



Tr.C.M.P.(MD)No.332 of 2023 and
C.R.P.(MD)Nos.1285, 1345 and 1346 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 01.11.2023

PRONOUNCED ON: 20.02.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

**Tr.C.M.P.(MD)No.332 of 2023
and
C.R.P.(MD)Nos.1285, 1345 and 1346 of 2023
and
C.M.P.(MD)Nos.7226, 6314, 6701 and 6702 of 2023**

Tr.C.M.P.(MD)No.332 of 2023:

Hotel Ornate (Nilgiry) Private Limited,
represented by its Authorities Signatory
M.Srinivasan,
C-12, IHFD Colony,
Aadhanur,
Sriperumbudur Taluk,
Kanchipuram.

: Petitioner/Appellant

Vs.

1.R.Maheshwaran
2.Reguraj
3.Rajalakshmi
4.Lakshmi Priya Nagendran

5.The Manager,
State Bank of Travangore,
Main Branch,
Chennai.



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6. The Recovery Officer,
Income Tax Department,
Madurai.

: Respondents/Respondents

PRAYER:- Petition is filed under Section 24 of the Code of Civil Procedure seeking an order to withdraw the case in A.S.No.18 of 2023 from the file of the Subordinate Court, Dindigul District and transfer the same to any other Court.

For Petitioner : Mr.E.Om Prakash
Senior Counsel
for Mr.R.Harinath

For Respondents : Mr.M.Vallinayagam
Senior Counsel
for Mr.M.Kannan
for R.4
: R.2 and R.3 are represented by
the Power Agent A.1
: R.5 and R.6 – Dispensed with

C.R.P.(MD)No.1285 of 2023

Hotel Ornate (Nilgiry) Private Limited,
No.310, Veerasarkar Marg,
Dadar, Mumbai,
represented by its Power Agent/Authorities Signatory
M.Srinivasan,
S/o Muthiah Pillai,
Plot C-12, IHFD Colony,
Sriperumbudur Taluk,
Kanchipuram. : Petitioner/Petitioner/Defendant No.1

Vs.



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1.R.Maheshwaran

2.Reguraj

3.Rajalakshmi

4.Lakshmi Priya Nagendiran

(the Plaintiff Nos.2, 3 and 4 herein are represented
by their Power of Attorney Plaintiff No.1

R.Maheshwaran) : Respondents/Respondents/Plaintiffs

5.The Manager,
State Bank of Travangore,
Main Branch,
Chennai.

6. The Recovery Officer,
Income Tax Department,
Madurai. : Respondents/Respondents/Defendants

PRAYER: Petition filed under Section 227 of the Constitution of India
against the exparte order passed in O.S.No.58 of 2010, on the file of the
District Munsif cum Judicial Magistrate Court No.I, Kodaikanal, dated
20.03.2023.

(Prayer is amended vide Court order dated 25.09.2023)

For Petitioner : Mr.E.Om Prakash
Senior Counsel
for Mr.R.Harinath

For Respondents : Mr.A.Arumugam
for Mr.V.S.Kumaraguru
for R.1 to R.3
: Mr.M.Vallinayagam
Senior Counsel
for Mr.M.Kannan
for R.4
: R.5 and R.6 – Dispensed with



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C.R.P.(MD)No.1345 of 2023

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Hotel Ornate (Nilgiry) Private Limited,
No.310, Veerasarkar Marg,
Dadar, Mumbai,
represented by its Power Agent/Authorities Signatory
M.Srinivasan,
S/o Muthiah Pillai,
Plot C-12, IHFD Colony,
Adhanur,Sriperumbudur Taluk,
Kanchipuram. : Petitioner/Petitioner/1st Defendant

Vs.

1.R.Maheshwaran
2.Reguraj
3.Rajalakshmi
4.Lakshmi Priya Nagendiran : Respondents/Respondents/Plaintiffs

PRAYER: Petition filed under Section 227 of the Constitution of India
against the fair and decreetal order dated 26.04.2022, passed in I.A.No.
134 of 2014, in O.S.No.58 of 2010, on the file of the District Munsif
cum Judicial Magistrate Court No.1, Kodaikanal.

For Petitioner : Mr.E.Om Prakash
Senior Counsel
for Mr.R.Harinath

For Respondents : Mr.A.Arumugam
for Mr.V.S.Kumaraguru
for R.1 to R.3
: Mr.M.Vallinayagam
Senior Counsel
for Mr.M.Kannan
for R.4



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C.R.P.(MD)No.1346 of 2023

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M/s Trans India Resorts Ltd.,
represented by its Chairman
R.Marimuthu,
12, Sarojini Street,
T.Nagar,
Chennai-600 017.

: Petitioner/Petitioner/Proposed to implead
as 3rd party

Vs.

1.R.Maheshwaran
2.Reguraj
3.Rajalakshmi
4.Lakshmi Priya Nagendiran
(the respondents 2, 3 and 4 herein are represented
by their Power of Attorney 1st respondent)

: Respondents 1 to 4/Respondents 1 to 4/
Plaintiffs

5. Hotel Ornate (Nilgiry) Private Limited,
Having Office at No.310, Veerasarkar Marg,
Dadar, Mumbai,
represented by its Managing Director.

6.The Manager,
State Bank of Travangore,
Main Branch,
Chennai.

7. The Recovery Officer,
Income Tax Department,
Madurai.

: Respondents 5 to 7/Respondents 5 to 7/
Defendants

PRAYER: Petition filed under Section 227 of the Constitution of India
against the fair and decreetal order passed in I.A.No. Unnumbered / 2023



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in O.S.No.58 of 2010, on the file of the District Munsif cum Judicial
Magistrate Court No.I, Kodaikalan, dated 23.03.2023.

For Petitioner : Mr.E.Om Prakash
Senior Counsel
for Mr.R.Harinath

For Respondents : Mr.A.arumugam
for Mr.V.S.Kumaraguru
for R.1 to R.3

: Mr.M.Vallinayagam
Senior Counsel
for Mr.M.Kannan
for R.4

: R.5, R.6 and R.7– Dispensed with

COMMON ORDER

Tr.C.M.P.(MD)No.332 of 2023:

This petition has been filed seeking transfer of the first Appeal in
A.S.No.18 of 2023, pending on the file of the Subordinate Court, Palani
to any other Court.



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C.R.P.(MD)No.1285 of 2023:

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2. The Civil Revision Petition is directed against the exparte order dated 20.03.2023, passed in O.S.No.58 of 2010, on the file of the District Munsif cum Judicial Magistrate Court No.I, Kodaikanal.

C.R.P.(MD)No.1345 of 2023:

3. The Civil Revision Petition is directed against the order passed in I.A.No.134 of 2014 in O.S.No.58 of 2010, dated 26.04.2022, on the file of the District Munsif cum Judicial Magistrate Court No.I, Kodaikanal.

C.R.P.(MD)No.1346 of 2023:

4. The Civil Revision Petition is directed against the order dated 23.03.2023, rejecting the petition filed under Order 1 Rule 10 C.P.C.

5. This case is a classic example to show as to what extent the process of Court can be abused and misused by the plaintiffs at the initial stage in filing the untenable suit and by the 4th plaintiff at the final stage, in obtaining a decree, which is *ex facie* illegal.



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6. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking before the trial Court.

7. The revision petitioner in C.R.P.(MD)Nos.1285 and 1345 of 2023 and the petitioner in Tr.C.M.P.(MD)No.332 of 2023 is the first defendant and the revision petitioner in C.R.P.(MD)No.1346 of 2023 is a third party to the suit in O.S.No.58 of 2010, on the file of the District Munsif Court, Kodaikanal.

8. It is not in dispute that the suit properties were originally owned by one E.F.Stanack, that he sold the suit properties on 11.03.1920 to Vijay Regunatha Duria Singam, that the said Vijay Regunatha Durai Singam had died leaving behind his two sons viz., Shanmugaraja and Subramaniaraja, that both of them have entered into a partition deed on 03.06.1985 and divided the properties equally and as per that partition deed, the suit property was allotted to the share of Shanmugaraja, that the said shanmugraja had died leaving behind his two sons viz., Karthikeya Venkatachalapathi Raja and Ramachandra Raja and a daughter Rajakumari Rajalakshmi and that the said Rajakumari Rajalakshmi along with other legal heirs have entered into a partition deed on 24.02.1975



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wherein the suit property was allotted to the share of the said Rajakumari Rajalakshmi.

9. Admittedly, Rajakumari Rajalakshmi had died leaving behind her husband Reguraj – second plaintiff, two sons viz., Maheswaran – first plaintiff and Nagendiran and a daughter Rajalakshmi – third plaintiff and that her elder son viz., Nagendiran had died leaving behind his wife Lakshmi Priya Nagendiran – fourth plaintiff and two children.

10. The case of the plaintiffs is that the suit property is their ancestral property, that Rajakumari Rajalakshmi had no independent and absolute right over the suit property, that the said Rajakumari Rajalakshmi sold 7.20 acres of land with the house property (shown as “B” schedule property) out of 28.37 acres of land (shown as “A” schedule property) to the first defendant Company vide sale deed date 02.12.1985 (registered on 27.03.1986), that her sons were minors at that time, that the said Rajakumari Rajalakshmi has not executed the said sale deed for and on behalf of the minors, that possession of “B” schedule property was not at all delivered to the first defendant purchaser, as the property has not been physically demarcated, that the plaintiffs have been



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in peaceful possession and enjoyment of the property continuously, that the sale deed has not at all been acted upon and the same is not binding on the plaintiffs and that therefore, the plaintiffs were constrained to file the above suit to declare that the sale deed dated 02.12.1985 (registered on 27.03.1986) in favour of the first defendant as null and void and not binding upon the plaintiffs.

11. The plaintiffs' further case is that the first defendant, by depositing the original sale deed and other documents, obtained loan from the second defendant – State Bank of Travancore, that since the first defendant has not repaid the loan amount, they have already initiated recovery proceedings before the Debts Recovery Tribunal, that the Income Tax Department had also attached the suit property for the tax due by the first defendant Company, that the above attachments have been entered in the encumbrance certificate with respect to “B” schedule property and that is why the defendants 2 and 3 were impleaded.

12. It is seen from the records that one Srinivasan, S/o Muthiah Pillai claiming to be the power agent of the first defendant Company has filed vakalat along with a petition under Order 3 Rule 2 C.P.C., seeking



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permission to proceed with the case on behalf of the first defendant as a power agent. The trial Court by observing that though the petitioner's side has proved the execution and existence of the power deed, since the Managing Director cannot sub-delegate his power further, the validity of the power deed becomes questionable and as the principal has not filed any affidavit as contemplated under Rule 17 of Civil Rules of Practice, the petitioner therein cannot be recognised as power agent, dismissed the petition. Aggrieved by the order of dismissal, the Civil Revision Petition in C.R.P.(MD)No.1345 of 2023 came to be filed.

13. It is seen from the records that after the dismissal of the petition filed under Order 3 Rule 2 C.P.C., the case was being adjourned for written statement of the first defendant, that the plaintiffs filed a memo on 20.03.2023 stating that since I.A.No.235 of 2014 filed under Order 3 Rule 2 C.P.C., was ordered to be dismissed, there was no room for the first defendant to file a written statement and that the trial Court by recording the memo, called the first defendant absent and set them exparte and posted the case for exparte evidence on 23.03.2023. The said Srinivasan representing the first defendant Company has filed an application under Order 9 Rule 7 C.P.C., on 23.03.2023 seeking orders to



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set aside the exparte order passed on 20.03.2023, but the trial Court by raising a query as to on what locus standi, the defendant is filing this petition, has returned the same vide order date 23.03.2023. Aggrieved by the said order of return, the first defendant has preferred the Civil Revision Petition in C.R.P.(MD)No.1285 of 2023.

14. In the meanwhile, a third party M/s Trans India Resorts Ltd., has filed a petition under Order 1 Rule 10 C.P.C., to implead them as party defendant on 30.01.2023, by alleging that they have entered into a sale agreement to purchase the suit property from the first defendant and the same was ordered to be returned on 09.03.2023. The said petition was again represented on 15.03.2023 and that the learned trial Judge, after hearing the Counsel appearing for the proposed party and also the Counsel for the respondent, has passed an order dated 23.03.2023, rejecting the petition filed under Order 1 Rule 10 C.P.C. Aggrieved by the order of rejection, the third party has preferred the Civil Revision Petition in C.R.P.(MD)No.1346 of 2023.

15. It is further evident that the trial Court has then proceeded to record the evidence of the fourth plaintiff and passed the judgment and



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decree dated 31.03.2023 granting the relief of declaration as prayed for by the plaintiffs. Aggrieved by the said judgment and decree, the first defendant has preferred an appeal in A.S.No.18 of 2023 and the same is pending on the file of the Subordinate Court, Palani. The first defendant has filed the transfer petition seeking orders to withdraw the appeal in A.S.No.18 of 2023 from the Subordinate Court, Palani and transfer the same to any other Court essentially to this Court as the other Civil Revision Petitions arising from the interlocutory applications are being considered in Tr.C.M.P.(MD)No.332 of 2023.

16. After perusing the records, in order to ascertain as to whether the suit summon was served on the first defendant, this Court has directed the Registry to call for the original suit records from the first appellate Court, Palani, but after coming to know that the suit original records were not yet sent by the trial Court at Kodaikanal, directed the Registry to call for the records from the trial Court.

17. It is evident from the original records that after taking the suit on file on 13.03.2010, the suit summons were sent for the hearing on 27.03.2010 to all the three defendants, that the summons sent to the third



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defendant – the Recovery Officer of the Income Tax Department, Madurai has been served, that the summons sent to the second defendant – Manager – State of Bank of Travancore was returned for want of correct address and that the summons sent to the first defendant was returned for want of sufficient time. It is further evident that the third defendant, on receiving summons, has entered into appearance by engaging a Counsel and subsequently, the case was being adjourned again and again for the written statement of the third defendant and batta for defendants 1 and 2. On 12.03.2024, one Advocate Baghavathy Raj has filed vakalat for the first defendant along with the petition under Order 7 Rule 11 C.P.C., and petition under Order 3 Rule 2 C.P.C., and the said petitions were taken on file in I.A.Nos.133 and 134 of 2014. Thereafter, on coming to know that the summon was not served on the second defendant, fresh summon was ordered to be issued to the second defendant and that since the second defendant, despite the receipt of summons, has not turned up, he was called absent and set exparte.

18. It is pertinent to note that when the suit was pending, Advocate Brajesh Patel has filed change of vakalt for the first and third plaintiffs on 18.03.2022 and filed a memo stating that they are not presing the suit



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and that the trial Court, by recording the said memo, dismissed the suit as against the plaintiffs 1 and 3 as not pressed. Thereafter, the petition in I.A.No.134 of 2014 was taken up for enquiry and the same was ordered to be dismissed on 26.04.2022. Even thereafter, the case was being adjourned for written statement, along with the petition for rejection of the plaint.

19. As already pointed out, the fourth plaintiff's Counsel has filed a memo on 20.03.2023 stating that since I.A.No.134 of 2014 was already dismissed, there is no room for the first defendant to file a written statement. It is necessary to refer the exact order passed by the learned trial Judge, which is as follows:

“Memo recorded. Memo submitted by the plaintiff that I.A.No. 235/2014 in O.S.No.56/2017 was dismissed by this Court on 26.04.2022. Therefore there is no room for D.1 to file a written statement on behalf of Ornate Nilgielis. Therefore, the defendant Private Limited cannot proceed this case by its Managing Director one Mr.Srinivasan. Hence, the defendant Hotel Ornate (Nilgly) Private Limited called absent and set exparte, for exparte evidence, call on 23.03.2023.”



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But the memo submitted by the 4th plaintiff and recorded by the Court on 23.03.2023 is not available in the original case bundle.

20. At this juncture, it is necessary to refer that the fourth plaintiff has filed a suit against the Managing Director of the first defendant Company and against the revenue officials including the District Collector, Dindigul for permanent injunction restraining the defendants and their men from any manner disturbing the plaintiffs' possession and enjoyment by way of sub-division and in that suit, the said power agent Srinivasan has filed a similar petition under Order 3 Rule 2 C.P.C., seeking permission to proceed with the case on behalf of the first defendant therein as the power agent in I.A.No.235 of 2014 and after enquiry, the said application was ordered to be dismissed by the trial Court. Challenging the dismissal of the said petition, the first defendant has preferred a revision before this Court in C.R.P.(MD)No.2331 of 2022 and the learned Judge of this Court has dismissed the revision, vide order dated 07.03.2023. The fourth plaintiff, in the memo, instead of mentioning the petition filed under Order 3 Rule 2 C.P.C., by the first defendant in the present suit in I.A.No.134 of 2014, she has given I.A., and suit number in the other suit above referred and the trial Court,



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without considering the above, has mechanically recorded that memo.

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When the petition filed by the power agent to permit him to represent the first defendant was dismissed, the very filing of the memo saying that there is no room for the first defendant to file written statement is totally untenable and cannot legally be entertained. In that situation, the trial Court should have rejected the memo, but it has proceeded to record that memo and on that basis, set the first defendant exparte and as such, the same cannot legally be sustained.

21. It is pertinent to note that Srinivasan who claimed to be the power agent, has filed the permission petition under Order 3 Rule 2 C.P.C., and the same was dismissed. It is not the specific case of the plaintiffs or the trial Court that the suit summon was served on the first defendant Company earlier. As already pointed out, when the batta for the first defendant was shown to be due, the power agent has filed vakalat, representing the first defendant Company along with the petition under Order 3 Rule 2 C.P.C. After the dismissal of the petition filed under Order 3 Rule 2 C.P.C., the next legal course open to the Court was to issue fresh summons to the first defendant Company. But without verifying or recording that the suit summons had been served on the first



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defendant, the trial Court has proceeded to observe that the first defendant cannot proceed with the case. It is pertinent to note that without even serving the summons on the first defendant, after recording the alleged memo filed by the fourth plaintiff, the first defendant was called absent and set exparte. Hence, the very judgment and decree passed without serving the summons on the main contesting defendant ie., the first defendant Company, can only be considered as nullity.

22. Admittedly, as already referred in the earlier paragraphs, the suit property was allotted to the share of Tmt.Rajakumari Rajalakshmi in a partition that was entered into between herself and other legal heirs including her brother and wife of the deceased brother. Hence, the suit property obtained by the said Rajakumari Rajalakshmi can only be considered as her separate property under Hindu Law. But the plaintiffs by alleging that the suit property is their ancestral property has claimed ownership over the same and challenged the sale deed executed by the said Rajakumari Rajalakshmi.

23. It is settled Hindu Law that in order to claim that the property is an ancestral property, it should be only from male ascendent. It is



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pertinent to note that the first plaintiff has subsequently filed a partition suit against his father, sister and wife and children of his deceased brother – Nagendiran in O.S.No.31 of 2015, on the file of the Principal District Court, Sivagangai. In the plaint in O.S.No.31 of 2015, the plaintiff therein has specifically stated that the properties referred in that suit remained undivided among the legal heirs of Late Tmt.Rajakumari Rajalakshmi Reguraj and in the cause of action column, it has been stated that the plaintiff's mother acquired right, title and interest in the suit schedule properties therein. It is also not in dispute that all the parties to the suit in O.S.No.31 of 2015 had entered into compromise and filed a joint compromise memorandum before the Additional District Court, Sivagangai and the same was recorded and on that basis, the final decree came to be passed.

24. It is pertinent to note that in the suit in O.S.No.31 of 2015, 18.14 acres of land and bungalows and cottages and trees were shown as the second item of the suit property and more importantly out of total extent of 28.37 acres, after deducting 10.23 acres of land already sold by Tmt.Rajakumari Rajalakshmi, the remaining extent of 18.14 acres was shown as the second item of the property and only with respect to the



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said remaining extent and the other property in Sivagangai Town, compromise was entered into between the parties. More importantly, neither the plaintiff nor the defendants to the suit in O.S.No.31 of 2015 have referred that the properties shown therein were their ancestral properties.

25. The learned Senior Counsel appearing for the first defendant would submit that the plaintiffs 1 to 3 have filed a memo as early as on 18.03.2022 before the trial Court not pressing the suit and they have given a letter confirming the sale in favour of the first defendant on 13.02.2023. The copy of the same is annexed in the main typed set wherein they have specifically admitted that the suit properties were absolutely belonging to her and based on the absolute ownership, she sold a part of the suit property ie., 7.2 acres of land to the first defendant. But the fact remains that the fourth plaintiff has not disputed the very filing of the memo by the plaintiffs 1 to 3 not pressing the suit. Even before passing of the judgment and decree in O.S.No.58 of 2010, the fourth plaintiff has filed another suit in O.S.No.19 of 2023 before the District Munsif Court, Kodaikanal against the said Srinivasan alleged to be the power agent of the first defendant and four others including the



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proposed party M/s Trans India Resorts Private Limited claiming declaratory relief that the sale agreement dated 17.02.2015 entered into between the defendants 1 and 2 as null and void and not binding on her and for permanent injunction restraining the defendants 1 to 4 from interfering with her peaceful possession and enjoyment of the suit property and for permanent injunction restraining the defendants and their men in any manner alienating or encumbering the suit property and also restraining the fifth defendant from registering any encumbrance created by the defendants 1 to 4 in respect of the suit property therein.

26. The fourth plaintiff, in the suit in O.S.No.19 of 2023 has reiterated her earlier stand that the suit property is the ancestral property of her husband and others and that since they have been in continuous possession and enjoyment of the property, they have already perfected their title by adverse possession. It is pertinent to note that the fourth plaintiff, after getting a portion of the property, which was left by her mother-in-law – Rajakumari Rajalakshmi at Kodaikanal as per the compromise decree entered into between herself and others in O.S.No.31 of 2015, by only referring the same as the property of her mother-in-law,



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has taken a stand that the property is ancestral in character, in the plaint filed subsequently in O.S.No.19 of 2023.

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27. The learned Counsel appearing for the plaintiffs 1 to 3 before this Court would submit that subsequent to the sale now impugned in the present suit, Rajakumari Rajalakshmi has also executed four other sale deeds on 08.12.1989 in respect of 27 cents of land, from her remaining property at Kodaikanal and the said sales were not at all challenged by them or by the fourth plaintiff.

28. It is not the case of the fourth plaintiff that she has challenged the other four sale deeds executed by her mother-in-law on 08.12.1989 on the ground of ancestral property. As rightly contended by the learned Senior Counsel for the first defendant, the fourth plaintiff has not offered any reason or explanation for not challenging the said sale deeds, which are in respect of the remaining property of Rajakumari Rajalakshmi at Kodaikanal.

29. Considering the above and taking note of the fact that the plaintiffs were originally claiming title to the suit property only through



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the said Rajakumari Rajalakshmi and the subsequent admission of the plaintiffs 1 to 3 and also the fact that the plaintiffs had obtained a compromise decree with respect to the remaining extent excluding the property sold by the said Rajakumari Rajalakshmi, there is absolutely no iota of doubt that the suit property is not the ancestral property and is the separate and absolute property of the said Rajakumari Rajalakshmi and that therefore, the very basis of the suit claiming ownership alleging that the suit property is ancestral property is legally unsustainable.

30. The learned Senior Counsel appearing for the first defendant has relied on the decision of a learned Judge of this Court in ***J.Savithri and another Vs. Selvaraj and others***, passed in C.R.P.No.3980 of 2014, dated 19.09.2023, wherein also the plaintiffs therein have claimed ownership by alleging that the property belonged to her paternal grandmother and the learned Judge, by observing that since the plaintiff has made claim alleging that the property is ancestral property, but through the female line, the same is unknown to Hindu Law, has set aside the judgment and decree. The said decision is squarely applicable to the case on hand, as the plaintiffs are claiming that the suit properties are ancestral properties, but through the said Rajakumari Rajalakshmi.



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31. In the above decision case, though the revision was filed challenging the dismissal of the petition filed under Section 47 C.P.C., the learned Judge, by invoking Article 227 of the Constitution of India and by relying on the judgment of this Court in *Annapoorni Vs. Janaki* reported in **1995-1-L.W.141** and the judgment of the Hon'ble Supreme Court in *K.P.Natarajan and another Vs. Muthalammal and others* reported in **(2021)15 SCC 317** and by holding that the impugned decree therein was contrary to law, has set aside the same.

32. Admittedly, the impugned sale deed was dated 02.12.1985 and the same came to be registered on 27.03.1986. The present suit was filed in the year 2010, after the lapse of more than 24 years. The plaintiffs in their plaint have nowhere whispered as to how the suit is in time. As rightly contended by the learned Counsel for the first defendant, the first defendant has filed a petition for rejecting the plaint mainly on the ground that the suit itself is barred by time. As rightly contended by the learned Counsel for the first defendant, the youngest member of the entire family of the plaintiffs, ie., the first plaintiff Maheshwaran was shown to be aged 37 years on the date of plaint. Even according to the



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plaintiffs, the first plaintiff was aged 12 years at the time of the impugned sale deed and if it is so, the suit ought to have been filed within 3 years from the date of the first plaintiff attaining majority ie., at his 21 years of age and the same itself got expired in 1994.

33. It is evident from the records that the care taker of the suit property, engaged by the first defendant, filed a suit against the first plaintiff and his brother Nagendiran claiming permanent injunction restraining them from interfering with the peaceful possession and enjoyment of the suit property and since they remained exparte, the suit was decreed on 09.08.1995. As rightly contended by the first defendant's side, even thereafter no suit has been filed by the plaintiffs, on the basis of the so called continuous possession with them. Even as per the plaint averments, it is very much clear that the suit is hopelessly barred by the limitation.

34. As already pointed out, the plaintiffs 1 to 3 have filed a memo not pressing the suit and on that basis, the suit was ordered to be dismissed as against the plaintiffs 1 to 3 as not pressed. It is pertinent to note that the suit was filed by the first plaintiff for himself and on behalf



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of the plaintiffs 2 to 4 as their power agent. It is evident from the original records that the first plaintiff alone has filed vakalat for himself and for the other plaintiffs as their power agent. After the dismissal of the suit as against the plaintiffs 1 to 3, the fourth plaintiff has not filed any separate vakalat authorising his Counsel to proceed further. It is pertinent to note that the impugned sale was challenged by all the plaintiffs claiming that Rajakumari Rajalaksmi had no independent right to sell the property and the fourth plaintiff was claiming right over the suit property through her deceased husband. After the dismissal of the suit as against the plaintiffs 1 to 3, it is not known as to how the fourth plaintiff alone has proceeded with the suit and got a decree in her favour. The proper legal course open to the fourth plaintiff was to make the plaintiffs 1 to 3 as defendants, but admittedly no such steps were taken.

35. More importantly, the learned trial Judge, without taking note of the main fact that the suit was dismissed as against the plaintiffs 1 to 3 as early as on 21.07.2022, has passed the judgment and decree in the present suit in favour of all the plaintiffs. The learned trial Judge, in the judgment and decree dated 23.03.2023, has nowhere whispered about the dismissal of the suit as against the plaintiffs 1 to 3, but passed the



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judgment and decree declaring that the sale deed dated 27.03.1986 is invalid and is not binding on the plaintiffs. But shockingly, while perusing the original records, it is evident that the judgment available in the case bundle reflects different version and in that judgment, the learned trial Judge has referred that on the basis of the memo filed by the plaintiffs 1 to 3 not pressing the suit, they were ordered to be removed from the suit and proceeded to pass the judgment and decree only in favour of the fourth plaintiff.

36. Considering the above, it appears that after the issuance of the certified copies of the judgment and decree, the learned trial Judge has made changes in the judgment and decree unauthorisedly and for the reasons best known to him. As rightly contended by the learned Senior Counsel for the first defendant, since the suit was already dismissed as against the plaintiffs 1 to 3 and in the absence of the plaintiffs, who are allegedly having right over the suit property, as claimed by the fourth plaintiff herself, the judgment and decree cannot legally be sustained.

37. The main contention of the plaintiffs is that though the sale deed was executed in 1986, the possession of the suit property was and is



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with them and the revenue records were only in favour of them. The learned Counsel for the plaintiffs 1 to 3 would submit that after the sale in favour of the first defendant, their plan was approved by the Kodaikanal Municipality as early as on 04.09.1986, that patta was transferred in their name on 09.09.1986 and the patta was issued by the Tahsildar, Kodaikanal on 12.09.1986 and that at the instance of the first defendant's power agent complaining that the description of the property was wrongly shown in the patta and sketch, the District Revenue Officer has issued proceedings cancelling the patta transfer order and the patta already issued and directed the Tahsildar to issue fresh patta after making necessary changes. As already pointed out, the watchman engaged in the suit property by the first defendant has filed a suit in O.S.No.32 of 1995 and obtained a permanent injunction restraining the first plaintiff and the deceased husband of the fourth plaintiff from interfering with the first defendant's possession and enjoyment of the suit property and that the said decree is still in force.

38. It is evident from the records that the first defendant has entered into a sale agreement with the proposed party, the Trans India Resorts Limited to sell the suit property and the property at Ooty on



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15.07.1993, that since the proposed party has applied for the loan from the second defendant – State Bank of Travancore, a tripartite agreement was entered into between the first defendant, their bankers, the Bank of Tokyo and the bankers of the proposed party ie., State Bank of Travancore on 27.06.1994 and whereunder the State Bank of Travancore has agreed to sanction a demand loan of Rs.200 Lakhs for the purchase of the suit property and that, in pursuance of the same, the State Bank of Travancore – second defendant has paid the agreed amount to the Bank of Tokyo, after getting all the original title deeds from them.

39. It is also not in dispute that since the proposed party has not repaid the loan amount, the second defendant has initiated the recovery proceedings before the Debts Recovery Tribunal, Chennai. It is also not in dispute that the Income Tax Department through the third defendant has attached the suit property for the tax due by the proposed party and even according to the plaintiffs 1 to 3, panchanama was issued by the Income Tax Department attaching the suit property, in which the second plaintiff and the fourth plaintiff were signatories thereto.



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40. Considering the above proceedings and also the fact that the plaintiffs 1 to 3, after dismissal of the suit as against them, have not claimed that they have been in possession of the suit property, the very contention of the fourth plaintiff that the plaintiffs alone were/are in continuous possession and enjoyment of the suit property, is absolutely devoid of substance and is liable for rejection.

41. It is not in dispute that the said Srinivasan alleged to be the power agent of the first defendant alone has taken part in the revenue proceedings, for which, the plaintiffs have not raised any objections. It is also not in dispute that the said Srinivasan alone has preferred an appeal before the District Revenue Officer, Kodaikanal for cancellation of patta transfer order and the patta issued to them showing wrong description of the property, against the deceased husband of the fourth plaintiff – Nagendiran and that the said appeal came to be allowed.

42. As already pointed out, the fourth plaintiff in the recent suit filed in 2023 has impleaded the said Srinivasan as the first defendant. As rightly contended by the learned Senior Counsel for the first defendant, the said Srinivasan as power agent of the first defendant Company has



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appeared and contested in various litigations including the revenue proceedings and in those proceedings neither the fourth plaintiff nor the other plaintiffs have raised any objection nor raised any plea that he should not be recognised as power agent of the first defendant.

43. It is the specific case of the first defendant that the company Board has passed a resolution dated 24.06.1994 according permission to the Managing Director Mr.Jamal K.Shah and in pursuance of the same, the Managing Director has executed an irrevocable power of attorney in favour of the said Srinivasan and in pursuance of the said power of attorney, the said Srinivasan had taken part in the various litigations including the present suit. As already pointed out, the trial Court by observing that since the Managing Director was given permission by the Board resolution, he cannot sub-delegate the powers, dismissed the petition filed under Order 3 Rule 2 C.P.C.

44. The learned Senior Counsel appearing for the fourth plaintiff would mainly contend that in a similar petition filed in I.A.No.235 of 2014 in O.S.No.56 of 2014, a learned Judge of this Court has confirmed the order of the trial Court in dismissing the petition filed under Order 3



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Rule 2 C.P.C., and that since the only question whether the said Srinivasan has got valid power of attorney to represent the first defendant Company has already been decided by this Court in C.R.P.(MD)No.2331 of 2022, dated 07.03.2023, the present Civil Revision Petition in C.R.P. (MD)No.1345 of 2022 has to necessarily be dismissed on account of the above said order is in force.

45. The learned Senior Counsel would further contend that the learned Judge, in the order passed in C.R.P.(MD)No.2331 of 2022 has specifically held that the xerox copy of the power of attorney deed relied on by the said Srinivasan who represented the first defendant Company is inadmissible and the same cannot be considered and as such, the said Srinivasan is not entitled to claim the right to represent the first defendant Company in the suit, that this Court has also further held that the Managing Director himself has not been given any power to initiate or prosecute any litigation on behalf of the first defendant Company and that since the said power of attorney deed is the basic document in the present proceedings also, the said order is binding on the revision petitioner.



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46. The learned Judge, in the said order, after referring to the decisions of this Court as well as the other High Courts, has concluded that the Managing Director has failed to prove that he is authorised by the Board of Company to conduct the suit on its behalf and that since he lacked the necessary authority, the petitioner Company represented through the power agent cannot maintain the petition filed under Order 3 Rule 2 C.P.C. In the ***Schmenger GMBH and Company Leder Vs. Saddler Shoes Private Ltd.***, reported in ***2010 SCC Online Mad 6539*** referred by the learned Judge, the question was as to whether the Liaison Officer was duly authorised to institute the suit on behalf of the Company.

47. At this juncture, it is necessary to refer the judgment in ***Wasava Tyres A Partnership Firm Vs The Printers (Mysore) Ltd*** reported in ***[2007]139COMPCAS 446 (KAR)***, wherein, the Karnataka High Court, after referring to the definition of the Managing Director under Section 2(26) of the Companies Act, has observed as follows:

“12. The words "substantial powers of management" specifically excludes certain acts from its preview. Therefore except the excluded acts the managing director has power



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and privilege of conducting the business of company in accordance with the Memorandum and Articles of Association of the company. The institution of the emit on behalf of the company by the managing director is deemed to be within the meaning of "substantial powers of management" since such a power is necessary and incidental for managing the day-today affairs and business of the company. Therefore, by virtue of provisions of Section 26 the suit instituted by the Managing Director is deemed to be within his power and authority. The suit is obviously filed for the benefit of the company. In that view of the matter, the contention that the Managing Director had no authority to file a suit is untenable and the same is rejected."

48. Before the learned Judge of the Karnataka High Court, the other side has relied on the decision of the Calcutta High Court in *Al-Amin Seatrans Ltd. vs Owners And Party interested in Vessel in M.V.Loyal Bird* reported in *AIR1995CAL169*, wherein, there was a dispute between the two groups in the Board of Directors and when one group headed by the Managing Director had filed the suit based on the Articles of Association of the Company, the Calcutta High Court has held that in view of the dispute between the two rival groups of Directors, the Managing Director had no complete representative capacity to file a suit



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on behalf of the Company. In our case also, there is no material to show that there is disagreement amongst the Directors for defending the suit in question.

49. The Hon'ble Supreme Court in ***Bhupesh Rathod Vs. Dayashankar Prasad Chaurasia and another*** reported in ***(2022)2 SCC 355***, while dealing with the complaint filed under Section 138 of the Negotiable Instruments Act by the Managing Director of the Company, has held that the Managing Director has the authority to take action for day to day management of the company, which includes the initiation of civil or criminal action and the relevant passages are extracted hereunder:

“23.A Manager or a Managing Director ordinarily by the very nomenclature can be taken to be the person in-charge of the affairs Company for its day-to-day management and within the activity would certainly be calling the act of approaching the court either under civil law or criminal law for setting the trial in motion. It would be too technical a view to take to defeat the complaint merely because the body of the complaint does not elaborate upon the authorisation. The artificial person being the Company had to act through a person/official, which logically would include the Chairman or Managing



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Director. Only the existence of authorisation could be verified.”

50. It is also necessary to refer the judgment of the Hon'ble Supreme Court in ***United Bank of India Vs. Naresh Kumar and others*** reported in ***(1996)6 SCC 660***, relied on by the learned Senior Counsel for the first defendant and the relevant passages are extracted hereunder:

“9. In cases like the present where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts, under [the Code of Civil Procedure](#), to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable.

10. It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under [Order 6 Rule 14 of the Code of Civil Procedure](#) a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. [Order 29 Rule 1 of the Code of Civil Procedure](#), therefore, provides that in a suit by



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against a corporation the Secretary or any Director or other Principal officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6 Rule 14 together with Order 29 Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and de hors [Order 29 Rule 1 of the Code of Civil Procedure](#), as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of [Order 6 Rule 14 of the Code of Civil Procedure](#). A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a Corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The Court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the



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conclusion that the corporation had ratified the act of signing of the pleading by it's officer.”

51. As rightly pointed out by the learned Senior Counsel for the first defendant, though the plaintiffs have raised serious objections to the petition filed under Order 3 Rule 2 C.P.C., by the first defendant to represent through the power agent, the plaintiffs 2 to 4, who appeared through the first plaintiff – power agent have not chosen to file any application and there is absolutely no evidence available in the original case bundle to show that they have sought permission and the same was granted by the trial Court.

52. More importantly, in the present case, the Company has to defend the suit filed by the plaintiffs and it is not for filing of any suit or other action on behalf of the Company. Considering the legal position above referred, the decision of the learned Judge of this Court in C.R.P. (MD)No.2331 of 2022 cannot be considered as a binding precedent and it can only be treated as per incuriam. Hence, this Court is of the clear view that the Managing Director has every power or authority to defend



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the suit filed against the Company and consequently, he has every power and authority to appoint a power agent in that behalf.

53. At this juncture, it is necessary to refer the following decisions relied on by the learned Senior Counsel appearing for the first defendant which are as follows:

(i) *Annapoorni Vs. Janaki (suo motu revision Janaki Vs. Annapoorani)(1995-1-L.W.141)*:

“11. When this Court finds that a decree suffers from an error of law apparent on the fact of the records owing to non-application of mind of the Court, to the relevant principles of law, this Court cannot keep silent and allow the decree to be in force, particularly, when it causes grave injustice. There can be no doubt whatever that under the Hindu Succession Act, certain persons are designated as Class I heirs and all of them are entitled to succeed to the estate of a deceased Hindu. There is no earthly reason for depriving the mother of the deceased of her legitimate share in the estate which in this case happens to be a moiety. This is a typical case of miscarriage of justice which should be rectified the moment it comes to the notice of this Court. It is only for that reason, I am exercising my powers under



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*Section 115 of the Code of Civil Procedure and Article 227
of the Constitution of India.”*

(ii) *K.P.Natarajan and another Vs. Muthalammal and others*

[(2021)15 SCC 817]:

“21. The contention that in a revision arising out of the dismissal of a petition under [Section 5](#) of the Limitation Act, 1963, the High Court cannot set aside the exparte decree itself, by invoking the power under [Article 227](#), does not appeal to us. It is too well settled that the powers of the High Court under [Article 227](#) are in addition to and wider than the powers under Section 115 of the Code. In [Surya Dev Rai vs. Ram Chander Rai and Others](#), this Court went as far as to hold that even certiorari under [Article 226](#) can be issued for correcting gross errors of jurisdiction of a subordinate Court. But the correctness of the said view in so far as it related to [Article 226](#), was doubted by another Bench, which resulted in a reference to a three member Bench. In [Radhey Shyam & Anr. vs. Chhabi Nath & Others](#), the three member Bench, even while overruling [Surya Dev Rai](#) (supra) on the question of jurisdiction under [Article 226](#), pointed out that the jurisdiction under [Article 227](#) is distinguishable. Therefore, we do not agree with the contention that the High Court committed an error of jurisdiction in invoking [Article 227](#) and setting aside the exparte decree.”



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54. As already pointed out, the learned trial Judge has passed the exparte judgment and decree. Lord Macnaghten would say, “Great caution should be exercised when suits are heard ex-parte and the said principle is universal application.

55. It is also necessary to refer the decision of this Court in the case of ***Balakrishnan Vs. Kaliaperumal and another*** in C.P.R.(MD)Nos. 234 and 330 of 2021, dated 06.12.2021 and the relevant passages are extracted hereunder:

“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 ex-parte, 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 plaintiff is entitled to get a decree automatically. It is pertinent to mention that in cases where the 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.



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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."*

56. The learned Senior Counsel appearing for the first defendant has also relied on the judgment of the Hon'ble Supreme Court in **Ramesh Chand Ardawatiya Vs. Anil Panjwani** reported in **(2003)7 SCC 350**, and the relevant paragraph is extracted hereunder:

"33. So far as the plea of bar as to maintainability of suit for failure to seek further relief is concerned, we cannot find fault with the plaint as framed. The defendant was alleged to be a rank trespasser who was in the process of committing a trespass and was allegedly raising unauthorized



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construction over the property neither owned nor legally possessed by him. The relief of specific performance is not a further relief to which the plaintiff is entitled or which he could have sought for against this defendant. Thus, from the point of view of the present defendant, we cannot find any such defect or infirmity in the relief sought for by the plaintiff as would render the suit not maintainable and liable to be thrown out at the threshold. But there is substance in the other limb of this submission made by the learned senior counsel for the defendant-appellant. Even if the suit proceeds ex-parte and in the absence of a written statement, unless the applicability of Order VIII Rule 10 of the CPC is attracted and the Court acts thereunder, the necessity of proof by the plaintiff of his case to the satisfaction of the Court cannot be dispensed with. In the absence of denial of plaint averments the burden of proof on the plaintiff is not very heavy. A prima facie proof of the relevant facts constituting the cause of action would suffice and the Court would grant the plaintiff such relief as to which he may in law be found entitled. In a case which has proceeded ex-parte the Court is not bound to frame issues under Order XIV and deliver the judgment on every issue as required by Order XX Rule 5. Yet the Trial Court would scrutinize the available pleadings and documents, consider the evidence adduced, and would do well to frame the 'point for determination' and proceed to construct the ex-parte



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judgment dealing with the points at issue one by one. Merely because the defendant is absent the Court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence.”

57. In the present case, though the plaintiffs have claimed ownership through female line, the trial Court without considering and discussing anything about the nature of the properties, has simply held that the suit property is belonging to Hindu joint family and that since the second plaintiff and his sons and daughter were not parties to the sale deed, the same can be considered as a sham and nominal document and not acted upon. The trial Court, without any pleadings and evidence, has observed that since the sale deed was registered with the delay of 3 months, the same is legally invalid. It is nobody's case. Moreover, the property registration in Tamil Nadu must complete within 4 months of executing the sale deed and the delay in registration of the property documents would attract penalty. The trial Judge has given a finding that Srinivasan has not produced any evidence to show that he was permitted to institute the case as power agent. Even assuming that the said Srinivasan has not produced any document that he was permitted to



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defend the company as its power agent, that by itself is not a ground to decree the suit. Considering the above, the learned trial Judge, in the absence of any acceptable evidence produced by the plaintiffs and when the very claim of the plaintiff is against the settled Hindu Law, without any proper consideration, has mechanically passed the judgment and decree, which is not in accordance with law.

58. As already pointed out, the deceased husband of the fourth plaintiff has filed a suit in O.S.No.2 of 2004 against the first defendant from interfering with the peaceful possession and enjoyment of the suit property, by alleging the very same averments now raised in the plaint in O.S.No.58 of 2010, but the said suit was subsequently withdrawn and on that basis, the suit was ordered to be dismissed as withdrawn. Admittedly, the said plaintiff in O.S.No.2 of 2004 has not sought for any liberty and no liberty was granted by the Court to file a fresh suit. As rightly contended by the learned Counsel for the first defendant, the plaintiffs have not offered any reason or explanation for filing the suit in O.S.No.58 of 2010.



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59. Now turning to the dismissal of the impleadment petition filed by the Trans India Resorts Limited, the learned Senior Counsel for the fourth plaintiff has relied on the decision of this Court in ***C.R.P.(MD)No. 1087 of 2019, dated 22.01.2021(B.Sugendran and another Vs. Rajarathinam and others)***, wherein, it has been held that as per Section 54 of the Transfer of Property Act, the contract for sale of immovable property does not create any interest over such property and hence, based upon the sale agreement executed in favour of the proposed party, proposed party cannot claim any right or title in the suit property and that the only remedy available to the proposed party is to enforce the contract between himself and the vendor.

60. The Hon'ble Supreme Court in ***Rambhau Namdeo Gajre Vs. Narayan Bapuji Dhora (dead) through LRs.***, reported in ***(2004)8 SCC 614***, relied on by the learned Senior Counsel for the fourth plaintiff, has specifically held that the agreement to sell does not create an interest in favour of the proposed vendee in the suit property.

61. There is absolutely no dispute about the legal position above referred. In the case on hand, no doubt, the proposed party has entered



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into a sale agreement with the first defendant in the year 1994 itself. But the fact remains that the proposed party has paid the entire sale consideration through his bankers, the second defendant herein to the first defendant through their bankers ie., Bank of Tokyo and received the entire title deeds with respect to the suit property from the Bank of Tokyo on behalf of the first defendant. As already pointed out, the second defendant Bank has already initiated recovery proceedings and the Income Tax department has already attached the suit property for the liability of the proposed party. But the learned trial Judge, without considering the above aspects, by simply observing that the proposed party has been attempting to have another innings to procrastinate the trial for some more years and that would amount to re-litigation as the lis has already reached its finality, rejected the petition. It is pertinent to note that when the rejection order was passed on 23.03.2023, the suit in O.S.No.58 of 2010 was very much pending and as such, the lis had not reached its finality. As such, the impugned order cannot legally be sustained.

62. Now turning to the transfer petition, the learned Senior Counsel for the fourth plaintiff would submit that the first defendant



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cannot approach the High Court directly for transfer of the case from one Court to another in the same District and he ought to have approached the District Court at the first instance and as such, the transfer petition itself is legally not maintainable. In support of his contention, the learned Senior Counsel has relied on a decision of this Court in ***Reshma Begam and another Vs. Syed Nawab Jan and others*** reported in ***2016(6) CTC 703***, wherein a petition was filed before the High Court, seeking transfer of execution petition pending on the file of the District Munsif to other Additional District Munsif of the same District, before the High Court, the learned Judge of this Court, by observing that the transfer petition is to be filed before the District Court and wherever the transfer is not maintainable before the District Court concerned, the petition for transfer is to be filed before the High Court and that the High Court can entertain transfer petition only in extraordinary circumstances where it is not possible for District Court to exercise its power, has dismissed the transfer petition as not maintainable.

63. When another transfer petition has come up before another learned Judge of this Court, expressing disagreement with the order passed in ***Reshma Begam's case*** referred above, has made a reference to



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the Larger Bench and the Hon'ble Division Bench of this Court in Tr.C.M.P.(MD)No.371 of 2017, vide order dated 26.10.2018, (Vanaja and another Vs. Sri.V.Sureshkumar and others) by observing that the decision referred in Reshma Begams case is not good in law, has specifically held that the power under Section 24 C.P.C., is available both with District Courts and High Courts to transfer or withdrawal of any case pending before the Subordinate Courts.

64. Considering the dictum laid down by the Division Bench of this Court, the contention of the learned Senior Counsel for the fourth plaintiff that the transfer petition directly filed before this Court is legally not maintainable, cannot be sustained.

65. It is necessary to refer the decision of the Hon'ble Supreme Court in ***S.P. Chengalvaraya Naidu (Dead) by L.Rs vs Jagannath (Dead) by L.Rs. and Others*** reported in (1994)1 SCC 1, wherein the Hon'ble Supreme Court has held as follows:

“7. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts



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and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". 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. One who comes to the court, must come with clean-hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax- evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court - process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."

66. Considering the way in which the fourth plaintiff, after the dismissal of the suit as against the plaintiffs 1 to 3 has proceeded with the suit, the way in which the memo was filed and made the Court to set the first defendant exparte, the way in which the fourth plaintiff has suppressed the compromise decree obtained in O.S.No.31 of 2015 at the



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time of giving evidence before the trial Court and the way in which she had initiated various proceedings including the suit in O.S.No.19 of 2023, reiterating their earlier stand taken in O.S.No.58 of 20910, which is contrary to the stand taken in the suit in O.S.No.31 of 2015, this Court has no hesitation to say that the fourth plaintiff is making a mockery of judicial system.

67. Since the very basis on which the suit was laid, is against the settled Hindu Law and the facts that the suit itself is barred by limitation, that the suit as against the plaintiffs 1 to 3 was already dismissed as not pressed and they were not made as defendants, that the fourth plaintiff has not shown that she is still having cause of action to proceed further and that the way in which the fourth plaintiff has approached this Court with unclean hands, this Court has to necessarily held that the suit is legally not maintainable and as such, the plaint is liable to be struck of from the file. Since this Court has decided that the judgment and decree passed in O.S.No.58 of 2010 is a nullity and the plaint filed in O.S.No.58 of 2010 is liable to be struck of, all the Civil Revision Petitions pending before this Court and also the appeal in A.S.No.18 of 2023, pending on the file of the Subordinate Court, Palani have become infructuous.



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Considering the above, this decides that the fourth plaintiff is liable to be mulcted with exemplary costs.

68. In the result, the judgment and decree passed O.S.No.58 of 2010, dated 31.03.2023 is set aside and the plaint in O.S.No.58 of 2010 is ordered to be struck off from the file. The Appeal Suit in A.S.No.18 of 2023, pending on the file of the Subordinate Court, Palani is dismissed as infructuous. The Civil Revision Petitions in C.R.P.(MD)Nos.1285, 1345 and 1346 of 2023 and the transfer petition in Tr.C.M.P.(MD)No.332 of 2023 are also dismissed as infructuous. Consequently, the connected Miscellaneous Petitions are also dismissed. The fourth respondent/fourth plaintiff is directed to pay costs of Rs.10,000/-(Rupees Ten Thousand only) to the Legal Services Authority attached to this Bench within a period of 15 days from the date of receipt of a copy of this order.

69. Post the matter after four weeks for reporting compliance.

20.02.2024

NCC : Yes : No
Index : Yes : No
Internet : Yes : No
SSL



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- To
1. The Principal District Court, Thanjavur.
 2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P.(MD)Nos.1285, 1345 and 1346 of 2023

K.MURALI SHANKAR,J.

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PRE-DELIVERY ORDER MADE IN

**Tr.C.M.P.(MD)No.332 of 2023
and
C.R.P.(MD)Nos.1285, 1345 and 1346 of 2023
and
C.M.P.(MD)Nos.7226, 6314, 6701 and 6702 of 2023**

20.02.2024