IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23..07..2025

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.No.954 of 2024
and
C.M.P.No.4810 of 2024

M.Mervin Kumar

..... Petitioner

-Versus-

1.K.Paramasivam

2.E.Sadasivam

3.Canara Bank,
Rep. by its Authorized Officer,
Bhavani Branch,
Bhavani, Erode District.

..... Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the judgement and decree dated 24.08.2022 passed by the learned IV Additional District Judge, Erode District at Bhavani, in O.S.No.5 of 2021

For Petitioner	:	*Mr.K.Selvaraj*
For Respondent(s)	:	*Mr.N.Manokaran for R2*
		Mr.R.Sreedhar for R3
		No Appearance for R1

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ORDER

Challenge has been made to the judgement and decree dated 24.08.2022 passed by the learned IV Additional District Judge, Erode District at Bhavani, whereby the suit in O.S.No.5 of 2021 was decreed in part and a decree for specific performance of the agreement of sale was granted, on the ground that the said judgement and decree were obtained by fraud and collusion.

2. The revision petitioner is a third party. The 1st respondent is the plaintiff and the respondents 2 and 3 are the defendants in the suit in O.S.No.5 of 2001.

3.0 The fact that are necessary for the disposal of the present revision petition, in brief, are as follows:-

3.1 The above said suit was filed by K.Paramasivam, the 1st respondent herein against the respondents 1 and 2 herein for specific performance of contract of alleged agreement of sale dated 04.06.2017 directing the 1st defendant/2nd respondent herein to execute the sale deed for a total sale consideration of Rs.10,00,000/- after receiving the balance sale consideration of Rs.1,00,000/- and for a declaration declaring that the loan transaction between the defendants over the suit property is void and not binding upon the plaintiff/1st respondent herein and for possession of the subject property and few other properties set out in the plaint schedule. The said suit suit was decreed by judgement and decree dated 24.08.2022 on merits though the 2nd defendant bank remained ex parte. The learned Additional District Judge, however, decreed the suit only in respect of specific performance of contract and dismissed the suit in respect of the relief of declaration.

3.2 In the plaint, it was pleaded that out of total sale consideration of Rs.10,00,000/- for the sale of the subject property and few other properties, an advance of Rs.4,00,000/- was paid to the 1st defendant on the date of agreement itself. According to the plaintiff, though the balance sale consideration was agreed to be paid within a period of four months, the 1st defendant received a further sum of Rs.3,00,000/- and extended the time for further four years till 04.06.2017 and made an endorsement on the agreement itself. Further, the 1st defendant received another sum of Rs.2,00,000/- and extended the time for further three years till 04.06.2020 for the completion of the sale transaction and made an endorsement on the agreement in this regard. The plaintiff was always ready and willing to perform his part of contract and to have the contract concluded after paying the balance sale consideration, but it was the 1st defendant who did not come forwarded to execute the sale deed after receiving the balance sale consideration. Hence, according to the plaintiff, under the above circumstances, he had to file the above suit.

3.3 The 1st defendant filed written statement agreeing the averments made in the plaint. However, the 2nd defendant bank unfortunately remained ex parte and therefore, the learned Additional District Judge, heard the plaintiff and the 1st defendant and passed a decree and judgement as already stated supra against the 1st defendant after setting the 2nd defendant bank ex parte.

3.4 The revision petitioner who is a third party to the suit proceedings and the auction purchaser of the house site, Plot No.90, measuring an extent of 2400 square feet, comprised in R.S.Nos.43/1B, 44/1, 2, 45/3-7 and 45/10 of Uratchikottai village, Bhavani Sub Registration District and Revenue Taluk, Erode Registration District and Revenue District, has come forward with the present civil revision petition challenging the decree and judgement passed in favour of the 1st respondent - K.Paramasivam (plaintiff in the suit) and against the 2nd respondent - Sadasivam (1st defendant in the suit) stating that the decree and judgement is the result of collusion and fraud played by the plaintiff and the 1st defendant, the respondents 1 and 2 herein.

3.5 It was contended by the revision petitioner that the 2nd respondent had availed credit facility of Rs.20,00,000/- from the 3rd respondent bank on 23.12.2010 towards educational purpose of his son and towards the said liability, he created an equitable mortgage by depositing the title deeds in respect of the subject properties and few other properties with the bank vide Doc. No.7938 of 2010 registered on the file of the Sub Registrar, Bhavani. Since the 2nd respondent did not pay the loan dues and interest, the 3rd respondent bank, issued a demand notice 16.1.2017 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for short, "the SARFAESI Act, 2002"] for payment of Rs.25,32,107.72 paise; on 31.01.2018, the 3rd respondent bank issued possession notice under Section 13(4) of the SARFAESI Act, 2002; thereafter on 05.02.2018, possession notice was also publihsed in "Dinamalar" and "The Hindu" news dailies; on 09.01.2019, the 3rd respondent bank issued a sale notice proposing to e-auction the mortgaged properties on 15.02.2019 and as there was no bidders on that day, the e-auction was postponed to 28.08.2020; on 20.08.2020, one N.Natarajan and the revision petitionerherein participated in the e-auction and the revision petitioner successfully bid Rs.42,00,000/- and as such he was declared as the highest bidder and revision petitioner deposited the amount as directed by the 3rd respondent bank; thereafter, the learned Chief

Judicial Magistrate, erode, by order dated 23.10.2020 appointed an Advocate Commissioner and directed him to take physical possession of the mortgaged properties; on 02.02.2021 the 3rd respondent bank through Advocate Commissioner took possession of the mortgaged properties and sale certificate conveying the subject property to the revision petitioner was issued on 20.02.2021. Thereafter, on 22.02.2021, the 3rd respondent bank handed over the physical possession of the property to the revision petitioner and executed a sale deed in his favour which was registered on 22.02.2021 as Doc.No.1344 of 2021. The revision petitioner thereafter mutated the revenue records and has been in possession along with his family.

3.6 According to the revision petitioner, only, when the 2nd respondent visited the house of the petitioner along with the Sub Registrar, Bhavani, for the purpose of field inspection, he came to know about the court decree and the decree and judgement under revision was obtained by fraud and collusion between the 1st respondent and the 2nd respondent herein.

4. Despite notice having been served on the 1st respondent, there was no representation on his behalf, nor did he appear in person.

5. This court has heard the learned counsel for the revision petitioner,

learned counsel for the 2nd respondent and the learned counsel for the 3rd respondent bank.

6. This court has heard Mr.K.Selvaraj, learned counsel for the revision petitioner/third party, Mr.N.Manokaran, learned counsel for the 2nd respondent/1st defendant and Mr.R.Sreedhar, learned standing counsel for the 3rd respondent bank/3rd defendant.

Revision Petitioner's Submissions:

7.1 The learned counsel for the revision petitioner submitted that the 2nd respondent had created an equitable mortgage in favour of the 3rd respondent bank by depositing title deeds as security for an educational loan. This mortgage was valid and subsisting on the date the 2nd respondent executed a sale agreement in favour of the 1st respondent. The failure to disclose the existing mortgage amounts to suppression of material facts and constitutes fraud, rendering the subsequent agreement void.

7.2 The learned counsel for the revision petitioner further submitted that the 1st respondent failed to conduct a proper inquiry and exercise due diligence before entering into the sale agreement. Given that the mortgage was a registered one with a nationalised bank and related to immovable property, the

1st respondent is deemed to have had constructive notice. Consequently, the claim of being a bona fide purchaser without notice is untenable.

7.3. It was lastly submitted by the learned counsel for the revision petitioner that the decree obtained by the 1st respondent is the result of fraud and collusion between the 1st and 2nd respondents, and by suppression of material facts. Therefore, the decree is a nullity and liable to be set aside.

3rd Respondent Bank's Submissions:

8.1 The learned counsel for the 3rd respondent submitted that the 2nd respondent had validly created an equitable mortgage by depositing title deeds with the intent to secure the loan. This mortgage, being earlier in time, prevails over the subsequent sale agreement alleged to have been executed by him in favour of the 1st respondent.

8.2 It was further contended by the learned counsel for the 3rd respondent that the 1st respondent had constructive notice of the mortgage, and failure to conduct a search regarding title over the subject property amounts to negligence. As the 1st respondent derives his rights from the 2nd respondent, he cannot claim a better title than the mortgagor.

2nd Respondent’s Submissions:

9.1 Per contra, the learned counsel for the 2nd respondent contended that the allegation of fraud is a serious one, and it must be specifically pleaded and proved by clear and cogent evidence. Mere assertions, assumptions, or surmises are not sufficient to establish fraud in the eyes of of law.

9.2 The learned counsel for the 2nd respondent further contended that the judgement and decree in favour of the 1st respondent were passed on merits by a competent civil court and as such the same cannot be challenged by a third party through a revision petition. The proper and lawful course for the revision petitioner, if aggrieved by the decree, is to file an independent civil suit seeking cancellation of the decree on the grounds of fraud, collusion and suppression of material facts.

9.3 It was further submitted by the learned counsel for the 2nd respondent that revisional jurisdiction is limited in scope and is not meant to substitute the remedy of a properly instituted civil suit. When an effective and alternative remedy is available under law, especially to challenge a decree that does not directly involve the revision petitioner as a party, invoking revisional powers is not maintainable. Therefore, the present revision petition is not sustainable and is liable to be dismissed on this ground alone.

10. This court has considered the rival submissions and perused the available records carefully.

11. In the light of the rival submissions, the point that arises for consideration in this revision petition is:

> Whether the Court, while exercising its power under Article 227 of the Constitution of India, can set aside an ex parte decree on the ground of fraud and abuse of process of law?

Point No.1:

12. It is a settled principle of law that fraud vitiates even the most solemn transactions. In the case of ***S.P. Chengalvaraya Naidu vs. Jagannath [(1994) 1 SCC 1]***, emphasized that "fraud avoids all judicial acts, ecclesiastical or temporal".

13. Similarly, in ***Satluj Jal Vidyut Nigam v. Raj Kumar Rajinder Singh, [(2019) 14 SCC 449]***, the Hon'ble Supreme Court held that fraud vitiates every solemn proceeding, and no right can be claimed by a person who has committed

fraud merely on the ground of technicalities.

14. In the case of **K.P. Natarajan and another v. Muthalammal and others**, **[(2024) 6 CTC 819]**, the Hon'ble Supreme Court has held that the powers of the High Court under Article 227 of the Constitution of India are in addition to and wider than, the powers under Section 115 of the Code of Civil Procedure, the Hon'ble Supreme Court held that the High Court can invoke its jurisdiction under Article 227 to set aside an ex parte decree in a revision arising out of the dismissal of an application under Section 5 of the Limitation Act, in order to correct gross errors of jurisdiction committed by a subordinate court.

15. In ***Chandrasekaran v. Ganesan [2025 – 3 – L.W. 352***] this Court, following the dictum of the Hon'ble Supreme Court, held that where fraud is apparent on the face of the record and does not necessitate elaborate evidence for its establishment, the court is well within its jurisdiction to set aside such a decree in order to prevent miscarriage of justice. It was further observed by this court that a decree obtained by suppression of material facts or by misleading the court constitutes fraud on the court, and such a decree cannot be permitted to stand, even if rendered by a court of competent jurisdiction.

16. Coming to the factual aspect of the present case, on a careful perusal of available materials, it is evident that the 2nd respondent had created a prior equitable mortgage in favour of the 3rd respondent bank, which was subsisting at the time of execution of the alleged sale agreement in favour of the 1st respondent. The failure to disclose such subsisting encumbrance amounts to suppression of material facts.

17. The 1st respondent, having failed to conduct due diligence and being deemed to have constructive notice of the prior mortgage, cannot claim to be a bona fide agreement-holder. The decree obtained in favour of the 1st respondent, in a suit proceeding where the 3rd respondent bank remained ex parte, cannot override the prior rights of the mortgagee. Such decree, having been obtained without proper disclosure, is vitiated by fraud and is liable to be set aside. The 3rd respondent bank's mortgage, being prior in time, shall prevail over the subsequent transaction.

18. Even assuming, for the sake of argument, that no fraud was involved in the decree for specific performance obtained by the 1st respondent, this court is of the considered view that such decree and judgement, having been passed subsequently, cannot override or nullify the registered mortgage earlier created by the 2nd respondent in favour of the 3rd respondent bank.

19. It is a well-settled principle of law that the rights of a registered mortgagee take precedence over those of a subsequent agreement holder, particularly when the mortgage has been lawfully enforced through statutory recovery mechanisms culminating in an auction sale. The mortgage in question, being prior in time and legally enforceable, constitutes a priority claim and any subsequent equitable relief such as specific performance cannot displace the subsisting and valid mortgage held by the 3rd respondent bank. Accordingly, the decree for specific performance obtained by the 1st Respondent cannot prevail over the rights of the revision petitioner, who has purchased the property in a valid auction conducted pursuant to the enforcement of the mortgage.

20. In the light of the above discussions, this court finds that the judgement and decree under revision are vitiated by fraud and collusion between the respondents 1 and 2. The 2nd respondent, despite having created a prior equitable mortgage in favour of the 3rd respondent bank, entered into a sale agreement with the 1st respondent without disclosing the subsisting mortgage. The failure to disclose such a material fact amounts to suppression and deceit, which has misled the court in the earlier proceedings.

21. This Court, therefore, holds that the decree is tainted by fraud and

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collusion, which strikes at the root of the judicial process. A decree so obtained is a nullity in law and cannot be allowed to stand. Accordingly, interference under the revisional jurisdiction is warranted to prevent a miscarriage of justice and to protect the prior rights of the 3rd respondent, as well as the revision petitioner, who is the auction purchaser in the proceedings initiated under the SARFAESI Act, 2002.

In the result, the civil revision petition is allowed in the following terms:

(1) The judgement and decree dated 24.08.2022 passed in O.S.No.5 of 2021 on the file of the learned IV Additional District Judge, Erode District at Bhavani, are hereby set aside.

(2) As a consequence of the above, the Execution Petition filed by the 1st respondent/plaintiff in E.P. No.36 of 2022 in O.S. No.5 of 2021 on the file of the learned IV Additional District Judge, Bhavani, stands struck off.

(3) Considering the special circumstances of the case, this court is not inclined to pass any orders on costs and the contesting parties in this revision shall bear their own costs incurred on this revision petition.

Consequently, connected CMP is closed.

Index : yes / no 23..07..2025
Neutral Citation : yes / no
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To

1.The IV Additional District Judge, Bhavani, Erode District.

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N.SATHISH KUMAR.J.,

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