



C.R.P.No.194 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.No.194 of 2025

and

C.M.P.Nos.1295 & 1296 of 2025

P.Arumugam

... Petitioner

Vs.

1.K.Senthilkumar

2.P.Senthilkumar

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India against the judgment and decree dated 07.04.2015 in O.S.No.471 of 2014 on the file of the III Additional District Court, Coimbatore, as abuse of process and consequently, to set aside the sale deed dated 03.10.2024 executed pursuant to the *ex parte* decree.

For Petitioner : Mr.R.Bharath Kumar

For R2 : Mr.V.Ramamurthi
for Mr.V.Janarthanan

For R1 : No appearance



C.R.P.No.194 of 2025

ORDER

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Challenging the *ex parte* judgement and decree dated 07.04.2025 passed in O.S.No.471 of 2014 on the file of the learned III Additional District Judge, Coimbatore, and the sale deed dated 03.10.2024 executed pursuant to the said *ex parte* decree, the aggrieved third party to the suit proceedings has filed the present revision petition under Article 227 of the Constitution of India.

2.The revision petitioner is a third party to the suit proceedings. On an application filed by the petitioner, this Court, by order dated 10.01.2025, granted leave to institute the present revision petition.

3.The *ex parte* decree is primarily challenged on the ground that it was obtained by suppressing material facts and by playing fraud upon the Court.

4.1.It is the case of the revision petitioner that late C.T. Palaniappa Chettiar was the absolute owner of the suit properties, having purchased the same under two registered sale deeds dated 16.04.1963 and 20.05.1963. He



C.R.P.No.194 of 2025

passed away on 24.11.1987, leaving behind his legal heirs, viz., two sons and four daughters namely, Arumugam, Natarajan, Subbulakshmi, Ponmani, Arukkani, and Rukmani.

4.2.It is further averred by the revision petitioner that he is one of the sons of the late C.T. Palaniappa Chettiar. He has two sons, namely (1) Mohan Karthik and (2) Deepak Sathya. The said sons of the revision petitioner filed a suit in O.S.No.259 of 2011 on the file of the III Additional Subordinate Judge, Coimbatore, seeking partition and separate possession of their 2/3rd share in the suit properties. In the said suit, an order of interim injunction restraining any further alienation of the properties was granted, pending disposal of the suit.

4.3.The revision petitioner had appointed the 1st respondent, K.Senthilkumar, as his power of attorney agent by executing a registered Power of Attorney Deed dated 14.09.2011, registered as Doc.No.1315 of 2011. On the very next day, i.e., 15.09.2011, the 1st respondent, acting as the petitioner's agent, entered into an agreement of sale with the 2nd respondent. However, the said Power of Attorney was subsequently revoked by a



C.R.P.No.194 of 2025

registered Deed of Cancellation dated 04.09.2014, registered as Doc.No.8360 of 2014, after issuance of a legal notice dated 05.06.2013, which was duly sent by registered post to the 1st respondent.

4.4. When the matter stood thus, the 2nd respondent instituted a suit against the 1st respondent for specific performance of the agreement of sale, dated 15.09.2011, which was taken on file as O.S.No.471 of 2014 on the file of the learned III Additional District Judge, Coimbatore. The said suit was decreed *ex parte*. Pursuant to the said *ex parte* decree, in the execution proceedings filed by the 2nd respondent, the Executing Court executed the sale deed in favour of the 2nd respondent on behalf of the 1st respondent on 03.10.2024.

5. Aggrieved by the judgment and decree in the suit, the present revision has been filed.

6. Learned counsel for the revision petitioner contended that, on the very next day after the execution of the Power of Attorney by the revision petitioner, i.e., on 15.09.2011, the 1st respondent entered into a sale

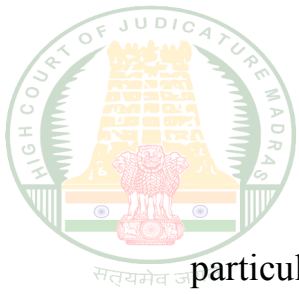


C.R.P.No.194 of 2025

agreement with the 2nd respondent. The suit in O.S.No.471 of 2014 was filed just three days prior to the expiry of the period of limitation. Crucially, the revision petitioner, who is the real owner of the property, was not impleaded as a party to the suit. Instead, only the power of attorney holder, the 1st respondent, was arrayed as the sole defendant.

7.It was further submitted that the 1st respondent, being fully aware of the revocation of the Power of Attorney by a registered Deed of Cancellation dated 04.09.2014, which was preceded by a legal notice dated 05.06.2013, chose to remain *ex parte* in the said suit, thereby facilitating the *ex parte* decree. This deliberate non-participation, despite knowledge of the revocation, demonstrates collusion and suppression of material facts, amounting to fraud on the court.

8.Thus, according to the learned counsel for the revision petitioner, the suit in O.S.No.471 of 2014 was filed by abusing the process of law, and the 2nd respondent obtained an *ex parte* decree in collusion with the 1st respondent by suppressing material facts and perpetrating fraud upon the Court. It is further submitted that the trial court failed to frame any issues,



C.R.P.No.194 of 2025

particularly on the readiness and willingness of the 2nd respondent to perform his part of the contract, an essential requirement in a suit for specific performance. Consequently, the trial court did not examine that critical aspect, and the *ex parte* decree was passed without proper reasoning. Hence, the decree is vitiated and is liable to be set aside, being contrary to the provisions of Order XX Rules 4 and 5 of the Code of Civil Procedure.

9. There is no representation for the 1st respondent.

10. Learned counsel for the 2nd respondent would mainly submit that, though the principal, the owner of the property, has not been made as a party to the suit, the suit has been filed against the power of attorney agent based on the Power of Attorney executed in his favour by the principal. Further, it is his contention that the petitioner/principal is also aware of the decree and judgment as early as on 07.04.2015. It is his contention that the sons and sisters of the revision petitioner have already filed suits challenging the sale, and therefore, according to him, the revision petitioner has knowledge about the decree and judgment much earlier. In such case, the petitioner ought to have challenged the decree and the sale deed executed pursuant to the



C.R.P.No.194 of 2025

decree, within a period of three years as per Article 59 of the Limitation Act.

It is submitted that, now, Execution Petition is also pending. Even in the execution proceedings, the factum of the *ex parte* decree and sale was known to the petitioner. Therefore, at this stage, the decree cannot be set aside. Hence, he opposed the revision.

11.I have perused the entire materials available on record.

12.Normally, this Court will not interfere with the judgment and decree under Article 227 of the Constitution of India. However, when the decree is non-est and obtained by fraudulent means, this Court, exercising its powers under Article 227 of the Constitution, can interfere with such decree.

13.Admittedly, in this case, the suit has been filed only as against the power agent. The principal, namely, the owner of the property, has not been made as a party. It is also relevant to note that the suit has been filed after the Power of Attorney was cancelled. The Power of Attorney was originally cancelled by issuance of a legal notice, dated 05.06.2013, followed by a



C.R.P.No.194 of 2025

registered Deed of Cancellation dated 04.09.2014. After registration of the Deed of Cancellation, the suit has been filed, making the power agent alone a party. The very framing of the suit itself, in the view of this Court, is not proper, since the registration of the Cancellation Deed itself is a notice. To enforce a contract against the principal through his agent, the principal ought to have been made as a party to the suit. Conveniently, the principal has not been made as a party to the suit and in the suit, the power agent conveniently remained *ex parte* and an *ex parte* decree has also been passed as follows :

“8) Exparte evidence perused. Case records perused. The defendant received the legal notice. Not chosen to send reply. The signatures in the Power of Attorney, Sale agreement and the acknowledgment found correct with each other. Claim Proved.”

14.It is also relevant to note that the suit has been filed to enforce the contract dated 14.09.2011. The suit has been filed at the fag end of the limitation. Even if the defendant remains *ex parte*, the same will not absolve the duty of the Court to frame necessary issues and decide the suit on the basis of the documents and evidence. Even for decreeing the suit *ex parte*, there must be proper reasons given in the judgment. Without giving



C.R.P.No.194 of 2025

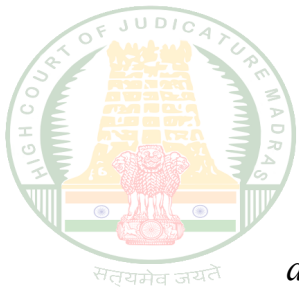
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any reasons and without even recording the finding on facts as to whether the plaintiff has exhibited his readiness and willingness, the trial Court has, casually, in a single line, decreed the suit for specific performance, which, in the view of this Court, is nothing but a nullity. In this aspect, this Court, in ***S.Baskar v. S.Ranjithkumar and others*** reported in **2024 (6) CTC 819**, has held as follows :

“9.This Court is of the view that the judgment and decree is not in tune with Order XX Rules 4 and 5 of CPC . The minimum requirement for a suit for specific performance, namely, the readiness and willingness that requires to be proved, has not even been dealt with in the judgment. Even concise statement of the case has not been given in the judgment and decree. The judgment does not satisfy the requirements of Order XX Rules 4 and 5 of C.P.C., When any judgment is passed without assigning any reasons and want for determination, such judgment cannot be considered as a valid judgment in the eye of law. As far as passing of the exparte decree in one line is concerned, this Court, in many occasion had deprecated the practise of passing such order and held that one line judgment is not valid judgment in the eye of law.”

In the same judgment, this Court, after taking note of various precedents, has further held as follows :

“11.It is clear from the above judgments that where the



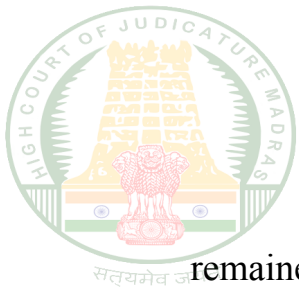
C.R.P.No.194 of 2025

WEB COPY

defendant contests a suit or submits himself to a decree, it is the bounden duty of the trial Court to follow the procedure under Order XX Rule 4 of the Civil Procedure Code, by giving the concise statement of the case, the points for determination, the decision thereon and the reasons for such decision. If this is not satisfied and a cryptic unreasoned judgment is passed, it is ex facie illegal. The Court need not have a pedantic approach in this regard, since it involves the substantial right of the parties.

12.This Court in exercise of its jurisdiction under Article 227 of the Constitution of India, is exercising power of superintendence over all the Courts and tribunals throughout the State. This Court cannot turn a blind eye when its attention is drawn to an ex-facie illegal judgment. This Court has to necessarily interfere with the same, failing which, there will be failure of justice and it will amount to perpetuating illegality.”

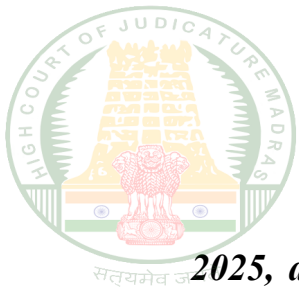
15.Further, the contention of the revision petitioner that the entire decree has been obtained by fraud is more probalised for the simple reason that the original owner has not been made as a party to the suit. Having appeared in the suit, immediately the defendant/power agent



C.R.P.No.194 of 2025

remained *ex parte* and has not even contested the suit. All these facts clearly probabalise the case of the petitioner about the fraud played.

16.It is relevant to note that, any act done by the power agent, of course, will bind the principal as long as the agency is in force. Admittedly, notice of revocation was also issued. Even thereafter, the agent, despite receipt of summons, has not informed the Court about the cancellation of agency also, but he remained *ex parte*. Though the power agent has entered into the contract, the fact remains that he has entered into the contract only on behalf of the principal and the same will bind the principal. Therefore, to enforce such contract as against the principal by way of a suit, not only the agent, but also the principal should have been made as a party, which has been omitted in this case, particularly after the termination of the agency. Therefore, the very framing of the suit without making the principal a party and obtaining *ex parte* decree, in the view of this Court, cannot be sustained in the eye of law. When the judgment itself is a nullity in the eye of law, this Court can very well interfere with such decree by exercising its power under Article 227 of the Constitution of India. In this aspect, this Court, in ***R.Chandrasekaran and another v. Ganesan and others [C.R.P.No.1602 of***



C.R.P.No.194 of 2025

2025, dated 24.06.2025], after referring to various precedents, has held as

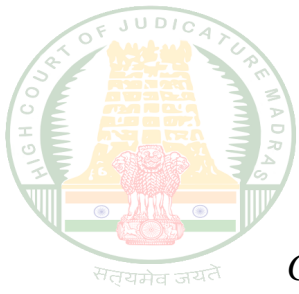
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follows :

“15.All the above precedents make it abundantly clear that a decree obtained by playing fraud upon the Court or by abuse of the process of law is a nullity in the eyes of law. In such cases, the supervisory jurisdiction of the High Court under Article 227 of the Constitution can rightly be invoked to set aside such an illegal and void decree, in order to uphold the sanctity of the judicial process and prevent miscarriage of justice.

...

19.Ordinarily, a challenge to a decree on the ground that it was obtained by fraud must be raised by way of an appeal or appropriate proceedings wherein the alleged fraud must be specifically pleaded and established by evidence. Mere allegations of fraud and collusion are not sufficient and there must be concrete facts to substantiate the allegations of fraud and collusion. However, in cases where the fraud is evident on the face of the judgment and decree, or discernible from the conduct of the parties, it may not be necessary to await a full-fledged trial for determination. In such exceptional circumstances, where the decree itself is a product of fraud and amounts to an abuse of the process of court, the High Court, in exercise of its supervisory jurisdiction under Article 227 of the



C.R.P.No.194 of 2025

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Constitution of India, is empowered to intervene and set aside such decree. The jurisdiction of the High Court under Article 227 is not ousted in cases where the decree is a nullity in law owing to fraud perpetrated upon the court itself.”

17.At this juncture, learned counsel for both sides fairly submit that they are ready to go for trial, if the revision petitioner deposits a sum of Rs.11,50,000/- (Rupees Eleven Lakhs and Fifty Thousand only) with reasonable interest from the date of the suit agreement. The learned counsel for the revision petitioner, on instructions, would submit that the petitioner is ready to deposit the said amount of Rs.11,50,000/- with interest at the rate of 9% p.a.

18.Though there is a considerable delay in challenging the decree and judgment, considering the nature of the suit filed for specific performance to enforce the sale agreement in respect of a large area of land and also having regard to the fact that the principal has not been made as a party to the suit and the suit has been decreed *ex parte*, this Court is of the view that the entire *lis* has to be decided only on merits. The question as to whether the conduct of the revision petitioner remaining silent all these years, would go



C.R.P.No.194 of 2025

against him or not, can be assessed only in the trial on the basis of evidence.

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Now, the parties are also willing to go for trial. In such view of the matter, the *ex parte* judgment and decree, without framing any necessary issues or giving proper reasons in a suit for specific performance, that too, where the principal, namely the owner of the suit property, has not been made as a party, is liable to be set aside.

19. Accordingly, the impugned judgment and decree of the trial Court is set aside. The trial Court is directed to restore the suit in O.S.No.471 of 2014 on its file, on condition that the revision petitioner deposits a sum of Rs.11,50,000/- (Rupees Eleven Lakhs and Fifty Thousand only) along with interest at the rate of 9% p.a. from the date of suit agreement till the date of payment, to the credit of O.S.No.471 of 2014. On such restoration, the plaintiff is permitted to file an application to amend the plaint by including the revision petitioner as one of the defendants. The trial Court shall issue summons to the defendants. Thereafter, the revision petitioner shall file his written statement within a month. Thereafter, the trial Court, after giving opportunity to the parties to let in oral and documentary evidence, shall dispose of the suit, on merits and in accordance with law, as expeditiously as



C.R.P.No.194 of 2025

possible. The entire exercise shall be done within an outer time limit of six months from the date of receipt of a copy of the order.

20.Though the sale deed, dated 03.10.2024, has been executed through Execution Court, pursuant to the impugned *ex parte* decree, by incurring huge stamp duty by the plaintiff, the validity of the sale deed will be subject to the result of the suit. In the event of the plaintiff succeeding in the suit ultimately, his title will be validated.

21.With the above directions, this Civil Revision Petition is allowed.
No costs. Consequently, connected miscellaneous petitions are closed.

10.07.2025

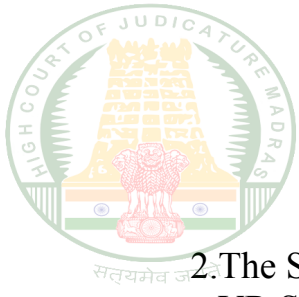
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Speaking order : Yes / No
Neutral Citation : Yes / No

To

1.The III Additional District Judge,
Coimbatore.

Page 15 of 17



C.R.P.No.194 of 2025

2.The Section Officer,
VR Section,
High Court, Madras.

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N. SATHISH KUMAR, J.

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C.R.P.No.194 of 2025

C.R.P.No.194 of 2025

10.07.2025