IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2024

CORAM

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.1019 of 2010

N.Krishnaraj (Died)
2.Soucila @ Susila @ Susiladevi
3.Karpagavally
4.Jayalakshmi
5.Manimaran ...appellants

[Sole Appellant died, A2 to 5 brought on records as LRs of the deceased sole appellant viz., N.Krishnaraj, vide Court order dated 21.04.2023 made in CMP.No.9042 of 2022 in S.A.No.1019 of 2010. by R.H.J.]

Vs

1.D.Pachaiappan (Died)
2.The Tahsildar
Vanur Taluk, Villupuram District.
3.The Collector,
Villupuram District.
4.Kuppammal
5.Deivanai
6.Illango @ Munuswamy
7.Devi
8.Jayanthi

(RR4 to 8 brought on record as LRs of the deceased First respondent vide Court order dated 21.07.2017 made in CMP Nos.6537, 6538 & 6539/2016 in S.A.No.1019/2010 by S.B.J.)

PRAYER: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 16.12.2004 made in A.S.No.84 of 1996, on the file of the Principal Subordinate Court, Tindivanam, reversing the judgment and decree passed in O.S.No.583 of 1995, dated 19.07.1996 on the file of the District Munsif cum Magistrate Court, Vanur, Villupuram District.

For Appellants	:	Mrs. R. T. Sundari for Mr.R.Margabandhu
For R1	:	Died
For R2 & R3	:	Dr.S.Suriya, AGP
For R4 to R8	:	Mr.A.K.Kumarasamy, Senior Counsel for Mr.S.Kaithamalai Kumaran

JUDGMENT

The appellants have preferred this Second Appeal against the Judgment and decree dated 16.12.2004 made in A.S.No.84 of 1996, on the file of the Principal Subordinate Court, Tindivanam, reversing the judgment and decree passed in O.S.No.583 of 1995, dated 19.07.1996 on the file of the District Munsif cum Magistrate Court, Vanur, Villupuram District.

2. Heard, Mrs. R. T. Sundari, learned counsel for Mr.R.Margabandhu, learned counsel for the appellant, Dr.S.Suriya, Additional Government Pleader appearing for the respondents 2 and 3 and

Mr.A.K.Kumarasamy, learned Senior Counsel for Mr.S.Kaithamalai Kumaran, learned counsel appearing for the respondents 4 to 8 and perused the material available in record.

3. The appellant is the 3rd defendant in A.S.No.84 of 1996, on the file of the Principal Subordinate Court, Tindivanam, which reversed the judgment and decree passed in O.S.No.583 of 1995 by the District Munsif-cum-Magistrate Court, Vanur, Villupuram District.

4. Before the trial court, the 1st respondent, Patchayappan, as the plaintiff, filed a suit seeking a specific prayer to declare the order of the 2nd respondent (2nd defendant) dated 31.08.1989, which canceled the patta in his name, as invalid. He further prayed for a declaration that the order directing the addition of the appellant (3rd defendant) as a joint pattadar, based on the order of the Tahsildar dated 04.07.1990, should be changed. In that suit, the appellant was added as the 3rd defendant, with the 1st defendant being the Tahsildar and the 2nd defendant being the Collector.

5. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.

6. Considering the oral and documentary evidence adduced by the plaintiffs and the defendants, the learned trial judge framed nine issues. The judge ultimately concluded that the order passed by the Tahsildar canceling the patta in the plaintiff's name was valid. If the plaintiff was aggrieved by the order, he should have preferred an appeal before the Revenue Authority. Additionally, since the plaintiff's earlier suit had been dismissed, he was estopped from filing the present suit, which was accordingly dismissed. Challenging these findings, the plaintiff preferred an appeal (A.S.No.84 of 1996) before the Principal Subordinate Judge, Tindivanam. The First Appellate Judge independently analyzed all the facts and records, finally concluding that the 3rd defendant had taken advantage of his father's name, Narayanasamy, as well as the plaintiff's vendor's name, Narayanasamy, to commit fraud upon the authorities and obtain the order of patta. The 3rd defendant also submitted false information before the trial court in the

earlier suit, O.S.No.2227 of 1979, thereby committing fraud upon the court. The trial court failed to appreciate this, whereas the plaintiff had proven his possession and enjoyment of the property with a valid title, rendering the cancellation of the patta by the revenue authorities invalid. Accordingly, the suit was decreed by allowing the appeal, with consequential relief. Aggrieved by these findings, the 3rd defendant has preferred this second appeal.

7. The learned counsel for the appellant submitted that the appellant purchased 2 acres and 69 cents from Gurusamy and Murugesan through a sale deed dated 05.04.1978, and his father, Narayanasamy, had not purchased any property in respect of the suit property. Ex.A14 is the sale deed standing in his name. Therefore, the authorities rightly granted patta for the suit property. However, the lower court failed to properly appreciate Ex.A14, which requires interference.

8. He further submitted that the respondent/plaintiff had already filed a suit (O.S.No.2227 of 1979) before the District Munsif, Tindivanam,

against the appellants for a declaration of title and injunction, which was dismissed. The appeal (A.S.No.128 of 1983) was also dismissed, and no second appeal was preferred by the plaintiff. In that suit, the title of the appellant (3rd defendant) was confirmed, thereby estopping the plaintiff from filing the present suit. The relief claimed seeks to declare the earlier decree in O.S.No.2227 of 1979, without any prayer for cancellation of the decree on the ground that the appellant committed fraud to obtain it.

9. Furthermore, he submitted that the revenue authorities conducted a proper enquiry and granted patta in the appellant's name. The plaintiff ought to have preferred an appeal before the RDO instead of filing a civil suit. The lower court failed to consider all the legal aspects and erroneously granted relief in favor of the respondent/plaintiff. Hence, he prays to set aside the same.

10. The second appeal was admitted by this Court on 22.09.2010, on the following Substantial Questions of Law.

"*(a) Whether the First Appellate Court is justified in holding that the appellant herein fraudulently obtained an order in his favour in O.S.No.2227 of 1979?*

(b) Whether the first respondent is entitled to file a suit before the Civil Court without exhausting the remedy available under the Patta passbook Act?

(c) Whether the findings of the Courts below are vitiated due to failure to appreciate the entire materials on record?"

11. The case of the plaintiff is that the suit property, as described in the plaint schedule, originally belonged to the plaintiff's grandfather, Palani Gramini. He purchased the property through the sale deed (Ex.A1) in 1961. Subsequently, he mortgaged the property to one Narayanasamy, who filed two suits in 1980, O.S.Nos. 241 of 1980 and 252 of 1980, to enforce the mortgage. The plaintiff discharged the mortgage in 1989, as evidenced by documents Ex.A5 and A6. However, the third defendant attempted to interfere with the possession of the property, leading to O.S.No.2227 of 1979 being filed for a permanent injunction. This suit was dismissed, and the plaintiff's appeal was also dismissed. In O.S.No.2227 of 1979, it was observed that the plaintiff's grandfather, Palani Gramini, had sold an extent

of 1.71 acres by sale deed dated 02.05.1974 (Ex.B15) to Narayanasamy, son of Lakshmana Goundar, and not to the third defendant's father, also named Narayanasamy. The third defendant falsely claimed rights over the property, taking advantage of the similarity in names. In fact, Lakshmana Gounder, son of Narayanasamy, and the plaintiff's father, Narayanasamy, are two different individuals. The earlier suit was not properly appreciated, necessitating the present suit. The third defendant, by providing false information, managed to cancel the patta in the plaintiff's name. Therefore, the plaintiff filed the current suit against the revenue authorities and the third defendant, seeking a declaration of his rights.

12. The revenue authorities (defendants 1 and 2) submitted that they cancelled the patta after due enquiry and were ready to abide by the court's order. However, the third defendant objected, claiming he purchased the suit property on 05.04.1978 from Gurusamy and Murugesan, sons of Palani Gramini, for 2.69 acres in S.No.173/3. The plaintiff's father allegedly purchased the property from Palani Gramini on 27.09.1979 for 2.66 cents. In O.S.No.2227 of 1979, an Advocate Commissioner was appointed to

measure the property covered under the sale deeds. The Commissioner marked the portion as ABCD, showing an extent of 2.69 acres in the defendants' possession. Based on these findings, the earlier suit was dismissed, and the judgment was deemed to operate as res judicata against the plaintiff. The revenue authorities also cancelled the patta in the plaintiff's name and included the third defendant as a joint pattadar. If the plaintiff was aggrieved by this order, he should have appealed before the RDO rather than filing a civil suit, leading to the dismissal of the current suit for lack of merit.

13. The learned counsel for the plaintiff submitted that in 1974, the original vendor, Palani Gramini, sold the property to Narayanasamy, son of Lakshmana Gounder, an extent of 1.71 acres, which is the suit property. However, the third defendant, taking advantage of the similarity in names, falsely claimed that his father, Narayanasamy, had purchased the property. Based on this false claim, the trial court in O.S.No.2227 of 1979 dismissed the suit. Although no title was declared in favor of the defendant, the third

defendant used the earlier suit to cancel the patta in the plaintiff's name. Hence, the present suit was filed.

14. Considering these submissions, the lower appellate judge noted that during the trial, the third defendant admitted that his father had not purchased the property in S.No.173/3, an extent of 1.71 acres. He also stated that he was unaware of whether the property standing in the name of Narayanasamy belonged to him. The lower appellate judge observed that during the trial in O.S.No.2227 of 1979, the sale deed (Ex.B1) in the name of Narayanasamy, executed by Palani Gramini, was marked and proved. The defendant claimed that his father, Narayanasamy, had purchased the property, and after his demise, he inherited it. The trial court observed that the defendant was claiming rights over the suit property of 1.71 acres. In the earlier suit, the third defendant produced a sale deed of Narayanasamy, which did not belong to his father, but contested that as if the property belonged to him after his father's death.

15. Furthermore, in the earlier judgment in O.S.No.2227 of 1979, the trial judge observed that the defendant purchased the property from Gurusamy and Murugesan on 05.04.1978, for an extent of 2.63 acres, which was not the suit property and was not under dispute. The first appellate judge rightly observed that the third defendant played fraud upon the court by giving false information under Section 715 of the Indian Contract Act.

16. The authorities relied upon by the learned first appellate judge are extracted as follows:

Section 17 of the Indian Contract Act defines "fraud" as under:

"FRAUD" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agents, with instant to deceive another party there to or his agent, or to induce him to enter into the contract:

i. The suggestion as a fact, of that which is not true, by one who does not believe it to be true:

ii. the active concealment of a fact by one having knowledge or belief of the fact:

iii. A promise made without any intention of performing it:

iv. Any other act fitted to deceive;

v. any such act or omission as the law specially declares to be fraudulent"

<u>Section 44 of the Indian Evidence Act lays down:</u>

"When one of the parties to a suit or other proceedings tenders, or has put in evidence a Judgment, order of decree under Section 40,41 and 42, it is open to the party against whom it is offered to avoid its effect on any of the three grounds specified in the Section, without having it set aside, viz.,

a. the incompetency or want of Jurisdiction of the Court by which the decree was passed;

b. that the judgement was obtained through fraud; or

c. that it was obtained by collusion."

What is contemplated under Section 44 of the Indian Evidence Act is "actual positive fraud" in this regard, we may usefully refer to the following passage in SARKARS LAW EVIDENCE, 14th EDITION page 763.

"It is now well established that a decree cannot be set aside as fraudulent on the allegation that it was obtained by perjured evidence, or that the claim was false. It must be shown that plaintiff was prevented by some fraud or

contrivance from appearing and placing his case before the Court i.e., the alleged fraud must be an extrainsic Act.

Lord Denning observed in a language without equivocation that 'no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everythins(Lazarus Estate Ltd., /vs/ Beasley 1956(1)OB 702...

In S.P.Chengalvaraya Naidu (dead) by Lr.S.V.Jagannath (dead) by Lrs.(1994)2 SCC 1 194 (AIR SCW 243) AIR 1994 SC 853) the two Judges Bench of this Court held:

"Fraud avoids all judicial acts, ecclesias tical or temporal" observed Chief Justice Edward Coke of England about three centuries age. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the Court is a nullity and hones in the eyes of law. Such a Judgment / decree by the first Court or by the highest Court has to be treated as a nullity by every Court, whether superior or inferior, it can be challenged in any court even in collateral proceedings. In Indian Bank / Vs./ Satyam Fibres (India) pvt. Ltd., (1996) 5 SCC.550(196 AIR SCW 3281 AIR 1996 SC 2592) another two Judges Bench after making reference to a number if earlier decisions rendered by

different High Courts in India, stated the legal position thus;

"Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also, amounts to abuse of the process of Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practiced upon that Court, similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order".

AIR 1984 ALLAHABAD 216

N.D.OJHA AND WAHAJUDDIAN J.J.,

Ibne Hasan /Vs./Smt. Hasma Bibi and others.

Second Appeal No.2503 of 1973 dt.31.01.1984 Evidence Act (1 of 1872) Sections 40,43,44 party to a decree or a person claiming through such party can under Section 44 be allowed to avoid effect of decree on grounds or fraud or collusion -(Civil P.S.(5 of 1908) Sec.11) AIR A11. 494 and AIR 1971 A11 439 over ruled. "

17. Therefore, in the earlier suit proceedings, the defendant misled the court by providing false information that his father's name was

Narayanasamy, son of Lakshmana Gounder. Hence, the findings of the earlier suit would not cause any res judicata to the present suit, as rightly observed by the trial judge. Furthermore, in the earlier suit, the third defendant claimed that his father, Narayanasamy, had purchased an extent of 1.71 acres in S.No.173/3 as per the sale deed dated 02/05/1974. However, the defendant's evidence now shows that his father did not purchase 1.71 acres in the suit S.No.173/3. His own contradictory evidence proves that he attempted to cloud the plaintiff's title. Moreover, based on the earlier suit's findings, the patta in the plaintiff's name was canceled without proper enquiry.

18. The first appellate judge rightly observed that no proper notice was issued to the plaintiff before canceling the patta, and the ex-parte order passed by the revenue authority was liable to be canceled. Accordingly, the plaintiff's relief is sustainable in the civil suit, and the permanent injunction granted requires no interference by this court.

19. By committing fraud, the third defendant provided false information to the court in O.S.No.2227 of 1979 and to the revenue authorities to obtain the patta. Therefore, the plaintiff's suit to cancel the patta is maintainable, and he was not required to appeal to the RDO since the title of the properties was involved. The first appellate judge's order in A.S.No.84 of 1996 is well reasoned and requires no interference. Accordingly, questions of law 1 and 2 are answered.

20. Furthermore, there is no record on the side of the Revenue Authority indicating that proper notice was issued before canceling the patta. Therefore, the cancellation of the patta, made without a proper enquiry by the revenue authorities, is also liable to be set aside. Accordingly, the First Appellate Judge rightly granted relief in this regard, which requires no interference. Thus, Question of Law 3 is answered.

21. Moreover, the plaintiff also proved his title over the property by producing the title deed, marked as Ex.A1, and other documents, including the subsequent transactions concerning the said property, marked as Ex.A5 and Ex.A6 (adoption mortgage). Therefore, as per Ex.A2 (settlement deed), the suit property originally belonged to the plaintiff's grandfather and is now under the plaintiff's enjoyment. This was rightly proved and needs no interference. Consequently, the finding of the learned First Appellate Judge is sustainable, and the suit is decreed as prayed for.

22. Accordingly, this Second Appeal is dismissed as devoid of merits. There shall be no order as to costs.

28.08.2024

Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order

rri

To

1. The Principal Subordinate Judge, Tindivanam.

2. The District Munsif cum Magistrate Court,
   Vanur, Villupuram District.

3.The Tahsildar
   Vanur Taluk, Villupuram District.

4.The Collector,
   Villupuram District.

5.The Section Officer, VR Section,
   High Court of Madras.

T.V.THAMILSELVI, J.

rri

S.A.No.1019 of 2010