



C.R.P.(MD)No.466 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.03.2024

Pronounced on : 30.04.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.466 of 2019

and

C.M.P.(MD)No.2346 of 2019

Meyammai Achi
through her Power of Attorney agent
V.Vairavan

... Petitioner

Vs.

1. S.Chidambaram @ S.Sugumar

2. Reginamary

3. Sub-Registrar,
Anna Salai,
Sub-Registrar Office,
Kodaikanal.

4. Registrar,
Sub-Registrar Office,
Palani.

5. District Registrar,
Round Road,
Registrar Office,
Dindigul.

... Respondents



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Prayer : This Civil Revision Petition filed under Section 115 C.P.C., to set aside the order dated 28.11.2018 of Subordinate Judge, Palani, (Camp Kodaikanal) in E.P.No.73 of 2014 in O.S.No.384 of 2010 and allow the Revision Petition.

For Petitioner : Mr.S.Manohar
For R1 : Mr.R.Babu Jaganath
For R2 : No appearance
For R3 to R5 : Mr.J.Ashok
Additional Government Pleader

ORDER

The Civil Revision Petition is directed against the order dated 28.11.2018 made in E.P.No.73 of 2014 in O.S.No.384 of 2010 on the file of the Subordinate Court, Kodaikanal.

2. The revision petitioner is the first defendant, the first respondent is the plaintiff and the respondents 2 to 5 are the defendants 2 to 5. For the sake of convenience and brevity, the parties herein will be referred to as per their status/ranking in the trial Court.



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3. The plaintiff, by alleging that the first defendant was his legally wedded wife and that he purchased the suit property with his funds, but in the name of his wife-first defendant, has filed the suit in O.S.No.384 of 2010 against the first defendant and other defendants claiming declaration that the sale deed dated 01.02.1996 registered as Document No.187/1996 on the file of the Sub Registrar Office (SRO), Kodaikanal, as null and void and for directing the defendants 3 to 5-Registration Department Officials to make necessary entries in their books stating that the sale deed dated 01.02.1996 is null and void and to cancel the same in consequence of the declaratory relief and for directing the second defendant to execute a fresh sale deed in favour of the plaintiff in respect of the suit property.

4. It is not in dispute that the suit property was originally owned by the second defendant and she sold the suit property in favour of the first defendant, vide sale deed dated 01.02.1996.

5. The case of the plaintiff projected by him till the filing of the present revision in brief as follows:-

(a) In the suit in O.S.No.384 of 2010, all the defendants had remained *ex parte*. The plaintiff has adduced evidence and the trial Court



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has passed an *ex parte* judgment and decree on 22.01.2014 as prayed for.

The plaintiff as decree holder has then laid the execution petition in E.P.No.73 of 2014 for executing the decree for mandatory injunction directing the second defendant to execute a sale deed in favour of the plaintiff. The defendants had also remained *ex parte* in the execution proceedings.

(b) Thereafter, the first defendant through her power agent has filed an application under Order 3 Rule 1 C.P.C. in E.A.No.130 of 2016 to permit her to appear through her power of attorney and the same was dismissed for default. The first defendant's power agent has also filed an application under Section 5 of Limitation Act to condone the delay in filing the petition for setting aside the *ex parte* decree along with another application under Order 3 Rule 1 C.P.C. to permit the first defendant to appear through her power agent and the same were also dismissed for default.

(c) As per the direction of the Executing Court, the plaintiff has produced draft sale deed and the same was accepted and on that basis, fair sale deed was executed and the same got registered and consequently, the execution petition was ordered to be closed on 28.11.2018.



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(d) The first defendant, without taking any steps to restore the applications, which were dismissed for default and after losing battle both in the original side as well as in the execution side, has approached this Court invoking revisional jurisdiction Court under Section 115 C.P.C., challenging the order passed by the Executing Court.

6. After considering the submissions made on either side and on perusing the entire records, it is very much clear that the first defendant has attacked the proceedings mainly on the following grounds:-

- a) Summons in the original suit and notices in the execution petition were neither sent nor served on the first defendant.
- b) The judgment of the trial Court is not in conformity with the provisions of Order 20 Rules 4 and 5 and the settled legal position.
- c) The plaintiff has neither raised any pleadings nor adduced any evidence to rebut the statutory presumption under Section 3(2) of the Benami Transactions (Prohibition) Act, 1988 that the suit property had not been purchased for the benefit of the first defendant.

7. No doubt, the first defendant has filed the present revision under Section 115 C.P.C. Considering the challenge made with respect to the



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judgment and decree dated 22.01.2014, this Court in exercise of its power of superintendence under Article 227 of the Constitution of India, can deal with the same.

8. It is evident from the records that on the first hearing on 04.02.2011, the Government Pleader filed memo of appearance for the official defendants 4 and 5 and since the summons sent to the defendants 1 to 3 were not returned, posted to 25.02.2011 for awaiting summons and that on 25.02.2011, there was an endorsement that notice to the defendants 1 to 3 not returned and adjourned to 15.04.2011 for written statement of the defendants 4 and 5. It is shocking to notice that subsequently the case was adjourned only for the written statement of the defendants 4 and 5 and there was no reference to the defendants 1 to 3. Since the defendants 4 and 5 have not filed their written statement on 23.10.2013, it has been recorded “written statement not filed Defts called absent set *ex parte* Evidence C/o 4.12.13” and on 04.12.2013, “plaintiff proof affidavit filed Expt A1 and A2 marked, for orders by 18.12.2013” and that on 18.12.2013, Judge on O.D., the case was adjourned to 22.01.2014 and on that day, *ex parte* judgment and decree came to be passed. Considering the



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above, it is very much clear that suit summons were not at all sent to the defendants 1 to 3 including the first defendant and they have not at all entered into appearance, but the learned trial Judge, without considering the above, has proceeded mechanically and passed the *ex parte* judgment and decree. Hence, this Court has no hesitation to hold that the judgment and decree passed without serving summons on the main contesting defendant i.e., first defendant can only be considered as nullity.

9. Before entering into other aspects, it is necessary to refer the case of the plaintiff. The plaintiff's case is that the plaintiff married the first defendant, a citizen of Malaysia on 10.11.1995 at O.Siruvayal, Karaikudi Taluk and the marriage was registered with the Marriage Registrar, Sivagangai Taluk, that the plaintiff and the first defendant lived as husband and wife for some days after their marriage and thereafter, the first defendant had left for Malaysia and stayed there, that the plaintiff, out of his own funds and due to natural love and affection he had for his wife, purchased the suit property on 01.02.1996 in the name of the first defendant, that the plaintiff alone has been looking after the suit property as the first defendant was permanently residing at Malaysia, that



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subsequently there was strained relationship between the plaintiff and the first defendant and the plaintiff stopped of his visiting the first defendant at Malaysia, that the first defendant had initiated several proceedings in Malaysia courts for dissolving their marriage, that the plaintiff came to know that the first defendant had married a third person and had given birth to a child, that the suit property was treated by the plaintiff as his own property and has been in possession and enjoyment of the same, that the first defendant, after lapse of several years, is now attempting to create false documents in respect of suit property through her power agent, that since the first defendant is not a citizen of India, she has no right to purchase or hold any immovable property in her name in India and as such, the sale deed in her name is void document and that therefore, the plaintiff was constrained to file the above suit.

10. The learned trial Judge, after referring the reliefs claimed by the plaintiff, has given his so called findings as follows:-

□.....

2. வாதி தரப்பில் வாதியானவர் நிருபண வாக்குமூலம் தாக்கல் செய்து உள்ளார். 1ம் பிரதிவாதி பெயரில் ஏற்பட்ட கிரைய நகல் வா.சா.ஆ.1 ஆக குறியீடு செய்யப்பட்டுள்ளது.



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3. வாதியின் கூற்றை மறுத்துரைக்கும் வகையில், பிரதிவாதிகள் தரப்பில் எதிர்வழக்குரை தாக்கல் செய்யவோ, பிரதிவாதி தரப்பில் சாட்சியங்கள் விசாரிக்கவோ, சான்றாவணங்களை தாக்கல் செய்யவோ, வா.சா.1னை குறுக்கு விசாரணை செய்யவோ போன்ற எந்த ஒரு முயற்சியும் பிரதிவாதி தரப்பில் மேற்கொள்ளவில்லை. பிரதிவாதிகள் தோன்றாததரப்பினராக கருதப்பட்டுள்ளனர். எனவே, வா.சா.1ன் சாட்சியம் மற்றும் வா.சா.ஆ.1 சான்றாவணம் மூலம் வாதி தரப்பில் எடுத்துக் கொண்ட கூற்றினை வாதி நிரூபித்துள்ளதாகவே இந்நீதிமன்றம் கருதுகின்றது. எனவே வழக்குரையில் கோரிய பரிகாரங்கள் வாதிக்குக் கிடைக்கத்தக்கது என்றே இந்நீதிமன்றம் முடிவு காண்கின்றது.□

11. Thereafter, in the paragraph No.4, granted the reliefs as prayed for by the plaintiff.

12. I had an occasion to consider a similar issue, in the case of ***Balakrishnan Vs. Kaliaperumal and another (C.R.P.(MD)Nos.234 and 330 of 2021 dated 06.12.2021)*** and the relevant passages are extracted hereunder:-

28. Order 20 Rule 4 of CPC deals with the contents of judgment and we are concerned with Sub Rule 2 of Rule 4



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and the same is extracted hereunder ;

“Judgment of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision”

Points for determination referred to in Rule 4(2) is nothing but issues, contemplated under Rules 1 and 3 of Order 14 of the Code of Civil Procedure. Generally the question of framing of issues would arise only after filing of the written statement. In case of non-filing of the written statement and the defendant remaining ex-parte, then the question of framing issues does not arise as the Court is not in position to ascertain as to the material proposition of fact or law raised in the plaint, is denied by the other side.

29. Even in ex-parte cases, the judgment must contain the brief statement of the case of the plaintiff, the point for determination, the evidence adduced by the plaintiff in support of his claim and the reasonings of the Judge either for dismissing the suit or for decreeing the suit.

30. But in such cases, as contemplated under Rule 4(2) of Order 20, the Court while proceeding the case ex-parte, has to necessarily frame the points for determination. Moreover, every judgment should contain brief statement of the case of the parties, point for determination, the evidence



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adduced by the parties and the reasoning of the Judge for the decision arrived at by him.

31.No doubt, the ex-parte judgment and decree can be set aside at the instance of the defendant by filing necessary application under Order 9 Rule 13 CPC and on proving that the summons was not duly served or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing. Moreover, the ex-parte judgment and decree can also be challenged by preferring a regular appeal under Section 96 of Code of Civil Procedure. At this juncture, it is necessary to refer the judgment of Division Bench of this Court reported in 2011 (3) CTC 168;

M/S Meenakshisundaram Textiles vs M/S Valliammal Textiles Ltd

“6. In terms of the above provisions, every judgment should contain a concise statement of the case, the points for determination, decision thereon and the reasons for such decision. A judgment which does not contain the bare minimum facts, the point for determination, the evidence adduced and the application of those facts and evidence for deciding the issue would not qualify it to be called as "judgment". The judgment should contain the brief summary of the facts, the evidence produced by the plaintiff in support of his claim and the reasoning of the



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learned Judge either for decreeing the suit or its dismissal. The Civil Procedure Code does not say that the Court is bound to grant a decree in case the defendant is absent. Judgment means cognitive process of reading a decision or drawing conclusion. Judgment is the basic requirement for a court and it means a decision or conclusion reached after consideration and deliberation. To put it differently, the basics of a judgment are to support by most cogent reasons that suggest themselves the final conclusion at which the Judge has conscientiously arrived.

....

21. From the above discussions, it is manifestly clear that even a judgment rendered ex parte and a decree is drawn on the basis of that judgment, it is appealable. In case that judgment and decree become final without there being any appeal, the decree is executable. In that sense, there is no difference between a judgment and decree and an ex parte judgment and decree. In view of the above, in the event the defendant is set ex parte, the Court should be extra careful in such case and it should consider the pleadings and evidence and arrive at a



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finding as to whether the plaintiff has made out a case for a decree. In this context, it may also be mentioned that though a detailed judgment is required in a contested matter, an ex parte judgment should show the application of the minimum requirement of consideration of the pleadings, issues, evidence and the relief sought for rendering such judgment.”

32.In the case on hand, the trial Court has passed a cryptic unreasoned judgment. The impugned judgment does not contain the case of the plaintiff nor the evidence adduced by the plaintiff nor the point for determination nor any reasoning of the Court for granting the decree as sought for by the plaintiff.

33. Lord Macnaghten has observed;

“ Great caution should be exercised when suits are heard ex-parte. This principle is of universal application.”

34.Mere absence of the defendant does not by itself justify the presumption that the plaintiff's case is true. Even though the defendants is set exparte, the plaintiff is duty bound to prove his case. It is also the duty of the Court to see as to whether the plaintiff has proved his claim. Just because the defendant is not in picture, it cannot be said that the



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plaintiff is entitled to get a decree automatically. It is pertinent to mention that in cases where the defendant remains ex-parte, a heavy burden lies on the Court to consider as to whether the plaintiff has proved his claim prima facie and the Court is expected not to pass any decree in favour of the plaintiff except on proof by the plaintiff that he is entitled to that decree.

*35.The Hon'ble Supreme Court in **C.N.Ramappa Gowda Vs. C.C.Chaqndergowda (Died) By Lrs and another** reported in **2012 5 SCC 265**, has held that it is settled position of law that assertion is no proof and hence, the burden lies on the plaintiff to prove his case even if there was no written statement to the contrary or any evidence of rebuttal.*

36.Merely because there is no written statement nor any evidence of denial or rebuttal, it cannot be said that the plaintiff's case is said to have been proved and the Court in case of accepting the case of the plaintiff, must record the reasons, even if it is based on ex-parte evidence.

13. The learned counsel appearing for the first defendant has relied on the decision of this Court in **G.Selvam and others Vs. Kasthuri**



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(deceased) and others reported in **2015 (4) CTC 673**, wherein also, the trial Court did not frame any issue for deciding the suit and after examining P.W.1, has passed a cryptic judgment that the claim made by the plaintiff was proved and a learned Judge of this Court, by referring to various decisions of the Hon'ble Supreme Court as well as the other High Courts, has specifically held that the judgment passed by the trial Court does not satisfy any of the requirements under Order 20 Rules 4 and 5 C.P.C. and that since the trial Court has passed cryptic judgment without framing any issue, is *ex facie* illegal. In the case on hand, considering the judgment of the trial Court and taking note of the legal position above referred, this Court has no other option but to hold that the learned trial Judge has not passed the judgment in consonance with Order 20 Rules 4 and 5 C.P.C. and the judgment does not reflect any application of mind and that the judgment is cryptic and non-speaking judgment and the same has to necessarily be considered as illegal.

14. Admittedly, in the case on hand, the sale deed in respect of the suit property stands in the name of the first defendant. The plaintiff has taken a specific stand that he purchased the suit property with his own



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funds, but in the name of his wife-first defendant, that since the purchase the plaintiff has been in possession and enjoyment of the same as absolute owner and that since the first defendant being a Malaysian citizen has no right to own or possess any immovable property in India as per the provisions of then prevailing Foreign Exchange Regulation Act, the sale deed in the name of the first defendant is void document. With regard to the first defendant's alleged non-eligibility to own a property is a matter between the first defendant and the competent authorities under the said Act and the plaintiff has no *locus standi* to decide the nature of the document as per the provisions of the said Act. More importantly, even according to the plaintiff, he has taken the sale deed in the name of the first defendant and as such, he is estopped from taking such a stand in this regard.

15. The main contention of the plaintiff is that the first defendant is not the owner of the suit property and she was only a name lender and that the plaintiff is the real owner in possession and enjoyment of the suit property. At this juncture, it is necessary to refer Section 3 of the Benami Transactions (Prohibition) Act, 1988:



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“3. Prohibition of benami transactions:

1. No person shall enter into benami transaction.

2. Nothing in sub-section (1), shall apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter.”

16. No doubt, sub-section 2 has been omitted by Act 43 of 2016 with effect from 01.11.2016. But in the present case, the suit property was purchased on 01.02.1996. The Hon'ble Supreme Court in the case of ***Nand Kishore Mehra vs Sushila Mehra*** reported in ***AIR 1995 SC 2145***, has held as follows:

“Since the plaintiff is the husband who had the right to enter into a benami transaction in the matter of purchase of property in the name of his wife or unmarried daughter, as we have held earlier, he is entitled to enforce his rights in the properties concerned if he can succeed in showing that he had purchased them benami in the name of his wife. But in view of the statutory presumption incorporated in sub-section (2) of section 3 of the Act, he can get relief sought in the suit only if he can prove that the properties concerned had not been purchased for the benefit of the wife, even if he succeeds



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in showing that the consideration for the purchases of the properties had been paid by him.”

17. It is also necessary to refer the following decisions;

(i) 1997(2) MLJ 46

(Parvathiammal Vs. Solaiammal and another):

“14. The general presumption should be that the husband thought fit to purchase some of the items of the properties in the name of his wife for her benefit and welfare. Such presumption would be in our view be strong in a case where the very case of the plaintiff is that all properties belonging to the father are his self-acquisition and not that they were purchased from out of any ancestral nucleus or nucleus coming tout of the joint family or coparcenary property or funds. In such cases, Courts have been insisting upon very strong and specific claim at the instance of the defendants who project the claim of benami, making it also obligatory on the part of such person to prove the same that the acquisition was not meant to be for the benefit or welfare of the person in whose name it was acquired but it was for the family only and that the ostensible owner was merely a name-lender. In this case, there is no such plea or assertion and the evidence is also slender and practically nil from the side of the plaintiff who failed to make any specific plea as



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above and produce any independent evidence except examine herself on the plaintiff's side.”

***(ii) T.K.Krishnan Vs. Kalavathi and another
(A.S.No.162 of 2017, dated 16.02.2023)***

“12. Though it appeared that the property had been purchased by the plaintiff in the name of the 1st defendant, the law presumes that it had been purchased in the name of the 1st defendant for her benefit. As per Clause 3(2)(a) of the Benami Transactions (Prohibition) Act, 1988, the Court shall presume unless the contrary is proved that the property has been purchased for the benefit of the wife or unmarried daughter. The suit property has been purchased in the name of the wife, the husband and wife lived together in the suit property Item No.2 till dispute arose between them. Thus, the legal presumption is in favour of the 1st defendant. Though the deposition of PW1 and DW1 reveals that several disputes arose between them regarding their matrimonial issues, admittedly, the suit schedule property stands in the name of the 1st defendant and that being the factum established, the Trial A.S.No. 162 of 2017 Court made a finding that even if the property was purchased from and out of the funds of the plaintiff, it was purchased for the benefit of the 1 st defendant / wife.

15. The suit was instituted for declaration and



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permanent injunction. Though the plaintiff was in possession of the Suit property the Trial Court A.S.No.162 of 2017 found that the plaintiff purchased the property for the benefit of the 1st defendant, who is none other than his wife and from out of their relationship two sons were born and at a later point of time there was a dispute between the plaintiff and the 1st defendant and subsequently, the 1st defendant lived separately.

16. Admittedly, the suit property was purchased in the name of the 1 st defendant and the sale deed was marked as Ex.A1 and Patta was marked as Ex.A2, which also stand in the name of the 1st defendant. The transaction and execution of sale deed in favour of the 1st defendant has not been hit by the provision of the Benami Transactions (Prohibition) Act, since the plaintiff is the husband of the 1st defendant.”

18. Section 3(1) of the Benami Transactions (Prohibition) Act mandates that no person shall enter into any benami transaction and sub-section 2 contemplates that sub-section 1 shall not apply, when the purchase of the property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is



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proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter. It is pertinent to mention that as per the provisions of the Benami Transactions (Prohibition) Act, even though the husband had purchased the property in the name of his wife or unmarried daughter, there is a presumption that it is for the benefit of the wife or the unmarried daughter, unless the contrary is proved.

19. If a husband has taken a plea that the property in question was purchased in the name of his wife, not for the benefit of his wife, but for the benefit of the family, then it is for the husband to plead and prove that he had no intention to benefit his wife by the said purchase.

20. No doubt, any person can purchase the property in the name of his wife or unmarried daughter and can claim right over the property subsequently by showing that he had purchased the property benami in the name of his wife or unmarried daughter, but at the same time, he has to prove that the property had not been purchased for the benefit of his wife or unmarried daughter.



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21. More over, it is settled law that the burden of showing that a transfer is a benami transaction always lies on the person who asserts it. If a husband provides money for purchasing the property in the name of his wife, the transaction does not necessarily imply benami transaction and as per the provisions of the Benami Transactions (Prohibition) Act, the Court has to presume that the purchase was made only for the benefit of his wife or unmarried daughter. In the present case, the plaintiff, in his plaint, has specifically stated that in the name of his wife, due to his love and affection towards his wife and the relevant plaint portions are extracted hereunder for better appreciation;

“(IV) During that time, the Plaintiff, out of his own funds and due to natural love and affection he had for his wife purchased the suit property for a sum of Rs.49,350/- on 01.02.1996 in the name of his wife, the first defendant.

(V) But, this plaintiff out of his own funds purchased the suit property in the name of his wife out of love and affection....”

22. Even according to the plaintiff, he purchased the suit property in the name of his wife due to his love and affection he had with his wife, then the necessary inference would be that the purchase was made only for



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benefiting his wife. The plaintiff, in the entire plaint, has nowhere whispered that the purchase was not for the benefit of his wife, but for his benefit. Moreover, the plaintiff has not produced any iota of evidence to show that the suit property was purchased not for the benefit of the first defendant, but for the benefit of the plaintiff. Except the evidence reiterating the plaint averments, the plaintiff has not adduced any evidence to rebut the statutory presumption under Section 3(2) of the Benami Transactions (Prohibition) Act.

23. Moreover, the plaintiff has not even chosen to adduce evidence to show that the sale price had been paid by him. Even assuming for arguments sake that the plaintiff has adduced evidence showing that he had paid the sale price, he has to necessarily prove that the property had not been purchased for the benefit of his wife. Considering the above, this Court has no other go but to say that the plaintiff has neither raised any pleadings nor adduced any evidence to prove that the property had not been purchased for the benefit of the first defendant.

24. It is pertinent to note that though the plaintiff has claimed that



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he is the owner of the suit property, admittedly, has not claimed any declaration of his title to the suit property, but on the other hand, after claiming the relief of declaring that the sale deed in favour of the first defendant is null and void, sought for mandatory injunction directing the second defendant- original owner, who sold the property in favour of the first defendant, to execute a fresh sale deed in the name of the plaintiff. As rightly pointed out by the learned counsel appearing for the first defendant, the reliefs claimed by the plaintiff are peculiar and unusual in nature. The plaintiff, after getting the *ex parte* judgment and decree, as already pointed out, has filed the execution petition seeking direction to the second defendant to execute a sale deed in his favour, as if, he had obtained a decree for specific performance and in the prayer column of the execution petition, praying the Court to direct the second defendant to receive the balance sale price and to execute the sale deed in favour of the plaintiff.

25. It is pertinent to note that in the execution petition, the plaintiff has claimed the relief only against the second defendant, but all the defendants were shown as the respondents in the cause title. It is evident



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from the records that notice in the execution petition was only sent to the second defendant, but that was also returned as unserved as “left”, but by showing that notice was refused to be received, the respondents were called absent and the petition was adjourned on the ground of advocates boycott and then on 30.09.2015, the Executing Court has proceeded to record that respondents 1 to 4 were called absent and set *ex parte* and directed the plaintiff to file a draft sale deed. It is clearly evident from the records that though no notice was sent to the defendants 1 and 2, by making a wrong endorsement that they have refused to receive the notice, they were also called absent and set *ex parte*.

26. The Hon'ble Supreme Court in the case of ***Garment Craft Vs. Prakash Chand Goel*** reported in ***(2022) 4 SCC 181***, relied on by the learned counsel appearing for the first defendant, has specifically observed,

“15. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person



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can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.”

27. It is also settled law that if a judgment or order is obtained by playing fraud, then that judgment or order is a nullity and non-est in the eye of law and as such, the same can be interfered even in collateral proceedings and this Court can never allow the perpetuation of illegality. Fraud vitiates every solemn act, as Chief Justice Edward Coke would say “Fraud avoids all judicial acts, an ecclesiastical or temporal”. In the case on hand, the plaintiff, without even sending suit summons and notice in the execution petition to the defendants 1 and 2 and by suppressing the non-sending of summons and notices and the consequent non-service on the contesting defendants, has obtained a decree and consequential sale deed fraudulently. Hence, the very filing of the suit and obtaining the decree and the sale deed is nothing but clear abuse of process of Court and law.

28. Viewing from any angle, the judgment and decree dated 22.01.2014 passed by the trial Court in O.S.No.384 of 2010 is not good in law and the same is liable to be set aside. Since the Executing Court has



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executed the sale deed in pursuance of the judgment and decree dated 22.01.2014, the same is also liable to be set aside consequently. Since the filing of the suit itself is abuse of process of law, this Court has no hesitation to hold that the plaint itself is liable to be struck off from the file.

29. Though this Court is of the view that the plaintiff must be mulcted with heavy costs, taking note of the fact that the plaintiff has already spent amount towards stamp duty and registration expenses, is not inclined to impose further costs. Hence, this Court decides that the parties are to be directed to bear their own costs.

30. In the result, this Civil Revision Petition is allowed and the judgment and decree dated 22.01.2014 passed in O.S.No.384 of 2010 and the sale deed executed by the Executing Court in favour of the first respondent/plaintiff are all set aside. The plaint in O.S.No.384 of 2010 is ordered to be struck off from the file of the Subordinate Court, Kodaikanal. Consequently, connected Miscellaneous Petition is closed. Parties are directed to bear their own costs.

30.04.2024



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Index :yes/No
Internet:yes/No
csm



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To

1. The Subordinate Court,
Kodaikanal.
2. The Sub-Registrar,
Anna Salai,
Sub-Registrar Office,
Kodaikanal.
3. The Registrar,
Sub-Registrar Office,
Palani.
4. The District Registrar,
Round Road,
Registrar Office,
Dindigul
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
6. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

Pre-Delivery Order made in
C.R.P.(MD)No.466 of 2019
and
C.M.P.(MD)No.2346 of 2019

Dated : 30.04.2024