



WP (MD) Nos.20641 of 2013
and 9445 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 30.06.2023
PRONOUNCED ON: .01.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)Nos.20641 of 2013 and 9445 of 2014

N.Raman @ Ramasamy

... Petitioner in WP(MD) No.20641 of 2013

SP.Krishnan

... Petitioner in WP(MD) No.9445 of 2014

Vs

- 1.The District Revenue Officer,
Sivagangai District,
Sivagangai.
- 2.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Devakottai, Sivagangai District.
- 3.The Tahsildar,
Taluk Office,
Karaikudi, Sivagangai District.
- 4.The Zonal Deputy Tahsildar,
Karaikudi, Sivagangai District.
- 5.PL.Lakshmanan



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6.VR.Nachiappan

7.SO.Nachiappan

8.So.Subbaiah

9.C.Mahadevan

10.C.Nachiappan

11.VR.Ramasamy

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records relating to the order bearing No.Pa.Mu.P1/21872-2011 dated 27.12.2012 passed by the 1st respondent confirming the order Pa.Mu.A1/8742/2010 dated 27.06.2011 passed by the 2nd respondent and the order dated 0211.2009 passed by the 4th respondent in B6/760/2009 and quash the same as illegal and restore the order dated 29.06.2010 passed by the 3rd respondent in Na.Ka.No.TPT591/2010.

For petitioner : Mr.T.Antony Arulraj
in WP(MD)No.20641 of 2013
: Mr.V.Rajiv Rufus
in WP(MD)No.20641 of 2014
For Respondent : Mr.S.Saji Bino,
Special Government Pleader
R1 to R4 in both WPs
: Mr.V.R.Shanmuganathan,
RR5 to 7, 9 and 10
in WP(MD)No.9445 of 2014
R 5 to R10 in WP(MD)No.20641 of 2013
:No appearance for R8



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COMMON ORDER

One Raman and Krishnan have approached this Court as against the orders passed by the District Revenue Officer, granting patta in favour of the respondents 5 to 11. Both writ petitioners are claiming title over the property in S.Nos.158 and 159 of Keeranipatti Village, Karaikudi Taluk. These properties originally belonged to one Nachiyappan, S/o.Nachiayappan Ambalam.

2.The learned Counsel for the petitioner Raman submits that the property is his ancestral property belongs to Nachiappan. This Nachiappan had adopted the petitioner Raman by registered adoption deed dated 17.05.1955. He came to know about the judgment and decree passed on 10.10.1990 very recently and he was not even served with any summon in the suit, though he was arrayed as a defendant. He claims that after 20 years of the said decree, the respondents approached the revenue officials for change of patta based on this fraudulent judgment and decree obtained by them and they got the patta in their favour.



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3.The learned Counsel for the petitioner Krishnan submits that one Murugappan is his great grandfather, who is the brother of the said Nachiappan, who died intestate. Therefore, he as the legal heir of the said Nachiappan is entitled to claim right over the property of Nachiappan. Further, the respondents 5 to 11 had forged certain documents and obtained the ex-parte decree in their favour and got the patta changed in their names. Moreover the respondents' ancestor Nachiappan is different from his father's brother Nachiappan. Both hailed from different places and the property is situated in Keeranipatti, where his uncle Nachiappan lived.

4.The learned Counsel for the respondents 5 to 11 submits that Nachiappan, died leaving behind his son Chinnakaruppan. The said Chinnakaruppan had five sons, namely, Palaniappan, Chokalingam, Subbaiah, Veerappan and Nachiappan, among them, Nachiappan died without any issue and the respondents 5 to 11 are the legal heirs of the other four. He further submits that respondents 5 to 11 have approached the Tahsildar for grant of patta in the year 1986, which was rejected by the Special Tahsildar by order dated 01.04.1987 stating that there are rival claims for the property, the property cannot be transferred in their names and it would be



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only in the name of Nachiappan, S/o.Nachiappan Ambalam as it is. They have also filed a review application on 08.06.1987 before the Tahsildar adding some third parties and requested them to review the earlier order. In the mean time, they also filed a civil suit before the District Munsif Court in OS.No.240 of 1989, wherein the petitioner Raman was shown as the st defendant, his wife and daughter were shown as 2nd and 3rd defendants respectively. This suit was decreed on 10.10.1990. Based on this judgment and decree passed in OS.No.240 of 1989 dated 10.10.1990, the respondents 5 to 11 have again approached the Zonal Deputy Thasildar for grant of patta and the Zonal Deputy Tahsildar by his proceedings dated 2.11.2009 directed the Village Administrative Officer to mutate the revenue records from the name of Nachiappan, S/o.Nachiappan Ambalam to the names of respondents 5 to 11. Challenging the same, the writ petitioner in WP(MD)No.9945 of 2014 namely Krishnan and one another person Palaniappan have filed an application on 10.06.2010 before the Tahsildar Karaikudi. The Tahsildar, Karaikudi by his order dated 29.06.2010 had cancelled the order passed by the Zonal Deputy Tahsildar for mutation of revenue records in the name of the respondents 5 to 11. As against that the 9th respondent C.Mahadevan has preferred an appeal dated 10.08.2010 before the Revenue Divisional Officer, Devakottai.



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The RDO by his order dated 27.06.2011 had set aside the order of the Tahsildar and confirmed the mutation of the revenue records in their favour. The writ petitioner Krishnan once again filed the review application before the District Revenue Officer as against the orders of the RDO dated 27.06.2011 and the DRO dismissed the review application by order dated 27.12.2012 stating that the respondents 5 to 11 are having a judgment and decree of the civil court. Therefore, these writ petitions have to be dismissed and there is no need to interfere with the impugned order.

5.This Court considered the rival submissions and perused the materials placed on record.

6.The order of the District Revenue Officer, Karaikudi dated 27.12.2012 is impugned in these writ petitions. By the said order, the DRO confirmed by the order passed by the RDO. The RDO by his order has confirmed the mutation of the revenue records in favour of the respondents 5 to 11 in respect of the properties in S.Nos.158 and 159 of Keeranipatti Village, Karaikudi Taluk. Admittedly this land belong to one Nachiappan, S/o.Nachiappan Ambalam.



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It is stated that Nachiappan died without any issue. Further respondents 5 to 11 claim that Nachiappan got married and he had a son namely, Chinnakaruppan and they are his legal heirs through Chiannakaruppan. The writ petitioner Raman claims that he is the adopted son of Nachiappan and he has filed the adoption deed dated 17.06.1955. The respondents 5 to 11 state that this adoption deed was subsequently cancelled on 07.08.1956 by Nachiappan himself. However, the writ petitioner Krishnan claims that Nachiappan was not having any issues and therefore as the son of his brother Murugappan, he is entitled for a share in the property. According to him, the respondents 4 to 11 are having their ancestor namely Nachiappan, he is a different person from Thalakkavur, whereas, the petitioner's ancestor Nachiappan is from Keeranipatti, where the properties in dispute are situated. Both Nachiappan are different from one and the other. By taking advantage of the similarity in the names, the respondents 4 to 11 have created documents and obtained ex-parte decree without arraying necessary parties in the suit.

7. The orders of the revenue officials were passed pursuant to the judgment and decree passed by the District Munsif, Devakottai in OS.No.240 of 1989 in



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favour of the respondents 5 to 11. The respondents 5 to 11 in fact have sought for patta for these lands before the Tahsildar in the year 1987 and the same was rejected by the Tahsildar by order dated 01.04.1987. Even though the respondents filed a revision petition against the said order without proceeding with the same, they have filed a civil suit and in the civil suit they have arrayed Raman, his wife and daughter as defendants and obtained an ex-parte decree on 10.10.1990. However in the said judgment there is no reference about the service of notice to the defendants. The trial Court without even any discussion, granted the relief in favour of the respondents 5 to 11 by its judgment dated 10.10.1990. The petitioners claim that the decree is obtained by misleading and by playing fraud on the Court.

8.A Division Bench of this Court in CMA.No.370 of 2010 reported in 2011 (3) CTC 168 in similar circumstances has discussed in detail as follows:

17. In order to bring a decree within the provisions of Section 2(2), the following essential elements are necessary. There must be a suit, as such a decree could be given only in relation to a suit. There must be an adjudication of the dispute. Adjudication means the judicial determination of the matter in dispute. Adjudication, in other words, also would mean that the



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Court must have applied its mind to the facts of the case to resolve the matter in dispute. Such adjudication must be about any or all the matters in controversy in the suit. After adjudication, there must be a conclusive determination of the rights of the parties. Finally, in order to pass a decree, the Court must formally express its decision in the manner provided by law. In this regard, the provisions of Section 33 of Civil Procedure Code are also relevant to be kept in mind. That provision states that the decree shall follow on the basis of the judgment pronounced.”

8.The Hon'ble Supreme Court in SP.Chengalvaraya Naidu Vs Jaganath reported in AIR 1994 SC 853 has held that "Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that 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.



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9.This Court in the case of the District Collector, Chennai Vs Vetri and others [in Review Application No.166 of 2021 in WP.No.15507 of 2021, dated 04.08.2022] has held as follows:

“23.The judgment of the Hon’ble Supreme Court in Papayya Shastry, referred supra, makes it abundantly clear that a decree obtained by playing fraud on the Court is a nullity and non-est in the eye of law and it can be questioned even in collateral proceedings. In the present case, Exhibit A3 and Exhibit A4 are fraudulent documents and a decree that was obtained based on these documents will be rendered to be a nullity and non-est in the eye of law. Such jurisdiction can be exercised even in Writ proceedings under Article 226 of the Constitution of India.

26. In view of the above, this Court holds that even where a competent Civil Court has granted a decree in favour of the petitioners and there was no finding to the effect that the order dated 15.4.1976 is a fabricated and forged document and this decree has become final, this Court can go into the issue of genuineness of the order dated 15.4.1976 in collateral proceedings under Article 226 of the Constitution of India, since it was a fraud played on the Court by using a forged order. This Court also holds that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India can nullify the judgment and decree passed by a competent Civil Court if it has been obtained by



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*playing fraud on the Court and such a decree is a nullity and non-
est in the eye of law.”*

10.Considering the manner in which the suit was decreed without any discussion and without any reason and in view of the law laid down by the Hon'ble Supreme Court and this Court in the above said judgments, this Court sets aside the judgment and decree passed in OS.No.240 of 1989 dated 10.10.1990 by the learned District Munisif, Devakottai. The parties to these writ petitions are at liberty to file a fresh suit within a period of six weeks from the date of receipt of a copy of this order and the trial Court shall entertain the suit without sticking to the limitation. The parties have to workout their remedy in the civil suit. The revenue official shall restore the patta in the name of Nachiappan, S/o.Nachiappan Ambalam. Subject to the outcome of the suit necessary orders have to be passed. Accordingly the impugned orders are set aside. No costs. Consequently connected miscellaneous petition is closed.

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



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The District Munisif,
Devakottai.



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B.PUGALENDHI, J.

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