



C.R.P.No.1602 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24..06..2025

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.No.1602 of 2025
and C.M.P.No.9253 of 2025

1.R.Chandrasekaran

2.Sekar

..... Petitioners

-Versus-

1.Ganesan

2.Madhu

3.The Sub Registrar,
Sub Registrar's Office,
Pennagaram Taluk, Dharmapuri District.

4.The District Registrar,
District Registrar Office,
Dharmapuri Town, Dharmapuri Taluk,
Dharmapuri District.

5.The State of Tamilnadu,
Rep. by the District Collector,
Collectorate Dharmapuri,
Dharmapuri Taluk, Dharmapuri District.

..... Respondents

Petition praying to set aside the judgement and decree dated 26.09.2023 passed in O.S.No.16 of 2023 on the file of the learned District Munsif cum Judicial Magistrate, Pennagaram, by allowing this Civil Prevision Petition in exercise the powers conferred under Article 226 of the Constitution of India.

For Petitioner : *Mr.N.Manokaran*

For Respondent : *Mr.S.Mukunth, Senior Counsel for*
Mr.R.Vasudevan for R1

Mr.T.Arunkumar,
Additional Government Pleader for R3 to R5
Mr.E.Kannadasan for R2



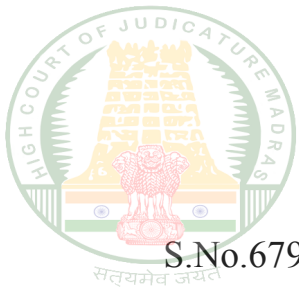
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ORDER

WEB COPY This Civil Revision Petition is filed under Article 227 of the Constitution of India, seeking to set aside (i) the ex parte decree dated 29.09.2023 passed in O.S.No.16 of 2023 on the file of the learned District Munsif, Pennagaram and (ii) the sale deed dated 15.11.2024, executed in favour of the 1st respondent-Ganesan by the learned District Munsif, Pennagaram, pursuant to the orders passed in the execution proceedings in E.P.No.1 of 2024 initiated on the basis of the said ex parte decree for specific performance of an agreement for sale.

2.0 The brief facts leading to the filing of this Civil Revision Petition are as follows:

2.1 The 2nd respondent-A.Madhu purchased a property measuring an extent of 1.99 Acres of land comprised in S.NO.679/1 situated at Sunjalnatham village, by virtue of sale deed dated 27.03.1987 vide Doc.No.346 of 1987; so also he purchased two other properties measuring an extent of 1.37 ½ Acres of land comprised in S.NO.679/8 and another extent of 42 cents comprised S.No.679/4 at Sunjalnatham village by virtue of registered sale deed dated 18.01.1991 vide Doc. No.17 of 1991. After having purchased, on 26.07.2013, the 2nd respondent-A.Madhu sold the property measuring an extent of 1.36 Acres of land comprised in S.No.679/8B; 1.99 Acres of land comprised in



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S.No.679/1 and 0.42 cents of land comprised in S.No.679/4 situated at Sunjalnatham village to one D.Maddhaiyan, G.Rajendran and P.K.Duraisamy vide Doc.No.361 of 2013. Subsequently, the 2nd respondent-A.Madhu, the original owner executed a rectification deed dated 31.08.2015 vide Doc. No.3035/2015 in favour of the said D.Maddhaiyan, G.Rajendran and P.K.Duraisamy to rectify the mistake in respect of the survey number for 1.36 acres of land. According to the rectification deed, instead of S.NO.679/8A, it was wrongly typed out as S.No.679/8B.

2.2 Thereafter, one I.Veerasamy, a practising Advocate as plaintiff, filed a suit in O.S. No. 21 of 2020 against his own brother-A.Madhu, the 2nd respondent herein, and his other family members for partition and also for a declaration, declaring the sale deed dated 26.07.2013 executed by the 2nd respondent in favour of D.Maddhaiyan, G.Rajendran and P.K.Duraisamy as null and void and for permanent injunction which suit was taken on file as O.S. No. 21 of 2020.

2.3 In the said suit, an interim application was filed by Advocate Mr. I. Veerasamy, which was numbered as I.A. No. 131 of 2021, seeking an order of interim injunction. The above-said application was heard and dismissed by the District Munsif by order dated 29.10.2021 on merits. Pursuant to the dismissal



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of the interim application for ad-interim injunction, Advocate Mr. I. Veerasamy, who was the plaintiff in the suit in O.S.No.21 of 2020 and also appeared in person, filed a memo dated 15.11.2021 seeking leave of the Court to withdraw the suit in O.S.No.21 of 2020. The learned District Munsif, acceding to the request of the plaintiff-Advocate-I.Veerasamy, dismissed the suit in O.S.No.21 of 2020 as not pressed.

2.4 While so, D.Maddhaiyan, G.Rajendran and P.K.Duraisamy, who originally purchased the properties described in the suit schedule measuring an extent of 1.30 acres of land in S.No.679/8A; 1.99 Acres of land in S.No.679/1 and 42 cents of land in S.No.679/4 after having retained 0.06 cents in S.No.679/8A by way of sale deed dated 13.12.2021 vide Doc.No.5687 of 2021 from the 2nd respondent-A.Madhu, in turn, sold the same on 13.12.2021 to the revision petitioners by virtue of a registered sale deed bearing Document No. 5687 of 2021. Pursuant to the said purchase, the revenue records were mutated in their name.

2.5 When the matter stood thus, Ganesan, the 1st respondent herein engaged Mr. I. Veerasamy, Advocate, to file a suit for specific performance against the 2nd respondent in O.S. No. 16 of 2023 on the file of the learned District Munsif, Pennagaram, based on a bogus and fraudulent agreement of



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sale said to have been executed on 05.05.2011. The said suit was filed on 09.03.2023 by Ganesan, the 1st respondent herein against the 2nd respondent- A.Madhu (who was arrayed as 1st defendant in the suit) and 4 others. The 2nd respondent - A.Madhu who was the 1st defendant in the suit had conveniently remained ex parte in the said suit, and let the suit decreed ex parte on 29.09.2023. Thereafter, the 1st respondent—Ganesan filed an execution petition, and pursuant to the orders passed therein, a sale deed was executed in his favour through the executing court, based on the ex parte decree obtained in O.S. No. 16 of 2023.

2.6 According to the revision petitioners, the decree obtained in O.S.NO.16 of 2023 was nothing but an outcome of fraud and collusion between the 1strespondent's Advocate - I.Veerassamy who was plaintiff in O.S.No.21 of 2020 on the file of the learned District Munsif, Pennagaram and incidentally, he was the Advocate who represented the plaintiff-Ganesan in the in the suit in O.S.No.16 of 2023, the 1st respondent herein.

2.7 The vendors of the revision petitioners lawfully purchased the property on 26.07.2013 under a registered sale deed, which is duly recorded in the encumbrance register maintained by the Registration Department.

2.8 The suit for specific performance was filed at the instance of Mr. I.



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Veerasamy, Advocate, who is the mastermind behind the creation of the alleged sale agreement dated 05.05.2011. The 1st respondent was only a name lender. Hence, the decree dated 29.09.2023 passed in O.S. No.16 of 2023 on the file of the learned District Munsif, Pennagaram is nothing but a product of fraud and is a nullity in the eyes of law. As the decree was obtained by practising fraud upon the Court, it is rendered void ab initio and can be challenged under Article 227 of the Constitution of India. The learned counsel for the revision petitioners submitted that it is highly improbable for a person, who had allegedly entered into an agreement for sale in the year 2011, to remain silent for more than twelve years and then abruptly file a suit for specific performance in the year 2023. Such prolonged and unexplained inaction, according to the learned counsel, raises grave doubts about the authenticity of the alleged agreement. It is further contended that the said agreement appears to have been fabricated solely with the intention of defeating and nullifying the valid sale deed already executed by A.Madhu, the 2nd respondent herein who is the brother of Advocate – I.Veerasamy in favour of D.Maddhaiyan, G.Rajendran and P.K.Duraisamy.

3. This court has heard Mr.N.Manokaran, learned counsel for the



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revision petitioners, Mr.S.Mukunth, learned senior counsel on behalf of Mr.R.Vasudevan, counsel on record for the 1st respondent and Mr.T.Arunkumar, learned Additional Government Pleader for the 2nd respondent.

4.1 The learned counsel for the revision petitioners summarised the background of the facts leading to the filing of the revisionpetition in detail which read as follows:

(i) Earlier, one Advocate, I. Veerasamy, a practising Advocate, instituted a suit in O.S. No. 21 of 2020 against his brother, the 2nd respondent, A. Madhu (2nd defendant), mother Kunjammal and other family members, besides the District Collector, Pennagaram, and a few other officials of the Registration, Revenue, and Survey Departments, a decree and judgement for partition of the family properties; a declaration declaring that the sale deed executed in favour of defendants 7 and 8 as null and void; a permanent injunction and for mesne profits.

(ii) Along with the suit, Advocate I. Veerasamy, who was the plaintiff in O.S. No. 21 of 2020, also filed an application for interim injunction. However, the trial court, by a reasoned order dated 29.10.2021 in I.A. No. 131 of 2021, dismissed the said application on merits. Subsequently, the plaintiff—



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Advocate I. Veerasamy, chose to withdraw the entire suit.

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(iii) Thereafter, the very same Advocate filed another suit, which was taken on file as O.S. No. 16 of 2023, this time in the name of the 1st respondent herein – Ganesan, seeking specific performance of an agreement allegedly dated 05.05.2011.

(iv) The very nature of the non-judicial stamp paper used for engrossment of the alleged agreement of sale would sufficiently indicate that it was created solely for the purpose of fabricating an agreement of sale. The appropriate stamp duty for engrossing an agreement of sale is twenty rupees, as prescribed under Article 5(j) of the Schedule to the Indian Stamp Act, as amended by the Tamil Nadu Act 9 of 2001. However, in the present case, the alleged agreement has been engrossed on a non-judicial stamp paper of only ten rupees, which is insufficient and improper for such a document. This discrepancy, according to the learned counsel, categorically establish that the agreement was not executed contemporaneously in 2011 as claimed, but was instead created later to suit the convenience of the first respondent.

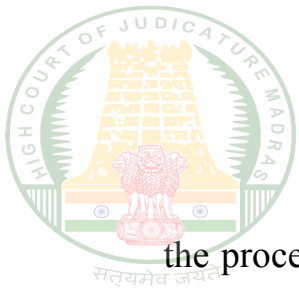
(v) The very same Advocate — Mr. I. Veerasamy — who had earlier instituted a comprehensive suit seeking a judgment and decree for partition of the suit properties into six equal shares, allotment of one such share



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to the plaintiff, and for separate possession, had also sought a declaration that the sale deed dated 26.07.2013 executed by the 2nd defendant in favour of defendants 7, 8, and 9 was fraudulent, dishonest, null and void. In addition, he prayed for a permanent injunction restraining defendants 7 and 8 from entering upon or encroaching upon the suit properties and from measuring the same, as well as an enquiry into mesne profits. It is this very same Advocate who has now filed the present suit in O.S. No. 16 of 2023, seeking specific performance on the basis of an alleged agreement of sale dated 05.05.2011, thereby giving rise to serious concerns regarding the bona fides and consistency of the legal claims advanced. However, in doing so, the said Advocate has deliberately failed to implead the purchasers of the property, who are necessary parties to the suit. Instead, Mr. I. Periyasamy, who instituted the suit on behalf of Ganesan, the 1st respondent herein, chose to implead his own brother, Mr. A. Madhu, and four public officials including those from the Registration Department and the District Collector, Dharmapuri, without impleading the actual purchasers, who are just and necessary parties to the suit.

(vi) Such selective impleadment, omitting necessary parties without whom the matter could not have been adjudicated effectively, enabled the 1st respondent to obtain an ex parte decree. This sequence of events, coupled with



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the procedural omissions, would clearly establish that the decree was obtained by playing fraud upon the Court.

(vii) Advocate I. Veerasamy, as plaintiff, filed a suit in the year 2020, which was taken on file as O.S. No. 21 of 2020 on the file of the learned District Munsif, Pennagaram, seeking partition and other reliefs. In that suit, he was fully aware of the earlier sale transaction and, in fact, specifically sought a declaration that the sale deed dated 26.07.2013, executed by the 2nd respondent herein (who was arrayed as the 1st defendant in that suit) in favour of D. Madhaiyan and two others, was fraudulent, dishonest, and null and void.

(viii) However, subsequently, the same Advocate filed another suit in the name of Ganesan, the 1st respondent herein, based on an alleged agreement of sale dated 05.11.2011, seeking specific performance, while purportedly suppressing all the previous transactions concerning the sale of the property by the 2nd respondent to D. Madhaiyan and others.

(ix) Such deliberate concealment of material facts and earlier proceedings would, by itself, be sufficient to constitute fraud played upon the Court.

4.2 In essence, the learned counsel for the revision petitioners submitted that



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(i) The suit in O.S. No. 16 of 2023 was a fraudulent and collusive action filed by Advocate I. Veerasamy in the name of the 1st respondent – Ganesan, after having withdrawn an earlier suit (O.S. No. 21 of 2020) in which he himself had challenged the same sale deed dated 26.07.2013. In the present suit, the said Advocate deliberately suppressed the earlier transactions and failed to implead the *bona fide* purchasers of the property, despite being fully aware of their interest. The agreement of sale dated 05.05.2011, alleged in support of the suit, was not only suspiciously delayed in enforcement but also improperly stamped, indicating fabrication. The suit was thus engineered to secure an ex parte decree by deceit.

(ii) Such deliberate concealment and procedural manipulation amount to fraud on the Court, warranting exercise of powers under Article 227 of the Constitution to set aside the decree and the sale deed executed pursuant to it as null and void.

4.3 The learned counsel for the revision petitioners in support of his above contentions placed reliance upon the following judgements:

1. S.P.Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1;

2. Satluj Jal Vidyut Nigam v. Raj Kumar Rajinder Singh, (2019) 14 SCC 449;



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3. K.P.Natarajan and another v. Muthuammal and others, (2024) 6 CTC 819

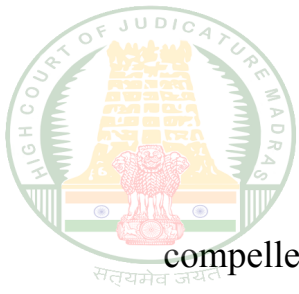
4. S.Baskar v. S.Ranjithkumar and others (2021) 1 CTC 539

5. Shanthimalai Trust v. Arunachala Education & Environmental (2021) 1 CTC 539; and

6. Ayyasamy v. Shanmugam (2024) 6 MLJ 164

5.1 On the other hand, the learned counsel for the 1st respondent opposing the revision, submitted that the decree obtained in O.S. No. 16 of 2023 is lawful, valid, and based on a binding agreement of sale dated 05.05.2011. the ex parte decree was passed after service of summons, and no challenge was raised at the relevant time. The decree was followed by execution proceedings, culminating in the execution of a sale deed through the court, thereby transferring valid title to the 1st respondent.

5.2 The learned counsel for the 1st respondent further contended that the 2nd respondent – A. Madhu, as the original owner of the property, had entered into a valid agreement for sale with the 1st respondent – Ganesan, and that the entire sale consideration was paid at the time of the agreement. Due to delay on the part of the vendor in executing the sale deed, the 1st respondent was



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compelled to file the suit for specific performance.

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5.3 The learned counsel for the 1st respondent furthermore contended that the failure to implead subsequent purchasers does not render the decree void, as they were neither necessary nor proper parties to a suit between the contracting parties, especially when the purchasers had notice of the prior agreement. Earlier suit (O.S. No. 21 of 2020) filed by Advocate I. Veerasamy was entirely independent and unrelated to the agreement in question and was withdrawn voluntarily. The present suit in O.S. No. 16 of 2023 was based on a legally enforceable agreement and pursued in accordance with law. The ex parte nature of the proceedings, by itself, does not constitute fraud, and that the decree was passed following the normal legal process. Merely because Advocate I. Veerasamy, who instituted the suit in O.S. No. 16 of 2023 on behalf of the 1st respondent—Ganesan, and who was himself the plaintiff in the earlier suit in O.S. No. 21 of 2020, happens to be a close relative of Ganesan, such a relationship alone cannot form the basis to attribute fraud.

5.4 According to the learned counsel for the 1st respondent, the revision petitioners cannot invoke the supervisory jurisdiction of this Hon'ble Court under Article 227 of the Constitution of India to challenge the validity of a

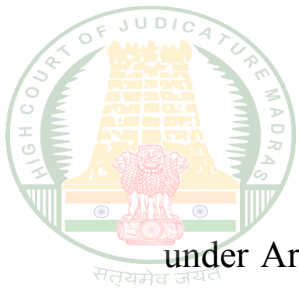


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decree that was legally passed, even if it was an ex parte decree. If the revision petitioners were truly aggrieved by such decree, the proper course of action would have been to file an appeal or an application to set aside the ex parte decree, as provided under the Code of Civil Procedure or to file a separate suit for declaration under Section 34 of the Specific Relief Act or otherwise to establish that the decree is not binding on them due to fraud, collusion, or suppression.

5.5 The learned counsel for the 1st respondent lastly contended that allegations of fraud, collusion, or suppression of material facts must be specifically pleaded and proved by evidence. Such serious allegations cannot be raised casually or for the first time in a revision petition. The revision petitioners, having failed to challenge the proceedings at the appropriate time, cannot now, at this belated stage, seek to unsettle a concluded judicial proceeding by making unsubstantiated claims. Therefore, the learned counsel prayed that the revision petition be dismissed.

6.1 The learned counsel for the 2nd respondent while adopting the arguments advanced by the learned senior counsel appearing on behalf of the 1st respondent would additionally contend that the powers of the High Court



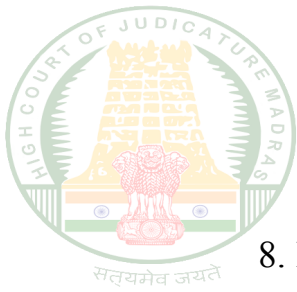
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under Article 227 being supervisory, the same has to be exercised sparingly in cases where errors are apparent on the face of record, occasioning grave injustice by the court assuming jurisdiction which it does not have, failing to exercise jurisdiction which it does have, or exercising its jurisdiction in a perverse manner. Hence, he would contend that essence of the power under Article 227, being supervisory, it cannot be invoked to usurp the original jurisdiction of the court which it seeks to supervise.

6.2 In support of his above contention, Mr.S.Mukunth, learned senior counsel would place much reliance on the very recent judgement of the Hon'ble Supreme Court in S.L.P.(C) No.21466 of 2024 dated 29.04.2025 (K.Valarmathi and others v. Kumaresan).

7. 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?



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8. It is apposite to refer to the settled legal principles on the subject.

9. In **S.P.Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1**, the Hon'ble Supreme Court has held that fraud avoids all judicial acts, ecclesiastical or temporal. The 1st paragraph of the judgement reads as follows:

“Fraud avoids all judicial acts, ecclesiastical or temporal” observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree by the first court or by the highest court has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.”

10. In **Satluj Jal Vidyut Nigam v. Raj Kumar Rajinder Singh, (2019)**

14 SCC 449, the Hon'ble Supreme Court has held as follows:

“68. Fraud vitiates every solemn proceeding and no right can be claimed by a fraudster on the ground of technicalities. On behalf of the appellants, reliance has been placed on the definition of “fraud” as defined in *Black's Law Dictionary*, which is as under:



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“*Fraud* : (1) A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Fraud is usually a tort, but in some cases (esp. when the conduct is wilful) it may be a crime. ... (2) A misrepresentation made recklessly without belief in its truth to induce another person to act. (3) A tort arising from a knowing misrepresentation, concealment of material fact, or reckless misrepresentation made to induce another to act to his or her detriment. (4) Unconscionable dealing; esp., in contract law, the unconscientious use of the power arising out of the parties' relative positions and resulting in an unconscionable bargain.”

69. *Halsbury's Laws of England* has defined “fraud” as follows:

“Whenever a person makes a false statement which he does not actually and honestly believe to be true, for purpose of civil liability, the statement is as fraudulent as if he had stated that which he did know to be true, or know or believed to be false. Proof of absence of actual and honest belief is all that is necessary to satisfy the requirement of the law, whether the representation has been made recklessly or deliberately, indifference or recklessness on the part of the representor as to the truth or falsity of the representation affords merely an instance of absence of such a belief.”

70. In *Kerr on the Law of Fraud and Mistake*, “fraud” has been defined thus:

“It is not easy to give a definition of what constitutes fraud in the extensive significance in which that term is understood by Civil Courts of Justice. The



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courts have always avoided hampering themselves by defining or laying down as a general proposition what shall be held to constitute fraud. Fraud is infinite in variety... Courts have always declined to define it, ... reserving to themselves the liberty to deal with it under whatever form it may present itself. Fraud ... may be said to include property (*sic* properly) all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue or unconscientious advantage is taken of another. All surprise, trick, cunning, dissembling and other unfair way that is used to cheat anyone is considered as fraud. Fraud in all cases implies a wilful act on the part of anyone, whereby another is sought to be deprived, by illegal or inequitable means, of what he is entitled to.”

71. In *Ram Chandra Singh v. Savitri Devi* [*Ram Chandra Singh v. Savitri Devi*, (2003) 8 SCC 319] , it was observed that fraud vitiates every solemn act. Fraud and justice never dwell together and it cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*. This Court observed as under : (SCC pp. 327-29, paras 15-18, 23 & 25)

“15. Commission of fraud on court and suppression of material facts are the core issues involved in these matters. *Fraud, as is well known, vitiates every solemn act. Fraud and justice never dwell together.*

16. *Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter.*



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17.It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.

18.A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.

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23. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous.

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25. *Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata.”* (emphasis supplied)

72. In *Madhukar Sadbha Shivarkar v. State of Maharashtra* [Madhukar Sadbha Shivarkar v. State of Maharashtra, (2015) 6 SCC 557 : (2015) 3 SCC (Civ) 368 : (2015) 3 SCC (Cri) 239] , this Court observed that fraud had been played by showing the records and the



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orders obtained unlawfully by the declarant, would be a nullity in the eye of the law though such orders have attained finality. Following observations were made : (SCC pp. 569-70, para 27)

“27. The said order is passed by the State Government only to enquire into the landholding records with a view to find out as to whether original land revenue records have been destroyed and fabricated to substantiate their unjustifiable claim by playing fraud upon the Tahsildar and appellate authorities to obtain the orders unlawfully in their favour by showing that there is no surplus land with the Company and its shareholders as the valid sub-leases are made and they are accepted by them in the proceedings under Section 21 of the Act, on the basis of the alleged false declarations filed by the shareholders and sub-lessees under Section 6 of the Act. The plea urged on behalf of the State Government and the de facto complainant owners, at whose instance the orders are passed by the State Government on the alleged ground of fraud played by the declarants upon the Tahsildar and appellate authorities to get the illegal orders obtained by them to come out from the clutches of the land ceiling provisions of the Act by creating the revenue records, which is the fraudulent act on their part which unravels everything and therefore, the question of limitation under the provisions to exercise power by the State Government does not arise at all. For this purpose, the Deputy Commissioner of Pune Division was appointed as the enquiry officer to hold such an enquiry to enquire into the matter and submit his report for consideration of the Government to take further action in the matter. The legal contentions urged by Mr Naphade, in justification of the impugned judgment and order prima facie at this stage, we are satisfied that the allegation of fraud in relation to getting the landholdings of the villages referred to supra by the declarants on the alleged ground of destroying



original revenue records and fabricating revenue records to show that there are 384 sub-leases of the land involved in the proceedings to retain the surplus land illegally as alleged, to the extent of more than 3000 acres of land and the orders are obtained unlawfully by the declarants in the land ceiling limits will be nullity in the eye of the law though such orders have attained finality; if it is found in the enquiry by the enquiry officer that they are tainted with fraud, the same can be interfered with by the State Government and its officers to pass appropriate orders. The landowners are also aggrieved parties to agitate their rights to get the orders which are obtained by the declarants as they are vitiated in law on account of nullity is the tenable submission and the same is well founded and therefore, we accept the submission to justify the impugned judgment and order Babu Maruti Dukare v. State of Maharashtra [Babu Maruti Dukare v. State of Maharashtra, 2006 SCC OnLine Bom 1268 : (2007) 2 AIR Bom R 361] of the Division Bench of the High Court.” (emphasis supplied)

73. In *Jai Narain Parasrampur v. Pushpa Devi Saraf* [*Jai Narain Parasrampur v. Pushpa Devi Saraf*, (2006) 7 SCC 756] , this Court observed that fraud vitiates every solemn act. Any order or decree obtained by practising fraud is a nullity. This Court held as under:

“55. *It is now well settled that fraud vitiates all solemn act. Any order or decree obtained by practising fraud is a nullity.* [See (1) *Ram Chandra Singh v. Savitri Devi* [*Ram Chandra Singh v. Savitri Devi*, (2003) 8 SCC 319] followed in (2) *Kendriya Vidyalaya Sangathan v. Girdharilal Yadav* [*Kendriya Vidyalaya Sangathan v. Girdharilal Yadav*, (2004) 6 SCC 325 : 2005 SCC (L&S) 785] ; (3) *State of A.P. v. T.*



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Suryachandra Rao [State of A.P. v. T. Suryachandra Rao, (2005) 6 SCC 149] ; (4) *Ishwar Dutt v. LAO* [Ishwar Dutt v. LAO, (2005) 7 SCC 190] ; (5) *Lillykutty v. Scrutiny Committee, SC & ST* [Lillykutty v. Scrutiny Committee, SC & ST, (2005) 8 SCC 283] ; (6) *Maharashtra SEB v. Suresh Raghunath Bhokare* [Maharashtra SEB v. Suresh Raghunath Bhokare, (2005) 10 SCC 465 : 2005 SCC (L&S) 765] ; (7) *Satya v. Teja Singh* [Satya v. Teja Singh, (1975) 1 SCC 120 : 1975 SCC (Cri) 50] ; (8) *Mahboob Sahab v. Syed Ismail* [Mahboob Sahab v. Syed Ismail, (1995) 3 SCC 693] ; and (9) *Asharfi Lal v. Koili* [Asharfi Lal v. Koili, (1995) 4 SCC 163] .]”

11. In **K.P. Natarajan and another v. Muthuammal 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. Para 21 of the judgement reads as follows:

“21. The contention that in a revision arising out of the dismissal of a petition under Section 5 of the



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Limitation Act, 1963, the High Court cannot set aside the ex parte 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 v. Ram Chander Rai* [*Surya Dev Rai v. Ram Chander Rai*, (2003) 6 SCC 675] , 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 insofar as it related to Article 226, was doubted by another Bench, which resulted in a reference to a three-member Bench. In *Radhey Shyam v. Chhabi Nath* [*Radhey Shyam v. Chhabi Nath*, (2015) 5 SCC 423 : (2015) 3 SCC (Civ) 67] , the three-member Bench, even while overruling *Surya Dev Rai* [*Surya Dev Rai v. Ram Chander Rai*, (2003) 6 SCC 675] 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 ex parte decree.”

12. Following the settled legal position, this Court, in ***S. Baskar v. S.***

Ranjithkumar and others, MANU/TN/6545/2024 (C.R.P. No. 4050 of 2024

dated 02.12.2024), has held as follows:

“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



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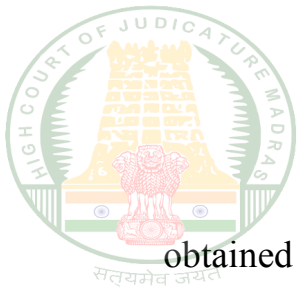
judgment. This Court has to necessarily interfere with the same, failing which, there will be failure of justice and it will amount to perpetuating illegality.”

13. In **Shanthimalai Trust v. Arunachala Education & Environmental, (2021) 1 CTC 539**, this court has held as follows:

“36. The Civil Revision Petition is allowed the exparte decree dated 28.04.2009 is set aside, all the applications pending before the Trial Court, except the application in IA No. 37 of 2010 are closed as unnecessary. The application in IA No.37 of 2010 will be treated as an application for amendment of the cause title in the suit filed by the plaintiff and the same shall be disposed of within 30 days from the date of a receipt of the copy of the order and the Trial Court shall report such disposal to this Court.”

14. In **Ayyasamy v. Shanmugam, MANU/TN/5582/2023** (C.R.P.No.2672 of 2019 dated 19.09.2023), this court has held that the High Court under Article 227 has the jurisdiction to set aside a decree while dealing with a revision under Section 5 of the Limitation Act.

15. All the above precedents make it abundantly clear that a decree

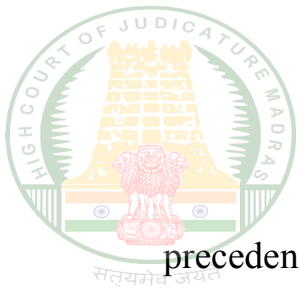


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obtained by playing fraud upon the Court or by abuse of the process of law is a nullity in the eyes of law. In such cases, the supervisory jurisdiction of the High Court under Article 227 of the Constitution can rightly be invoked to set aside such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

16. In ***K. Valarmathi and others v. Kumaresan*** [S.L.P. (C) No. 21466 of 2024, dated 29.04.2025], upon which the learned senior counsel for the 1st respondent placed much reliance, the Hon'ble Supreme Court has held that a decree cannot be set aside in the exercise of jurisdiction under Article 227 of the Constitution of India. In the said judgement, the Hon'ble Supreme Court emphasized that Article 227 confers supervisory jurisdiction, not appellate or revisional jurisdiction, and cannot be invoked to substitute statutory remedies or to set aside a decree passed by a competent civil court in the exercise of its original jurisdiction.

17. On a careful perusal of the recent judgement of the Hon'ble Supreme Court in ***K. Valarmathi and Others v. Kumaresan*** (cited supra), this Court finds that none of the earlier judgements rendered by the Hon'ble Supreme Court were brought to the notice of the Court. In particular, the earlier binding



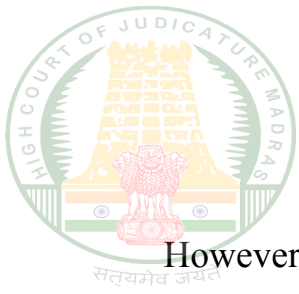
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precedent of the Hon'ble Supreme Court in *Natarajan v. Muthuammal*, (2021)

15 SCC 817, wherein it was categorically held that the powers of the High Court under Article 227 of the Constitution of India are in addition to, and wider than, the power under Section 115 of the Code of Civil Procedure, and that such power can be exercised even to set aside a decree in exceptional circumstances, was not considered.

18. In the case of *Natarajan v. Muthuammal* (supra), the Hon'ble Supreme Court examined and relied upon several earlier decisions and reaffirmed the settled legal position regarding the scope of Article 227. Accordingly, this Court is inclined to consider the facts of the present case bearing in mind the law laid down in *Natarajan's case* and the binding precedents in few other cases which have consistently interpreted the scope and extent of supervisory jurisdiction of the High Court under Article 227 of the Constitution.

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.



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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 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.

20. Let this Court now advert to the facts of the present case, wherein the decree dated 29.09.2023 is sought to be assailed, in the light of the settled legal position discussed above.

21. On a careful perusal of the judgment and decree dated 29.09.2023 made in O.S. No. 16 of 2023 on the file of the learned District Munsif, Pennagaram, it is seen that the 1st respondent filed the suit on the basis of an unregistered agreement of sale dated 05.05.2011, allegedly entered into between the 1st respondent (purchaser) and the 2nd respondent (vendor). It is pertinent to note that although the agreement is dated 05.05.2011, the suit came to be filed only in the year 2023.

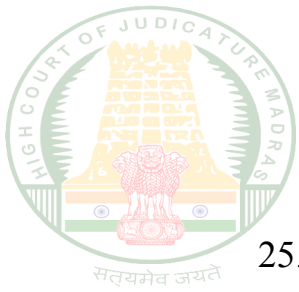


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22. The pleadings in the plaint reveal that no steps were taken by the plaintiff from the date of the alleged agreement, despite claiming that the entire sale consideration of Rs. 80,000/- for the purchase of 3.77 acres was paid in full on the date of execution of agreement of sale itself. It is pleaded in the plaint that the 1st respondent herein issued a legal notice to his vendor, the 2nd respondent herein only on 01.03.2023, nearly twelve years later, calling upon him to appear before the Sub-Registrar for execution of the sale deed.

23. A photocopy of the so-called agreement of sale dated 05.05.2011 has been placed before this Court for perusal. On a careful examination of the same, it is seen that the said agreement was typed on a non-judicial stamp paper of Rs.10/-, which appears to have been purchased in the name of the 1st respondent – Ganesan.

24. It is relevant to place on record that, as per Article 5(j) of Schedule-I to the Indian Stamp Act, 1899, as amended by the Tamil Nadu Act 9 of 2001, the stamp duty for an agreement for sale was prescribed as Rs. 20/-, with effect from 11.07.2002. Therefore, the fact that the alleged agreement of sale dated 05.05.2011 was executed on a non-judicial stamp paper of only Rs. 10/-, instead of the statutorily required Rs. 20/-, raises a serious doubt about the genuineness and authenticity of the document.



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25. Be that as it may, though the agreement of sale dated 05.05.2011 states that the entire sale consideration of Rs. 80,000/- for the sale of 3.77 acres of land had been paid in full, there is no recital in the agreement regarding delivery of possession of the subject properties to the purchaser. Furthermore, the agreement does not stipulate any specific time frame within which the sale transaction was to be completed by execution and registration of the sale deed.

26. This Court is of the view that the absence of a specific time limit prescribed in the agreement of sale clearly indicates that such omission was deliberate, with the apparent intention of bringing the suit within the period of limitation as contemplated under Part II of Article 54 of the Limitation Act, 1963.

27. It is relevant to note that the conduct of a person who claims to have parted with the entire sale consideration, yet remains silent for more than twelve years without initiating any action, is wholly inconsistent with the conduct expected of a prudent person. The prolonged inaction on the part of the 1st respondent, including the failure to issue even a legal notice during this entire period demanding execution of the sale deed, assumes considerable significance when viewed in the context of the other attending circumstances



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of the case. Such unexplained delay raises serious doubts about the bona fides of the alleged agreement and the claim arising therefrom.

28. It is also relevant to note that the suit properties were sold by the 2nd respondent by way of a registered sale deed dated 26.07.2013, vide Document No. 361 of 2013, in favour of D. Maddhaiyan, G. Rajendran, and P.K. Duraisamy. Subsequently, the 2nd respondent executed a rectification deed on 31.08.2015, vide Document No. 3035 of 2015, to correct an error in the survey number mentioned in the original sale deed. Thus, as early as 26.07.2013, the 2nd respondent, the vendor of the vendors of the revision petitioner under the agreement dated 05.05.2011 had already conveyed the suit properties by way of a valid registered sale, and it is this sale that was sought to be annulled in the suit filed in O.S. No. 21 of 2020 by Advocate I. Veerasamy, who had arrayed himself as the plaintiff.

29. It is pertinent to note that Advocate I. Veerasamy, a practising lawyer, is none other than the brother of the 2nd respondent, A. Madhu. In his plaint in O.S.No.21 of 2020, Advocate-I.Veerasamy not only sought relief against the 2nd respondent but also against the other family members.

30. In the plaint filed in O.S. No. 21 of 2020, Advocate I. Veerasamy alleged that the suit properties were joint family properties, though purchased

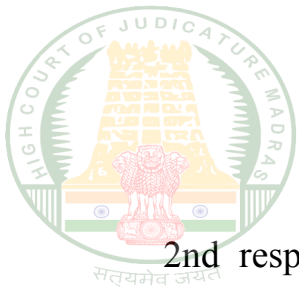


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in the name of the 2nd respondent. It was further contended that the 2nd respondent had executed the sale deed with the intention of defeating the rights of the other family members. Accordingly, he prayed for a judgement and decree declaring the sale deed dated 26.07.2013 as null and void, in addition to seeking the reliefs of partition and permanent injunction.

31. Along with the suit in O.S. No. 21 of 2020, Advocate I. Veerasamy also filed an application in I.A. No. 131 of 2020 under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, seeking an ad-interim injunction. However, the said application was dismissed on merits by the learned District Munsif by order dated 29.10.2021. Subsequently, Advocate I. Veerasamy filed a memo expressing his intention not to pursue the suit any further and sought permission to withdraw the same. Notably, he did not seek to reserve his right to institute a fresh suit on the same cause of action. Accepting his request, the learned District Munsif dismissed the suit as not pressed by judgement dated 15.11.2021.

32. From the foregoing facts, it is evident that Advocate I. Veerasamy, a practising Advocate who is the brother of the 2nd respondent, was well aware of the sale of the suit property as early as July 2013. He had himself instituted a suit challenging the sale deed dated 26.07.2013 executed by his brother, the



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2nd respondent – A. Madhu, in favour of D. Madhaiyan and two others.

However, the said suit was later withdrawn by Advocate I. Veerasamy on his own volition, without reserving liberty to file a fresh suit on the same cause of action. Thereafter, Advocate I. Veerasamy himself instituted the suit in O.S.No.16 of 2023 on behalf of the 1st respondent – Ganesan, seeking specific performance of the so-called agreement of sale dated 05.05.2011.

33. It is pertinent to note that the 1st defendant in the said suit, A. Madhu, is none other than the brother of Advocate I. Veerasamy. The suit in O.S.No.16 of 2023 came to be filed for specific performance by the very same advocate who had earlier challenged the sale deed executed by his own brother in the suit in O.S.No.21 of 2020 and subsequently withdrew that suit without reserving any liberty. However, while drafting the plaint in O.S. No. 16 of 2023, Advocate I. Veerasamy deliberately maintained complete silence with respect to the prior transactions involving the very same properties. He conveniently omitted any reference to the earlier sale deed dated 26.07.2013, which he had himself challenged in his own suit in O.S. No. 21 of 2020. Such suppression is glaring and cannot be overlooked, particularly when the same advocate, fully aware of the prior transaction, chose not to disclose it in the subsequent suit. The deliberate omission raises serious concerns and casts a



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shadow over the bona fides of the suit, suggesting that the suppression was intentional and for reasons best known to Advocate I. Veerasamy, his brother A. Madhu.

34. Despite being fully aware of the registered sale deed executed by his brother, A. Madhu, on 26.07.2013 in favour of D. Madhaiyan, G. Rajendran, and P.K. Duraisamy, Advocate I. Veerasamy, while filing the suit in O.S. No. 16 of 2023 for specific performance, deliberately chose not to implead the said purchasers as parties to the suit. Instead, he arrayed only his brother, A. Madhu, the 2nd respondent herein as a defendant, along with certain Government officials. The conscious omission of necessary parties, despite knowledge of their direct interest in the subject matter, further reinforces the inference of deliberate suppression and calls into question the bona fides of the suit. This court is unable to comprehend how the Sub Registrar, Pennagaram, District Registrar, Dharmapuri and District Collector, Dharmapuri were necessary parties to the issue relating to enforcement of a contract.

35. Having chosen to implead his brother-A.Madhu, the 2nd respondent herein and certain government officials of the State as party defendants in the suit in O.S.No.16 of 2023, Advocate - I. Veerasamy, however, failed to implead the purchasers - D.Maddhaiyan, G.Rajendran and P.K.Duraisamy, who



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had acquired the suit properties from the said A.Madhu, the 2nd respondent herein under the registered sale deed dated 26.07.2013, as well as the subsequent purchasers, namely the revision petitioners herein, who had purchased the same properties on 13.12.2017 from D.Maddhaiyan, G.Rajendran and P.K.Duraisamy. Despite their clear and direct interest in the subject matter of the suit, those purchasers were deliberately omitted from the array of parties in O.S. No. 16 of 2023, thereby rendering the suit defective for non-joinder of necessary parties.

36. In the suit in O.S. No. 16 of 2023, the 2nd respondent, A. Madhu—who was arrayed as the 1st defendant, conveniently remained ex parte, thereby allowing the suit to be decreed ex parte. It is not in dispute that A. Madhu, the 2nd respondent herein had already sold the subject properties as early as July 2013 to D. Maddhaiyan, G. Rajendran, and P.K. Duraisamy. His brother, Advocate I. Veerasamy, who is a practising lawyer, was fully aware of the said transaction and had even instituted a suit (O.S.No.21 of 2020) challenging the said sale, which he later withdrew.

37. However, in the subsequent suit in O.S. No. 16 of 2023, Advocate I. Veerasamy, while acting as counsel for the plaintiff—Ganesan (1st respondent herein), conveniently omitted to implead the subsequent purchasers, including



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the revision petitioners herein, who had acquired the properties on 13.12.2017, as party defendants. This Court is of the considered view that such omission was not inadvertent but a deliberate act aimed at suppressing material facts relating to the prior alienation of the suit properties. The suppression of the subsequent sale transactions, particularly in a suit for specific performance, amounts to a clear and calculated act of fraud.

38. Had the subsequent purchasers been impleaded as parties in the suit, they would have had the opportunity to contest the claim and establish that the properties were transferred to them for valuable consideration, in good faith, and without notice of any prior agreement. The failure to implead them, coupled with the ex parte conduct of the 1st defendant, leads this Court to conclude that the decree was obtained by playing fraud upon the Court, thereby vitiating the very foundation of the judgement and decree passed in O.S. No. 16 of 2023.

39. It is now well settled that an agreement for sale can be enforced against a subsequent purchaser only if it is shown that such purchaser had notice of the prior agreement and that the purchase was not made in good faith or for valuable consideration. Only in order to circumvent such legal complications, the suit for specific performance in O.S. No. 16 of 2023 was



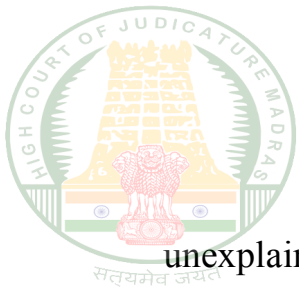
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cleverly instituted without impleading the subsequent purchasers as party defendants.

40. The pleadings in the earlier suit, O.S. No. 21 of 2020, filed by Advocate I. Veerasamy as plaintiff, clearly indicate that the subject properties were sold on 26.07.2013. Significantly, it was not his case in that suit that the sale consideration was not paid by the purchasers. If the agreement of sale dated 05.11.2011 had in fact been executed in favour of the 1st respondent and was in existence, such a vital fact ought to have been disclosed, in all fairness, in the pleadings of O.S. No. 21 of 2020.

41. The omission to mention the alleged agreement dated 05.05.2011 in the earlier suit and the subsequent filing of O.S. No. 16 of 2023 without impleading the known purchasers clearly reveal a concerted effort to suppress material facts. These circumstances strongly suggest that the 1st respondent is merely a name-lender, and that the suit is a result of collusion between the 2nd respondent and his brother, Advocate I. Veerasamy.

42. This conclusion is further fortified by the inherently improbable conduct of the 1st respondent, who, despite allegedly paying the entire sale consideration of Rs. 80,000/- on 05.05.2011, failed to take any steps whatsoever for over twelve years to enforce the agreement. Such prolonged and



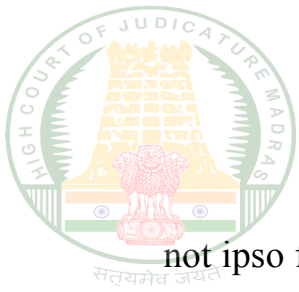
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unexplained silence is wholly against with the normal conduct of an ordinary prudent man, which casts serious doubt on the genuineness of the alleged transaction.

43. The cumulative facts and circumstances discussed hereinabove lead to the inescapable conclusion that the suit for specific performance in O.S. No. 16 of 2023 was clearly an afterthought, and the agreement of sale dated 05.05.2011 is antedated with the sole object of achieving, through indirect means, what could not be achieved directly through the earlier suit in O.S. No. 21 of 2020 filed by Advocate I. Veerasamy.

44. The very pleadings in the plaint in O.S. No. 16 of 2023, the conduct of the parties, the deliberate non-joinder of necessary parties, and the manner in which the 1st respondent – Ganesan obtained an ex parte decree and subsequently got a sale deed executed in his favour through the executing court, all point to a clear abuse of process.

45. Such a sale deed, executed in furtherance of a decree obtained by suppressing material facts and without impleading the true and lawful purchasers of the suit properties, cannot confer any valid title upon the 1st respondent. Merely because an ex parte decree was passed in the suit for specific performance and a sale deed was executed in pursuance thereof, it does



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not ipso facto confer any valid title upon the 1st respondent. It is an undisputed fact that the 2nd respondent – A. Madhu, had already conveyed the subject properties by way of a registered sale deed dated 26.07.2013, and therefore, on the date when the executing court purported to execute a sale deed in favour of the 1st respondent pursuant to the decree in O.S. No. 16 of 2023, the 2nd respondent no longer held any title to convey.

46. In the absence of impleadment of the subsequent bona fide purchasers, and in view of the fraudulent suppression of these transactions, the entire proceedings culminating in the ex parte decree and execution thereof are vitiated. Consequently, the decree for specific performance and the sale deed executed pursuant thereto are liable to be set aside as nullities in the eye of law.

47. In view of the foregoing discussion, this Court is of the considered opinion that the decree for specific performance obtained in O.S. No. 16 of 2023 was the result of a calculated and deliberate suppression of material facts, including the prior alienation of the suit properties and the purchasers were not impleaded as parties. The suit was engineered in collusion between the 1st and 2nd respondents, with the active connivance of Advocate I. Veerasamy, who had personal knowledge of all relevant transactions but chose to withhold the same from the Court. Such conduct constitutes a clear abuse of the process of



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court and amounts to playing fraud upon the court. It is a settled principle of law that a decree obtained by fraud is a nullity and can be declared as such even in collateral proceedings. Therefore, this Court finds that the ex parte decree dated 26.09.2023 passed in O.S. No. 16 of 2023 on the file of the learned District Munsif, Pennagaram, and the consequential sale deed executed by the executing court in favour of the 1st respondent, are vitiated by fraud and are hence null and void in the eye of law. This is a fit case warranting the exercise of this Court's supervisory jurisdiction under Article 227 of the Constitution of India. This Court is therefore of the considered view that the extraordinary supervisory jurisdiction under Article 227 of the Constitution of India is required to be exercised in this case. Accordingly, the impugned decree and sale deed are hereby set aside.

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

(1) The judgement and decree dated 29.09.2023 passed in O.S.No.16 of 2023 on the file of the learned District Munsif cum Judicial Magistrate, Pennagaram, Dharmapuri District, are hereby set aside.

(2) The sale deed dated 15.11.2024 executed by the District Munsif, Pennagaram, Dharmapuri District, on behalf the 2nd respondent-



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A.Madhu (1st defendant in O.S.No.16 of 2023 on the file of the District Munsif, Pennagaram) Son of Abimannan, in favour of the 1st respondent-Ganesan (Plaintiff in O.S.No.16 of 2023 on the file of the District Munsif, Pennagaram) Son of Selvam is hereby declared as null and void and non-est in the eye of law.

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

Consequently, connected CMP is closed.

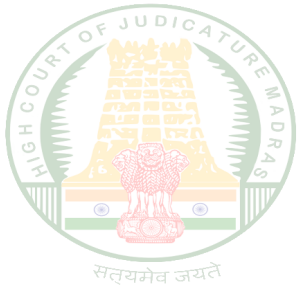
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Neutral Citation : yes / no

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To

1.The District Munsif cum Judicial Magistrate, Pennagaram,



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N.SATHISH KUMAR.J.,

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