not have any children. Suppressing the



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the assistance of the defendant falsely alleging that the defendant is the adopted son of Natesan.

b) The learned counsel for the appellant would also submit that ever since the date of the purchase of the suit schedule property, i.e., 13.06.1980, by the appellant, he is in possession and enjoyment of the same as the absolute owner.

9. The learned counsel for the appellant drew the attention of this Court to the judgment and decree of the Lower Appellate Court dated 30.11.2016 passed in A.S.No.112 of 2012, which is challenged in this Second Appeal and would submit that the Lower Appellate Court erroneously by giving perverse findings has dismissed the appeal of the appellant on the ground that the appellant having knowledge about the suit and the execution proceedings ought to have taken steps to implead himself as a party defendant to the suit O.S.No.259 of 2004 filed by the plaintiff for specific performance. Having not done so, at this point of time reopening the suit will unnecessarily give fresh trouble and hardship to the plaintiff. The learned counsel for the appellant would submit that the above findings of the Court below are not only perverse, but also against facts. According to her, when the appellant has been able to establish that the suit for specific performance filed by the plaintiff is a collusive suit and the ex parte decree has been obtained through fraudulent



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into the merits of the appellant's contentions, which have been proved by him that the ex parte decree dated 29.07.2004 passed in O.S.No.259 of 2004 on the file of the Principal Sub Court, Tiruchirappalli is a fraudulent decree obtained by the plaintiff.

10. The learned counsel for the appellant would further submit that the suit being one for specific performance, unless and until the plaintiff establishes that Natesan was the owner of the suit schedule properties on the date of the agreement of sale, viz., Ex.A1 dated 14.05.1998 and the same has been executed by him, there cannot be a decree in favour of the plaintiff. The learned counsel for the appellant would also submit that the sale agreement is of the year 1998 and the suit O.S.No.259 of 2004 was filed by the plaintiff only on 02.07.2004 and therefore, the said suit is also barred by limitation. Being a collusive suit and a decree obtained by fraudulent means, the learned counsel for the appellant would submit that the ex parte decree dated 29.07.2004 passed by the Principal Sub Court, Tiruchirappalli in O.S.No.259 of 2004 has to be set aside and this Second Appeal will have to be allowed by this Court by answering the substantial questions of law formulated by this Court while admitting the Second Appeal in favour of the appellant.

11. Per contra, the learned counsel for the first respondent/plaintiff would

<https://www.mhcourtsonline.org/judis> submit as follows:



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a) Mistakenly in the plaint filed in support of O.S.No.259 of 2004 on the file of the Principal Sub Court, Tiruchirappalli, the plaintiff had stated that the defendant is the adopted son of Natesan.

b) The registered sale deed dated 13.06.1980 executed by Natesan in favour of the appellant is a benami sale transaction and is a fraudulent sale deed.

c) The aforementioned sale deed was executed in favour of the appellant, who is the brother-in-law of Natesan, for evading to discharge a loan borrowed by Natesan from one Irudayasamy.

d) The said creditor Irudayasamy filed a suit in O.S.No.2222 of 1981 against the debtor Natesan and the appellant for recovery of the amount borrowed by Natesan. In the said suit, the District Munsif Court, Tiruchirappalli framed issues with regard to the sale deed dated 13.06.1980 standing in the name of the appellant and has given a finding in the said suit that the sale deed dated 13.06.1980 standing in the name of the appellant is a sham and nominal document created only to defraud and delay the execution of the decree by the creditor Irudayasamy and the same is hit by Section 53 of the Transfer of Property Act.

e) Against a decree and judgment passed in O.S.No.2222 of 1981, an appeal was preferred by the appellant (Vivekanandan) in A.S.No.36 of 1983.

The said appeal was allowed on payment of decretal amount by one Dhayanithi, wife of Natesan and the sister of Vivekanandan. While allowing the appeal, the



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Appellate Court without assigning reasons by framing specific issue simply set aside the judgment and decree of the Lower Court in respect of the appellant (Vivekanandan). It is against the provisions of Order 41 Rule 31 of CPC. Therefore, the order setting aside the judgment and decree of the Trial Court in A.S.No.36 of 1983 is a nullity in the eye of law. Therefore, the appellant, who is a third party, cannot take advantage of the judgment and decree in A.S.No.36 of 1983.

f) Since the defendant did not come forward to execute the decree dated 29.07.2004 passed in O.S.No.259 of 2004 on the file of the Principal Sub Court, Tiruchirappalli, the plaintiff filed an execution petition in E.P.No.38 of 2007 for execution of a sale deed in his favour by the Executing Court. By delivery warrant (Ex.A9) issued by the Executing Court, the plaintiff took possession of the suit schedule property and the delivery order was also recorded through Ex.A10.

g) Only after the appellant/third party kept silent for so many years and only after the delivery was effected in favour of the plaintiff through orders of the Executing Court, he has chosen to file a Civil Revision Petition under Article 227 of the Constitution of India in the year 2008 instead of filing a regular appeal. Only to circumvent the hurdle of limitation, the appellant had filed a Civil Revision Petition under Article 227 of the Constitution of India and get the relief of filing regular appeal against the Trial Court decree and judgment in O.S.No.259 of 2004. Even after the disposal of the Civil Revision



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Petition in the year 2008, the appellant/third party has not taken immediate steps to file the appeal. He preferred the appeal only in the month of February 2009.

h) The schedule to the sale deed dated 13.06.1980 (Ex.A5) standing in the name of the appellant would show that only undivided share in S.F.No.37/2 was conveyed without four boundaries, whereas, in Ex.A1 (agreement of sale entered into between the plaintiff and Natesan), the four boundaries of S.F.No.37/2 is clearly mentioned.

i) Even according to the appellant/third party, his sister Dhayanadhi has not challenged the decree and judgment in O.S.No.259 of 2004 and therefore, the appellant/third party has no *locus standi* to file an appeal in view of the judgment and decree in O.S.No.2222 of 1981.

Discussion:

12. The learned counsel for the first respondent/plaintiff fairly conceded that the defendant is the own brother of the plaintiff and not the adopted son of Natesan as pleaded in the plaint filed in support of O.S.No.259 of 2004 on the file of the Principal Sub Court, Tiruchirappalli. Natesan is the original owner of the suit schedule property. Natesan had sold the suit schedule property to the appellant under a registered sale deed dated 13.06.1980, which has been marked as Ex.A5. Though the plaintiff claims that the said sale deed is a benami transaction and was executed by Natesan in favour of the appellant only



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to defraud and delay the execution of the decree passed in favour of Irudayasamy against Natesan in O.S.No.2222 of 1981, the said sale deed has not been challenged till date either by Natesan while he was alive or by the defendant, who, the plaintiff has claimed in the plaint, is the adopted son of Natesan.

13. No documentary evidence has been produced by the plaintiff before the Trial Court, namely, Principal Sub Court, Tiruchirappalli in O.S.No.259 of 2004 to prove that the defendant is the adopted son of Natesan. The appellant categorically contends that the defendant is the plaintiff's own brother and not the adopted son of Natesan. The pleadings of the plaintiff are different with regard to the relationship between the plaintiff and the defendant. The learned counsel for the appellant has fairly conceded before this Court that the defendant is not the adopted son of Natesan, but is in fact the brother of the plaintiff. The sale deed dated 13.06.1980 standing in the name of the appellant was also not filed as a suit document in O.S.No.259 of 2004 on the file of the Principal Sub Court, Tiruchirappalli when the suit was originally filed by the plaintiff. Only before the Lower Appellate Court when the appellant as a third party intervened in the proceedings between the plaintiff and the defendant, it was brought to the notice of the Lower Appellate Court the existence of a sale deed for the very same suit schedule property dated 13.06.1980, which was marked as Ex.A5 in the Appellate Court proceedings pursuant to an application



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filed by the plaintiff in I.A.No.230 of 2012 in A.S.No.112 of 2012 on the file of the Principal District Court, Tiruchirappalli. Originally, the plaintiff had filed only three documents when the suit O.S.No.259 of 2004 was filed by him for proving the title of the suit schedule property. Only in the Appellate Court proceedings, with the leave of the Court, the plaintiff had filed additional documents as additional evidence, which were marked as exhibits A4 to A11.

14. Though the first respondent/plaintiff may contend that the sale deed dated 13.06.1980 standing in the name of the appellant (Ex.A5) is a benami transaction entered into between Natesan, the original owner and the appellant to defraud and delay the debt payment payable to a creditor, the same cannot be accepted by this Court in view of the fact that till date, the said sale deed dated 13.06.1980 standing in the name of the appellant has not been challenged before any Court of law either by the plaintiff, defendant or by Natesan while he was alive. The revenue records subsequent to the sale deed dated 13.06.1980 also stand in the name of the appellant.

15. Ex.B1 is the decree dated 14.12.2007 passed in O.S.No.334 of 1999 and Ex.B2 is the judgment dated 14.12.2007 passed in O.S.No.334 of 1999 and as seen from both the exhibits, the defendant (Sundaralingam) is neither a legatee nor an adopted son of the deceased Natesan and has no right to stake claim in respect of the properties earlier owned by Natesan. Ex.B3 is the



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decree dated 09.01.2012 passed in O.S.No.369 of 2004. Ex.B4 is the judgment dated 09.01.2012 passed in O.S.No.369 of 2004. O.S.No.369 of 2004 was also filed for specific performance in respect of the very same suit schedule property. In the said suit, the defendant never brought to the knowledge of the Court that he is the adopted son of Natesan, but in fact he was described as son of Muthaiyan. Ex.B5 is the xerox copy of the proceedings of the Tahsildar, Srirangam dated 18.06.2009, which revealed that patta for the suit schedule property has been transferred in favour of the appellant. Ex.B6 is the decree dated 25.06.2010 passed in O.S.No.1385 of 1999. The above suit was filed by the defendant as against the appellant and Murugesan for permanent injunction from interfering with his peaceful possession and enjoyment of the suit schedule property. The said suit was disposed of in June 2010 during which time, the defendant neither had title nor possession of the suit property in view of the sale deed in favour of the plaintiff executed by the Executing Court on 22.12.2005 pursuant to the ex parte decree dated 29.07.2004 passed in O.S.No. 259 of 2004 by the Principal Sub Court, Tiruchirappalli, which is the subject matter of challenge in this Second Appeal. The suit O.S.No.1385 of 1999 filed by the defendant was dismissed by the judgment and decree dated 25.06.2010 referred to supra and the decree has been marked as Ex.B6.

16. It is clear from the above mentioned paragraphs that the suit filed by

<https://www.mhc.tn.gov.in/judis>

the plaintiff in O.S.No.259 of 2004 on the file of the Principal Sub Court,



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Tiruchirappalli is a collusive suit and the judgment and decree dated 29.07.2004 passed in O.S.No.259 of 2004 by the Principal Sub Court, Tiruchirappalli is a judgment and decree obtained by the plaintiff by fraud despite the fact that the appellant is the absolute owner of the suit schedule property, he having purchased the same from Natesan under a registered sale deed dated 13.06.1980 (Ex.A5), which till date remains unchallenged and the revenue records also stand presently only in the name of the appellant. The Lower Appellate Court erroneously by non-application of mind to the evidence available on record has dismissed the appeal on a flimsy and hyper-technical ground that the appellant having knowledge about the suit O.S.No.259 of 2004 and the execution proceedings ought to have taken steps to implead himself as a party to the suit and having not done so, the question of reopening the suit will not arise as it will cause hardship to the plaintiff. When on the face of the records, it is clear that the appellant is the absolute owner of the suit schedule property by virtue of his sale deed dated 13.06.1980 (Ex.A5) as well as the revenue records standing in his name including the patta, the Lower Appellate Court by showing a blind eye to the said documents has erroneously confirmed the judgment and decree of the Trial Court dated 29.07.2004 in O.S.No.259 of 2004 by giving a perverse finding.

17. In a suit for specific performance of a contract of sale, the defendant

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should have good title over the suit schedule property to convey the same to the



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plaintiff on the date of the agreement of sale. It may not be necessary for the plaintiff to show that the defendant's title was good when the agreement of sale was entered into, but at least on the date of the decree, the defendant must have perfected his title in order to execute a legally valid sale deed in favour of the plaintiff. In the instant case, neither the defendant was having title to convey the suit schedule property to the plaintiff on the date of the agreement of sale nor did he have the title to execute a sale deed in favour of the plaintiff on the date of the decree passed by the Trial Court. The appellant/third party continues to be the owner of the suit schedule property pursuant to his sale deed dated 13.06.1980 (Ex.A5), which till date remains unchallenged and the revenue records presently stand only in his name.

18. The judgments relied upon by the learned counsel for the first respondent, namely,

a) In the case of *H.Siddiqui (dead) by LRs Vs. A.Ramalingam* reported in *AIR 2011 SC 1491*,

b) In the case of *Parimal Vs. Veena* reported in *AIR 2011 SC 1150*,

c) In the case of *K.Karuppuraj Vs. M.Ganesan* reported in *2022 (1) CTC 674* and

d) In the case of *Appa Trimbak Deshpande and another Vs. Waman Govind Deshpande and others* reported in *(28) AIR 1941 Privy Council 85*,

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have no bearing to the facts of the instant case. They do not deal with a case



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where the sale deed standing in the name of the owner remains unchallenged and the present revenue records also stand only in his name. It also does not deal with a case where a person who does not have title over the property and has also not perfected his title at the time of decree, but whereas, in the case on hand, neither does the plaintiff has title over the suit schedule property nor has he challenged the sale deed dated 13.06.1980 (Ex.A5) standing in the name of the appellant/third party.

19. The Lower Appellate Court has also framed points for consideration, which included the point as to whether the suit property belongs to the appellant as claimed by him, which was a primary issue for consideration by the Lower Appellate Court. The Lower Appellate Court has framed the following points for consideration in its judgment and decree dated 30.11.2016:

“1) Whether the suit property belongs to the appellant as claimed by him?

2) Whether the appellant is entitled to any relief in the appeal?

3) Whether the documents filed by the appellant in this appeal can be received as evidence on his side?

4) Whether the documents filed by the respondent/plaintiff can be received as evidence on his side?

5) To what relief the petitioner in I.A.230/2012 is entitled?



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6) To what relief the petitioner in I.A.234/2012 is entitled?"

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Since the points for consideration have been rightly framed, the question of interference by this Court under Section 100 of CPC will not arise and the judgments relied upon by the learned counsel for the first respondent/plaintiff referred to supra have no bearing to the facts of the instant case.

20. As rightly held in the decisions relied upon by the learned counsel for the appellant/third party, namely,

a) In the case of **Commissioner of Customs (Preventive) Vs. M/s.Aafloat Textiles (I) Pvt. Ltd. and others** dated 16.02.2009, a decision rendered by the Hon'ble Supreme Court in **Civil Appeal No.2447 of 2007**,

b) In the case of **S.P.Chengalvaraya Naidu Vs. Jagannath** reported in **1994 SCC (1) 1** and

c) In the case of **Lilly Kutty Vs. Scrutiny Committee**, a decision dated 06.10.2005 rendered by the Hon'ble Supreme Court reported in **AIR 2005 SC 4313**,

the appellant/third party has been able to rightly establish that the plaintiff has played fraud upon him by his act of deliberate deception with the design of securing something by taking unfair advantage of another bringing loss to the appellant/third party. The plaintiff knowing fully well that a sale deed has been



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entered into an agreement of sale (Ex.A1) with the defendant for the very same property and obtained an ex parte decree behind the back of the appellant/third party, who is the true owner as per the sale deed dated 13.06.1980 (Ex.A5) and the present revenue records. Fraud has been established by the appellant/third party against the plaintiff, who has made a false statement in the plaint that the defendant is the adopted son of Natesan, the original owner of the suit schedule property, though in fact, the defendant is the own brother of the plaintiff. He has also not challenged the sale deed dated 13.06.1980 (Ex.A5) standing in the name of the appellant/third party before any Court of law and after several years by entering into a collusive agreement (Ex.A1), a collusive suit has been filed by the plaintiff and he has also obtained an ex parte decree for specific performance in respect of the agreement of sale (Ex.A1). As observed earlier, the Lower Appellate Court has shown a blind eye to the documents produced by the appellant/third party and by total non-application of mind has misdirected itself by confirming the judgment and decree of the Trial Court passed in favour of the plaintiff on the hypertechnical ground of alleged laches on the part of the appellant/third party for taking immediate steps to file appeal, though on the face of it, it is undoubtedly clear that the appellant/third party is the absolute owner of the suit schedule property having got the same by way of a sale deed dated 13.06.1980 (Ex.A5) and he continues to be in possession and enjoyment of the same as the absolute owner. Being a collusive suit between



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below being a decree obtained through fraud by the plaintiff, the impugned judgment and decrees of the Courts below have to be set aside by this Court.

21. The decree for specific performance granted by the Courts below is arbitrary and the reasons for granting the same is also not sound and reasonable and is not guided by judicial principles. If the judicial principles had been properly followed, the Lower Appellate Court would not have dismissed the appeal of the appellant/third party as he is the absolute owner of the suit schedule property by virtue of the sale deed dated 13.06.1980 (Ex.A5) as the sale agreement (Ex.A1) has been entered into by the defendant in the suit, who is not the owner of the suit schedule property and he is also not the adopted son of Natesan, the original owner of the suit schedule property, as pleaded falsely in the plaint.

22. Necessarily, in view of the reasons stated supra, the substantial questions of law formulated by this Court at the time of admission of this Second Appeal, which have been extracted supra in the beginning of the discussion paragraph, have to be answered in favour of the appellant as the decree dated 29.07.2004 passed in O.S.No.259 of 2004 on the file of the Principal Sub Court, Tiruchirappalli has been obtained through fraud and the suit filed by the plaintiff is a collusive suit.



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23. In the result, the judgment and decree dated 30.11.2016 passed in A.S.No.112 of 2012 on the file of the Principal District Court, Tiruchirappalli confirming the judgment and decree dated 29.07.2004 passed in O.S.No.259 of 2004 on the file of the Principal Sub Court, Tiruchirappalli are hereby set aside and the Second Appeal is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

26.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
Lm

To

- 1.The Principal District Court,
Tiruchirappalli.
- 2.The Principal Sub Court,
Tiruchirappalli.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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Judgment made in
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