



C.R.P.No.2995 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 28.04.2023

Delivered on 08.03.2024

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.2995 of 2021

and C.M.P.Nos.21337 & 21338 of 2021

1.V.Mathiyalagan

2.Dr.G.Gananathan

...Petitioners/3rd party

-Vs-

1.K.Shankar

...1st Respondent/Plaintiff

2.R.Shankaran Gargh

...2nd Respondent/1st Defendant

3.The Sub Registrar,

Office of the Sub Registrar,

J.J.Complex, Anna Nagar, Chennai.

Now shifted to Nolambur Combined Sub Registrar office,

576, Mogappair West, Ambattur Industrial Estate,

Chennai, Tamil Nadu 600 037.

...3rd Respondent/2nd Defendant

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the judgment and decree dated 09.03.2018 in O.S.No.5353 of 2016 on the file of the VII Assistant City Civil Court, Chennai.

For Petitioners : Mr.I.Abrar Mohamed Abdullah
for Mr.A.M.Esakkiappan

For R1 : Mr.K.Mohana Murali

For R2 : Notice not ready



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For R3

: Mr.V.Jeevagiridharan,
Additional Government Pleader

ORDER

This Civil Revision Petition is filed to set aside the judgment and decree dated 09.03.2018 in O.S.No.5353 of 2016 on the file of the VII Assistant City Civil Court, Chennai.

2.The learned Counsel for the Revision Petitioners submitted that on 24.02.2009, the owner of the property, S.Suresh had executed Power of Attorney in favour of K.Shankar S/o.Kannan by a registered document bearing Doc.No.456 of 2009 on the file of the Sub-Registrar, Virugambakkam. It is his submission that the said Power of Attorney was executed only for the purpose of sale of the property by the Power of Attorney Agent and it was for the limited purpose of execution of the sale deed.

3.The deed of General Power of Attorney dated 24.02.2009, in clause 6 is extracted hereunder:-

To appoint any agents advocates attorney on my behalf to cause the schedule mentioned property to be sold.



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4. Accordingly, on 25.03.2011, the said K.Shankar, Power of Attorney Agent of S.Suresh, sold the suit property to R.Shankaran Gargh through a registered sale deed herein Doc.No.1208/2011 dated 25.03.2011 on the file of the Sub-Registrar, Anna Nagar. On 06.07.2016, the said R.Shankaran Gargh executed Power of Attorney in favour of another P.Shankar, S/o.V.Palani, bearing Doc.No.3144/16 on the file of the Sub-Registrar, Anna Nagar. The said Power of Attorney, P.Shankar, S/o.V.Palani, Power of Attorney Agent of R.Shankaran Gargh had executed sale deed in favour of V.Mathiyalagan and his wife Ramya through a registered sale deed registered as Doc.No.5454/2016 dated 19.12.2016 on the file of the Sub-Registrar, Anna Nagar. After such sale, the Power of Attorney of the original owner, S.Suresh as Plaintiff, not as Power of Attorney Agent of the original owner but in his individual capacity had filed the suit in O.S.No.5353 of 2016 for bare injunction against R.Shankaran Gargh, to whom he had sold the property.

5. The learned Counsel for the Revision Petitioners invited the attention of this Court to the order passed by the learned VII Assistant Judge, City Civil Court, Chennai in I.A.No.14206 of 2016 in O.S.No.5353



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of 2016, in which the 1st Revision Petitioner, Mr.V.Mathiyalagan and his wife Ramya are not parties. Without the original owner, the Power of Attorney himself had filed the suit as though he was in possession. Whereas, the property was sold as per sale deed dated 19.12.2016. The suit was filed on 21.10.2016. Therefore, on the date of the filing of the suit, the property was not in possession of K.Shankar S/o.Kannan, the Plaintiff. V.Mathiyalagan, the 1st Revision Petitioner herein, is not at all the Defendant and the possession was handed over as per the recitals in the sale deed under Doc.No.5454/2016. After one week of the registration of the sale deed, the suit had been instituted against the original owner by a person claiming to be in possession. Therefore, there is no cause of action, the 1st Revision Petitioner herein V.Mathiyalagan and his wife Ramya are not at all Defendants in the suit. Also, the suit had been filed suppressing the fact that the sale deed is in favour of V.Mathiyalagan and his wife Ramya by a Power of Attorney Agent of R.Shankaran Gargh.

6.Also, the learned Counsel for the Revision Petitioners invited the attention of this Court to Section 92 of the Indian Evidence Act, which is as follows:-



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“Exclusion of evidence of oral agreement.

When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1). -- Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, 1[want or failure] of consideration, or mistake in fact or law.

Proviso (2). -- The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3). -- The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4). -- The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5). Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6). -- Any fact may be proved which shows in what manner the language of a document is related to



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existing facts.

Illustrations

(a) A policy of insurance is effected on goods in ships from Calcutta to London. The goods are shipped in a particular ship which is lost. The fact that particular ship was orally excepted from the policy cannot be proved.

(b) A agrees absolutely in writing to pay B Rs. 1,000 on the first March 1873. The fact that, at the same time an oral agreement was made that the money should not be paid till the thirty-first March cannot be proved.

(c) An estate called the Rampore tea estate is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of Bs as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: "Bought of A a horse of Rs. 500. B may prove the verbal warranty.

(h) A hires lodgings of B, and gives B a card on which is written -- "Rooms, Rs. 200 a month". A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.

(i) A applies to B for a debt due to A by sending a



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receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.

(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.”

7.As per the same, party to the document is not permitted to deny the recitals in the document. In this case, the Plaintiff had already sold the property to R.Shankaran Gargh. Therefore, after sale of the document, Power of Attorney executed in his favour by the original owner, S.Suresh, which automatically expires and he cannot file the suit based on that Power of Attorney. Without Power of Attorney, he has no *locus standi* to claim any right in the property.

8.In the very same plaint, in paragraph no.6, the Plaintiff claims that after execution of sale deed he had entered into sale agreement with another party on 05.11.2015, which means he is denying the recitals in the sale deed which was registered as Doc.No.1308/2011 on the file of the Sub-Registrar, Anna Nagar. After which, nothing is left in his hands or in his possession.

(a) Permanent injunction restraining the 1st Defendant from alienating the schedule property.



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(b) Permanent injunction restraining the 1st Defendant and his men/agents, servants or anyone at his instigation or others from threatening or forcibly occupying the property of the Plaintiff and / or encroaching upon the property of the Plaintiff.

9.The learned Counsel for the Revision Petitioners invited the attention of this Court to the judgment pronounced by the learned VII Assistant Judge, City Civil Court, Chennai, which is extracted hereunder:-

“5)Point:-

This suit has been filed under Order VII Rule 1 of CPC for permanent injunction restraining the 1st Defendant from alienating the schedule property and for permanent injunction restraining the 1st Defendant and his men/agents, servants or anyone at his instigation or others from threatening or forcibly occupying the property of the Plaintiff and/ or encroaching upon the property of the Plaintiff and for costs. Learned Plaintiff Counsel argue the case states in the plaint is proved by the documents. Defendants not appea and set exparte. On perusal of documents Ex.A1 to Ex.A14. Ex.A1 is that settlement deed executed by Smt.Vasanthi Devi dated 21.08.2008, Ex.A2 is that sale deed executed by S.Rani dated 23.02.2009, Ex.A3 is that copy of paper publication dated 23.02.2009, Ex.A4 is that General Power of Attorney dated 24.02.2009, Ex.A5 is that Affidavit and receipt dated 24.02.2009, Ex.A6 is that Challan for Corporation of Chennai dated 30.04.2009, Ex.A7 is that Receipts for plan approval dated 04.05.2009, Ex.A8 is that sale deed by S.Suresh dated 06.07.2009, Ex.A10 is that sale deed by S.Suresh dated 25.03.2011, Ex.A11 is that registration deed dated 11.04.2011, Ex.A12 is that Agreement of sale property to R.Shankaran Gargh dated 5.11.2014, Ex.A13 is that copy of letter addressed to Sub-Registrar dated 05.08.2016, Ex.A14 is that paper



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publication dated 29.09.2016. There is no contra evidence available to disprove the case of the Plaintiff. The Plaintiff has proved the claim by production of sufficient documentary evidence. Thus the point is answered in favour of the Plaintiff.”

10.The person to whom the Plaintiff K.Shankar S/o.Kannan had sold was aware of the plaint averments. He did not contest the case. The Defendant R.Shankaran Gargh had already sold the property by executing Power of Attorney Deed to one P.Shankar S/o.V.Palani, who had sold the property to a V.Mathiyalagan and his wife Ramya as per sale deed dated 14.10.2016, bearing Doc.No.5454/2016 on the file, which is known to the sole Defendant in the suit. He had not contested, therefore, the suit had been decreed in favour of the Plaintiff. This decree cannot be enforced in law as it is a collusive decree. The Plaintiff in the suit in O.S.No.5353 of 2016 did not have title to the property on the date of filing the suit. The judgment in favour of the Plaintiff is not as per Order XX Rule 47 of CPC. The injunction granted in favour of the Plaintiff in I.A.No.12406 of 2016 in O.S.No.5353 of 2016 that the 2nd Defendant in the suit shall not register the sale deed, which is not enforceable in law as per Order XX Rule 47 of CPC. Also, as per Section 47 of the Registration Act, the suit prayer cannot be granted. The plaint averments herein are against the presumption under



Section 48 of the Registration Act.

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11.Sections 47 and 48 of the Registration Act are extracted hereunder:-

“Section 47. Time from which registered document operates.—A registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

Section 48. Registered documents relating to property when to take effect against oral agreements.— All non-testamentary documents duly registered under this Act, and relating to any property, whether movable or immovable, shall take effect against any order agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession 1 [and the same constitutes a valid transfer under any law for the time being in force:

Provided that a mortgage as defined in section 58 of the Transfer of Property Act, 1882 (4 of 1882), shall take effect against any mortgage-deed subsequently executed and registered which relates to the same property.]”

12.After having sold the property in 2011, he filed the suit for permanent injunction restraining the Defendant with whom the property was not in possession and obtaining a decree is a collusive decree against the person who did not have any right or interest over the property. Further, in the year 2020, the said Plaintiff, K.Shankar S/o.Kannan, had filed a complaint against the 1st Revision Petitioner and Ramya



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w/o.V.Mathiyalagan in Virugambakkam Police Station. Also, he had filed a private complaint before the learned XXIII Metropolitan Magistrate, Saidapet under Section 156(3) of Cr.P.C. Based on which, the learned XXIII Metropolitan Magistrate, Saidapet, had directed the police to register a FIR in CrI.M.P.No.1319 of 2020, dated 23.12.2020. Subsequently, the Plaintiff in O.S.No.5353 of 2016 has filed W.P.(CrI)No.9282 of 2021, seeking to transfer the investigation from the 1st Respondent to any Competent Authority. W.P.(CrI)No.9282 of 2021 was disposed of by this Court on 05.07.2021, with a direction to the Investigation Officer to file a final report within a period of three months. The police had filed closure report before the learned XXIII Metropolitan Magistrate, Saidapet, against which the Plaintiff in the suit, K.Shankar S/o.Kannan had filed Protest Petition.

13.After enquiry, the learned XXIII Metropolitan Magistrate, Saidapet, had dismissed the Protest Petition by order dated 22.09.2022. Now the said Plaintiff had instigated M.Thalapathi Sivaji. M.Thalapathi Sivaji has claimed to be a tenant in the property and through him, has filed a false complaint against the Revision Petitioners herein with Virugambakkam Police Station on 12.10.2020. M.Thalapathi Sivaji had



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filed a complaint in CrI.M.P.No.359 of 2021 under Section 156(3) of Cr.P.C. before the learned XXIII Metropolitan Magistrate, Saidapet. M.Thalapathi Sivaji had filed CrI.M.P.No.359 of 2021 before this High Court in W.P.(CrI)No.18644 of 2021 dated 09.09.2022, seeking transfer of the investigation. Earlier, the Plaintiff in the suit in O.S.No.1867 of 2012, R.Shankaran Gargh filed the suit against one S.Suresh and K.Shankar Defendants on the file of the XIV Assistant City Civil Judge, Chennai. 28.03.2012, filed a Petition to reject the plaint. After due enquiry, the Plaintiff in O.S.No.1867 of 2012 on the file of the learned XIV Assistant Judge, City Civil Court, Chennai, was rejected. Therefore, in the light of the above proceedings, there was suppression of fact by the Plaintiff in O.S.No.5353 of 2016, in which the person who is in both possession and enjoyment of the suit property had not been impleaded as a necessary party and the party who had sold the property to the Revision Petitioner herein, who was the Defendant in the suit in O.S.No.5353 of 2016, had remained ex-parte. Therefore, based on the fact, that the Defendant remained ex-parte. The learned VII Assistant Judge, City Civil Court, Chennai, had decreed the suit in support of the document filed by the Plaintiff, R.Shankaran Gargh whereas the averments in the plaint itself would go to



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show that the Plaintiff is not in possession and enjoyment of the property.

The learned VII Assistant Judge, City Civil Court, Chennai, failed to consider the fact while appreciating the evidence that the Plaintiff in O.S.No.5353 of 2016 had executed registered sale deed in favour of R.Shankaran Gargh because he was not permitted to state facts that were contradictory to the recitals in the sale deed. When there is a registered sale deed, there is a stronger presumption in favour of the recitals in the sale deed that the property was sold for valuable consideration and possession handed over to the Defendant in that suit. The learned VII Assistant Judge, City Civil Court, Chennai, failed to appreciate those facts. In the light of the recitals in the sale deed, the Court permitted and granted decree in favour of the Plaintiff. Since the Defendant had not appeared before the Court, the judgment and decree of the learned VII Assistant Judge, City Civil Court, Chennai, are not at all maintainable in law as per Order XX Rule 40 of CPC. Further, the Revision Petitioner herein is not a party before the learned VII Assistant Judge, City Civil Court, Chennai, in O.S.No.5353 of 2016, whereas he is in possession. The Plaintiff in the suit in O.S.No.5353 of 2016 had preferred criminal complaint against the Revision Petitioner in a Virugambakkam Police Station under Section



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156(3) of Cr.P.C, the learned XXIII Metropolitan Magistrate, Saidapet, had directed the police to register the case. After registration of the case, the Plaintiff in O.S.No.5353 of 2016 had approached this Court by filing W.P.(Crl)No.9821 of 2021, seeking transfer of the investigation in W.P.Crl.No.9282 of 2021. W.P.(Crl.)No.9821 of 2021 filed by the Plaintiff in O.S.No.5353 of 2016 before this Court and was disposed of by this Court with a direction to the Investigation Officer to complete the investigation within the period of three months.

14.The investigation was completed and found that there was no material to file a final report against V.Mathiyalagan and Ramya. Through the Investigation Officer, a closure report was filed, which was produced by the Plaintiff, K.Shankar S/o.Kannan. in O.S.No.5353 of 2016. After hearing the enquiry, the learned XXIII Metropolitan Magistrate had dismissed the Protest Petition. In the above circumstances, the Plaintiff in O.S.No.5353 of 2016 was aware that the Revision Petitioner herein was an original owner who had purchased the property with valid consideration and was a bona fide purchaser. He had admitted to taking possession of the property through filing a criminal complaint, whereas he had suppressed



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those facts in the civil suit filed by him in O.S.No.5353 of 2016. Therefore, a decree already granted in favour of the Plaintiff, a collusive decree against the original owner, the Revision Petition is not maintainable in the eyes of law. Further, in the facts and circumstances of this case, it is to be treated as if the learned Judge had failed to exercise jurisdiction over him and therefore, it is a fit case for rejecting the plaint or striking down the plaint by invoking the power of the Court under Article 227 of the Constitution of India.

15.In support of the submission, the learned Counsel for the Revision Petitioners relied on the following rulings:-

In the case of *M.Antonysamy Vs. S.Mumtaj and Others* reported in **(2019) 5 CTC 522** wherein the learned Single Judge of this Court had placed reliance on earlier reported rulings in **2013 (6) CTC 166** in the case of *P.Subramani Vs. A.Periyasamy*.

16.In the light of the above reported rulings, the learned Counsel for the Revision Petitioner seeks to set aside the judgment and decree passed by the learned VII Assistant Judge, City Civil Court, Chennai, in



O.S.No.5353 of 2016 dated 09.03.2018.

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17. The learned Counsel for the Respondent submitted that K.Shankar, Power of attorney of S.Suresh, S/o.B.Selvam was given Power of Attorney. The Power of Attorney deed dated 24.02.2009. K.Shankar had filed the suit against K. Shankaran Gargh and the Sub- Registrar as Defendants. The Suit was filed for the relief of restraining the first Defendant from alienating the schedule property. Restraining the first Defendant his men/agent, servant or anyone at his instigation from forcible occupying the property of the plaintiff. In plaint, the plaintiff had stated that he had entered into a sale agreement, stated in Page 156 of the typed sets of paper reads as follows:

“The plaintiff states that due to paucity of funds for the construction, he approached the 1st Defendant who offered to buy the balance available land for an agreed price and by paying an amount of Rs.10,00,000/- entered into an agreement of sale with the plaintiff agreeing to pay the balance after obtaining a loan from the bank. Subsequently with ulterior motive the 1st Defendant prevailed upon the Plaintiff to register the land in his name agreeing to repay the amount and also had given an Affidavit to the effect that he will give five PDC's for Rs.75,00,00/- being the balance amount due to be paid to the Plaintiff and pass the same when presented on the given dates and only then will take physical possession of the property. He had further stated that since he had a financial crunch, he would pledge the documents with



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the bank and obtain a loan and arrange for payments to the plaintiff. Accordingly believing his words the plaintiff had registered the land being 2693 sq.ft., in the name of the 1st Defendant, registered as Doc.No.1208 of 2011 in SRO, Virugambakkam. Thus, the entire schedule property of 3165 sq.ft., has been registered in the name of the 1st Defendant. He had then mortgaged the document for 2693 sq.ft., with United Bank of India and obtained a loan on the same. However he has not paid the plaintiff as promised. The Plaintiff had many times approached the 1st Defendant and requested him to pay the amount due to him, but he had not kept his promise. On 05.11.2014, the 1st Defendant had entered into an agreement of sale of the schedule property with the plaintiff since he was unable to honour his payment commitment. In spite of the plaintiff's repeated request to register the document in his name the 1st Defendant has been dodging the plaintiff. Now the 1st Defendant is trying to sell the same to a third person. Hence the plaintiff has no other option than to approach this Hon'ble Court with the present suit. The 1st Defendant have sufficient money power and manpower and capable of doing anything and everything in order to grab the land."

and in Page 158 of the typed set of papers, read as follows:

"For the aforesaid reasons the plaintiff prays that this Hon'ble Court may be pleased to pass a Decree and Judgment against the Defendants for:

- a) Permanent injunction restraining the 1st Defendant from alienating the schedule property.*
- b) Permanent injunction restraining the 1st Defendant and his men/agents, servants or anyone at his instigation or others from threatening or forcibly occupying the property of the plaintiff and/or encroaching upon the property of the plaintiff;*
- c) Directing the 1st Defendant to pay the cost of the*



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suit."

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18. The Suit was filed on 21.10.2016. It was taken on file on 24.10.2016. The Revision Petitioner had purchased the property only on 21.10.2016, title conveyed to the Petitioner in C.R.P only on 14.10.2016. The sale deed in the name of Revision Petitioner was executed on 14.10.2016.

19. The learned Counsel for the Respondent also invited the attention of this Court to the discussion by the learned VII Assistant Judge, City Civil Court, Chennai in the judgment dated 09.03.2018 in O.S.No.5353 of 2016 as follows:

"This suit has been filed under Order VII Rule 1 of C.P.C for permanent injunction restraining the 1st Defendant from alienating the schedule property and for permanent injunction restraining the 1st Defendant and his men/agents, servants or anyone at his instigation or others from threatening or forcibly occupying the property of the plaintiff and/or encroaching upon the property of the plaintiff and for costs. Learned plaintiff counsel argue the case states in the plaint is proved by the documents. Defendants not appear and set exparte. On perusal of documents Ex.A1 to Ex.A14. Ex.A1 is that settlement deed executed by Smt.Vasanthi devi dated 21.08.2008, Ex.A2 is that Sale deed executed by S.Rani dated 23.02.2009, Ex.A3 is that copy of paper publication dated 23.02.2009, Ex.A4 is that General Power of attorney dated 24.02.2009, Ex.A5 is that Affidavit and receipt dated



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24.02.2009, Ex.A6 is that Challan for Corporation of Chennai dated 30.04.2009, Ex.A7 is that Receipts for plan approval dated 04.05.209, Ex.A8 is that Sale deed by S.Suresh dated 06.07.2009, Ex.A9 is that Sale deed by S.Suresh dated 25.03.2011, Ex.A10 is that Affidavit of R.Shankaran Gargh dated 28.03.2011, Ex.A11 is that Registration deed dated 11.04.2011, Ex.A12 is that Agreement of sale property to R.Shankaran Gargh dated 05.11.2014, Ex.A13 is that copy of letter addressed to Sub-Registrar dated 05.08.2016, Ex.A14 is that paper publication dated 29.09.2016. There is no contra evidence available to disprove the case of the plaintiff. The plaintiff has proved the claim by production of sufficient documentary evidence. Thus the point is answered in favour of the plaintiff.

6. In the result, the suit is decreed as prayed for no costs.

20. The Revision Petitioner acquired title on 14.10.2016. The said Shankaran Gargh has no title to the property. On 14.10.2016, Shankaran Gargh is not mere owner of the property. K.Shankar, Power of Attorney sought injunction in the year 2016 for the property sold on 14.10.2016.

21. On perusal of the judgment in O.S.No.5353 of 2016, it is found that the learned Judge had not discussed the materials available through the evidence. He had arrived at conclusion based on the fact that the Respondent remained exparte and the document of the plaintiff itself sufficient to come to the conclusion that the plaintiff is entitled to decree.



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22. The learned Judge failed to consider the fact that the plaintiff who approached the Court had clearly stated in the sale deed that he had sold the property to the Defendant. When the property was sold, the title is conveyed to the Defendant after selling the property. There cannot be any claim, contrary to the recitals in the sale deed. Therefore the judgment and decree passed in O.S.No.5353 of 2016 ought to have been rejected or dismissed. Instead, the learned Judge had granted decree, as the Defendant failed to appear and dispute the claim of the plaintiff. After sale of the property, the recitals in the sale deed claims possession handed over to the purchaser. It is nothing but a clever drafting, only to confuse the Court. The person who had purchased the property had already sold the property to third parties behind the back of the third parties, the Suit had been filed and the Suit was decreed behind the back of the third parties.

23. The learned Counsel for the Revision Petitioner relied on the following rulings, in the cases of ;

(i) ***K.Akbar Ali -vs- K.Umar Khan and others*** reported in ***MANU/SC/0261/2021***.



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(ii) ***Tamil Nadu Handloom Weavers Cooperative Society -vs- S.R.Ejaz*** reported in ***MANU/TN/2567/2009***.

(iii) ***Rajendra Bajora and others -vs- Hemant Kumar Jalan and others*** reported in ***MANU/SC/0678/2021***.

(iv) ***R.S.Sornam -vs- Rathinam and others*** reported in ***MANU/TN/8406/2019***.

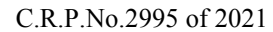
(v) ***Asset Reconstruction Company (India) Ltd -vs- V.Chola and others*** reported in ***MANU/TN/7334/2021***.

(vi) ***M.Antonysamy -vs- S.Mumtaj and others*** reported in ***(2019) 5 CTC 522***.

(vii) ***Syed Abdul Haleem and others -vs- Rajarathinam Construction Pvt.Ltd*** reported in ***MANU/TN/2201/2021***.

24. In the case of ***Asset Reconstruction Company (India) Ltd -vs- V.Chola and others*** in ***MANU/TN/7334/2021***, the learned Counsel for the Revision Petitioner relied on Para 20 and 21 of the judgment and it reads as follows:

20. In the decision reported in ***MANU/SC/0701/2001 : 2002 (1) CTC 183 (Roshan Deen Vs. Preeti Lal)***, the Honourable Supreme Court dealt with the powers that could be exercised by the Courts under Article 227 of the



Constitution of India and held that no man should be subjected to injustice by violating the Rule of law.

21. In this case, though there is an alternative remedy of appeal, considering the issue involved in this case and also considering the fact that the respondents 1 to 4 delayed the process of auctioning about 10 years by abusing the process of the Court and the decree has been obtained by the respondents 1 to 4 by collusion and suppression, and without impleading necessary parties and in order to avoid further delay, this Court is of the view that interference of the judgment and decree passed by the Court below is required by exercising the power of superintendence under Article 227 of the Constitution of India.

25. In the case of *M.Antonysamy -vs- S.Mumtaj* in (2019) 5 CTC 522, the learned Counsel for the Revision Petitioner relied on the following portions:

3)2013 (6) CTC 166 [P.Subramani V. A.Periyasamy]
“21.In the present case, the entire proceedings relating to delivery of possession are vitiated by fraud. When an order is obtained by resorting to fraud, all the subsequent proceedings thereto will also render it vitiated.
In this context, I am fortified by the decision of this Court reported in (J.Sivasubramanian and another vs. N. Govindarajan and another) 1998 1 CTC 470 relied on by the learned counsel for the revision petitioner. In that case, this Court took note of the fact that the suit was filed by suppressing material facts and by not impleading the proper and necessary parties. This Court held that fraud and collusion are palpable and that the decree was obtained by power of attorney agent as against his own principal thereby depriving his right over the property, which was purchased



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by him from the original owner. As the power agent filed the suit by suppressing the material facts, this Court held that *"....in such cases, it is the duty of the Court to see that the suit itself is wiped off from the file."* It was also held by this Court that in such circumstances the revision petition under Article 227 of the Constitution of India is very much maintainable. In that case, this Court, relying on the decision of the Honourable Supreme Court reported in *S.P. Chengalvaraya Naidu (dead) by Lrs vs. Jagannath (dead) by Lrs and others, 1994 (1) SCC 1* culled out the legal propositions as follows:-

12. In *S.P. Chengalvaraya Naidu (dead) by LRs. v. Jagannath (dead) by LRs. and others*, their Lordships have decided as to what is meant by 'fraud'. In paragraph 6, Their Lordships have held thus:- *"... 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..."* Their Lordships have further said thus:- *"A litigant who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side, then he would be guilty of playing fraud on the Court as well as on the opposite party."* In the earlier portion of that Judgment, their Lordships have held thus:- *"... We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation."* The effect of such a decree obtained in such cases is also stated in that judgment thus:-

13. *"... 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.*



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One who comes to the Court, must come with clean hands.... A judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decreed 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 Mahboob Sahab v. Syed Ismail and others, of the judgment, Their Lordships declared thus:- "... The reason is that fraud is and extrinsic collateral act, which vitiates the most solemn proceedings of courts of justice. If a party obtains a decree from the Court by practicing fraud or collusion, he cannot be allowed to say that the matter is res judicata and cannot be reopened. There can also be no question of res judicata in a case where signs of fraud or collusion are transparently pregnant or apparent from the facts on record." In paragraph 10, Their Lordships further declared thus:-

"... Section 44 of the Evidence Act envisages that any party to a suit or proceeding may show that any judgment, order or decree, which is relevant under Sections 40, 41 or 42 has been obtained by fraud or collusion. Under Section 40, the existence of the judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such court ought to take cognizance of such suit or to hold such trial."

In Indian Bank v. Satyam Fibres (India) Pvt. Ltd., it was declared thus:- "The authorities, be they constitutional, statutory or administrative, (and particularly those who have to decide a lis) possess the power to recall their judgments or orders if they are obtained by fraud as fraud and justice never dwell together (Fraud et junsnunquam cohabitant). Fraud and deceit defend or excuse no man (Fraud et dolus nemini patrocinari debent). The judiciary in India also possesses inherent power, specially under Section 151, CPC., to recall



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its judgment or order if it is obtained by fraud on court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers which are resident in all Courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rule, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Court's business. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the court and also amounts to an abuse of the process of court, the courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court.”

26. On consideration of the above rulings, it is found that in all these cases, the judgment of the trial Court was challenged. As the judgment is not as per Order 20 Rule 5, the reading of the plaint itself gives a presumption that there is no cause of action in this case before this Court. The learned VII Assistant Judge, City Civil Court, Chennai granted decree to the plaintiff who has already claimed to have sold the property to the Defendant. After sale of such property, he seeks permanent injunction restraining the Defendant from encumbering the property. When already sale deed had been executed, title and possession handed over to the Defendant, there cannot be an injunction to the purchaser of the property



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by the very same seller of the property. The plaintiff in the case is Power of attorney of Suresh, the Principal. On behalf of the Principal when the Power of Attorney had executed sale deed and title and possession having transferred to the purchaser then the averments in the plaint seeking injunction gives a presumption that there is no cause of action. Further the conduct of the plaintiff in the Suit before the learned VII Additional Judge, in O.S.No.5353 of 2016 is hit by the principle of estoppel under Section 115 of the Indian evidence Act. Having executed the sale deed and having made the Defendant to believe that the title and possession having been transferred, the plaintiff in O.S.No.5353 of 2016, Sankar S/o.Kannan cannot be permitted to make contradictory claims, contradictory to the averments in the sale deed. Further, presumption in favour of the registered sale deed is stronger against the seller. As per the provisions of Section 47 and 48 of the Registration Act. By clever drafting the plaintiff had claimed cause of action as though there is cause of action” A Suit for mere injunction is not at all entitled maintenance after having sold the property in favour of Defendant who is the purchaser of the property.

27. In the case of ***K.Akbar Ali -vs- K.Umar Khan and others,***



reported in **MANU/SC/0261/2021** by the hon'ble Supreme Court, when the judgment had been found to be ex facie illegal in view of the fact the same is not in consonance with the Order 20 Rule 4 and 5 of C.P.C. The judgment does not reflect application of mind. This Court has to necessarily interfere with the same by exercising the power of its jurisdiction under article 227 of the Constitution of India.

8. In this case, a meaningful reading of the plaint as a whole makes it abundantly clear that the relief claimed in the suit is barred in view of the restricted scope of the power of Attorney given by the first Defendant to Mr.Zahir Ali.

9. Where on the face of the averments in the plaint, the claim in a suit is based on an agreement executed through a Power of Attorney holder, the Court is not debarred from looking into the Power of Attorney. It is open to the Court to read the terms of the Power of Attorney along with the plaint in the same manner as documents appended to the plaint, which form part of the plaint.

12. It is patently clear from a meaningful reading of the plaint in its entirety that the plaintiff has no cause of action against the first defendant being the owner of the suit property, the power of attorney being patently invalid. The inter-se dispute between the heirs of the deceased-Defendant No.1 will not confer any right on the petitioner as his claim is based upon a pre-emption agreement executed by a power of attorney, which does not authorize the attorney to deal with the property of the said Defendant.

13. The Division Bench of the High Court has done substantial justice by nipping in the bud, a suit which is ex facie not maintainable for want of cause of action against the



Defendants or any of them, thereby saving precious judicial time as also inconvenience and expenditure to the parties to the suit.

28. In the case of ***R.S.Sornam -vs- Rathinam and others*** reported in ***MANU/TN/8406/2019***, the Revision Petitioner relied on Para 26, 27 and

28 of the judgment and read as follows:

26. In the case of hand, all the defendants were set ex parte. The trial Court did not frame any issue for deciding the suit. The trial court simply did not frame any issue for deciding the suit. The trial court simply examined P.W-1 and found that the claim made by him is proved. The judgment pronounced by the trial court is clearly contrary to the provision of Order 20 Rule 4 and Rule 5 of Civil Procedure Code.

27. In the judgment reported in MANU/SC/0320/2012 : 2012 (5) SCC 2665 (C.N.Ramappa Gowda vs. C.C.Chandregowda (dead) by Lrs and another, cited supra, the Hon'ble Supreme Court held that in a suit, where the defendants failed to file their written statement, the non-filing of the written statement should not have any penal consequences and the court should proceed cautiously and exercise its discretion in a just manner and even in the absence of written statement, burden of proof would remain on plaintiff and his mere assertion in plaint would not be sufficient to discharge the burden.

28. In that case, challenging a cryptic unreasoned judgment and decree, resulting from failure to file a written statement despite repeated opportunities having been given for the same, it has been held that the High Court was justified in remanding the matter to the lower court for de novo trial by giving fresh opportunity to the defendants to file written statement.

15. It is clear from all the above judgments that, when a judgment ahs been found to be ex facie illegal, in view of



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the fact that the same is not in consonance with Order 20 Rule 4 and 5 of CPC and the judgment does not reflect any application of mind, this Court has to necessarily interfere with the same in exercise of its jurisdiction under Article 227 of the Constitution of India.

29. The Civil Revision Petition is to be allowed with cost of Rs.1,00,000/- on the Respondents 1 and 2 for abuse of process of the Court. **In the result, the Civil Revision Petition is allowed.** Consequently, connected miscellaneous petitions are closed.

The decree of the learned VII Assistant City Civil Judge, Chennai in O.S.No.5353 of 2016 dated 09.03.2018 is set aside. The Respondents 1 and 2 in this Civil Revision Petition shall pay exemplary cost of Rs.1,00,000/- (Rupees one lakh only) [i.e. 2 X Rs.50,000/- (Rupees fifty thousand each)] to the Civil Revision Petitioner within 90 days from the date of pronouncement of the order in this Civil Revision Petition.

08.03.2024

cda/Shl

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No



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SATHI KUMAR SUKUMARA KURUP, J.,

cda/shl

To

The VII Assistant City Civil Court, Chennai.

**Order made in
C.R.P.No.2995 of 2021
and C.M.P.Nos.21337 & 21338 of 2021**

08.03.2024