



S.A.No.632 of 2025

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2025

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

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1. M/s. Auto Fabs Private Limited
Represented by its Director
G. Kalyanaraman
No.12, 8th Street, Gopalapuram,
Chennai 600 086

2. G. Kalyanaraman

...Appellants

Vs.

M/s. Krishna Fabrications Private Limited
Represented by its Directors
1. Arun Choudhari
2. Akash Choudhari
Registered office at
6-A, Phase-1, Peenya Industrial Area,
Bangalore 560 058

... Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 to set aside
the decree and judgment dated 24.01.2025 made in A.S. No.37 of 2023

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on the file of the Principal Subordinate Judge, Chengalpattu, confirming the decree and judgment dated 02.08.2023 in I.A. No.4 of 2023 in O.S. No.124 of 2022 on the file of the District Munsif Court, Chengalpattu.

For Appellants : Mr. P. Elayaraj Kumar
for Mr. R. Gowthaman

For Respondent : Mr. K. Harishankar

JUDGMENT

The appellants herein, as plaintiffs, filed a suit in O.S. No.124/2002 on the file of the District Munsif Court at Chengalpattu against the respondent/1st defendant and two others (M/s. Jones Foundations Private Limited, the 2nd defendant and the Sub Registrar, Guduvancherry, the 3rd defendant) for the following reliefs:

- i. Declaration to declare the sale deed dated 12.07.2021, executed by the first defendant in favour of second defendant and the same was registered as document No.8589/2021 before the third respondent in the suit schedule mentioned property at SRO, Guduvancherry as null and void.



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ii. To grant permanent injunction restraining the second defendant, their men, servants, agents or anybody else claiming through, or under their in any manner from alienating or encumbering the schedule mentioned suit property to the third party.

2. For the sake of convenience, the parties are referred to as per their ranking in O.S. No.124 of 2022.

3. Pending suit, the 1st defendant/respondent filed an application in I.A. No.4/2023 under Order VII Rule 11 of CPC to reject the plaint and in the above application, the plaintiffs/appellants have filed their counter and after contest, the said application was allowed by the trial court and the plaint was rejected. Assailing the said order, the plaintiffs/appellants preferred an appeal in A.S. No.37/2023, which was dismissed by the Principal Sub Judge, Chengalpattu on 24.01.2025. Being aggrieved against the decree judgment made in A.S. No.37/2023, the plaintiffs/appellants have filed the present second appeal.



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WEB COPY 4. Mr. K. Harishankar, learned counsel took notice for the respondent. By consent, the above second appeal is taken up for final hearing.

5. The learned counsel appearing for the appellants/plaintiffs submits that none of the documents filed on the side of the plaintiffs were considered by the courts below. The plaint document No.3 dated 20.05.1991 (form No.B2) reveals that the 2nd appellant is one of the director of the 1st appellant company. Further it is submitted that as per order dated 12.02.1996 made in C.P. No. 57 of 1995, the 1st appellant company was not in amalgamation with the respondent. But, the lower appellate court wrongly concluded that the 1st appellant company was in amalgamation with the respondent. The appellants have challenged the sale deed dated 12.07.2021 executed by the respondent in favour of M/s.Jones Foundations/2nd defendant which was registered as document No.8589 of 2021 at SRO, Guduvancherry, and only a civil court can entertain such suits allowing the parties to let in evidence, to substantiate that the above sale deed was executed by the respondent without parent



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documents which is in the hands of the appellants. His further contention is that, under Article 59 of the Limitation Act, 1963, the period of limitation to cancel or set aside an instrument or decree is three years and the time begins to run when the facts entitling the plaintiffs/appellants to have the instrument or decree cancelled and set aside or contract rescinded, date of knowledge of the plaintiffs. The lower appellate court erred in taking a stand that the present suit is barred. The courts below erred in allowing the application under Order VII Rule 11 of CPC on the ground that unless the order in C.P. No.57 of 1995 is set aside, no suit challenging the sale deed can be entertained. Hence prayed for setting aside the judgment and decree passed by the courts below.

6. The learned counsel for the 1st defendant/respondent would submit that the suit is frivolous and vexatious and barred by law and it does not disclose any cause of action for the following reasons:

a. Pursuant to the amalgamation of M/s. Auto Fabs Ltd., with the petitioner Ms/. Krishna Fabrication Ltd., in 1955/1996, M/s. Auto Fabs



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has been dissolved without winding up and it is not in existence and ex facie, the 2nd plaintiff has no authority to represent the 1st plaintiff which is not even in existence.

b. In fact, only the 1st defendant is the legal successor of M/s.Auto Fabs Ltd. Admittedly, the amalgamation order which was passed about 27 years ago, has become final and has not at all been challenged till date, as per law and the above suit is in contempt of the orders of the High Court of Karnataka and Madras sanctioning the amalgamation of M/s. Auto Fabs Pvt Ltd with the Petitioner and dissolution of M/s. Auto Fabs Pvt Ltd.

c. Any challenge to the aforesaid amalgamation is clearly time barred and in any case, this Hon'ble Court has no jurisdiction to sit in appeal over the decision of the two Hon'ble High Courts. Therefore, this indirect challenge to the amalgamation is clearly barred by law including the law of limitation as well.



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d. Even assuming without admitting that the 2nd Plaintiff was a director of M/s Auto Fabs Private Limited, he has admittedly been away from its affairs since 1991 and is deemed to have ceased to be a director as per Section 283(1)(g) of the Companies Act, 1956 (now Section 167(1)(b) of Companies Act, 2013).

e. Similarly, even if it is assumed without admitting that the 2nd Plaintiff was shareholder as contended in the plaint, it is a fundamental and basic principle of Company Law that a shareholder/director by virtue of such position cannot claim ownership or any right whatsoever over the Company's assets/properties, as the Company has a distinct corporate personality, which is different from its members/shareholders.

f. On perusal of the entire plaint pleadings and the documents filed along with the plaint, it appears that the plaintiff company is referred as M/s. Auto Fabs Private Ltd. and even on conjoint reading of the entire plaint, the plaint does not contain the details of incorporation of the said company and about the current legal status of the 1st plaintiff company.



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WEB COPY g. Besides, the plaintiffs have not filed copies of the incorporation certificate, along with Articles and Memorandum of Association of the company to find out the legal status of the 1st plaintiff company, or any certificate to show the present directors details and about the legal requirement to demonstrate their right to sue. On the other hand, plaint document No.2 & 3 appears to be the documents of the year 1991 and the said resolution of the board as well the details of directors obtained under Form No.32 are not related to the present status of the 1st plaintiff company.

h. It is further submitted that the statutory obligations were duly complied with and accordingly, the Registrar of companies has brought the transferor company M/s. Auto Fabs Pvt. Ltd., to the status of "strike off" and hence, the 1st plaintiff namely, M/s. Auto Fabs Pvt. Ltd., does not exist as on the date of filing of the suit and hence, the present suit filed by the 1st plaintiff as well as 2nd Plaintiff claiming to represent 1st Plaintiff, is non-est in law, and they do not have any right to sue and plaint is liable to be rejected.



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i. Even if the relief of declaration sought in the suit were to be granted, it would only vest the property back in the 1st defendant and would not establish any right, title or interest in the 1st or 2nd Plaintiff. In such circumstances, the consequential relief of injunction, curtailing the right to deal with the suit property, is not permissible in law.

j. The above suit is a gross abuse of process of law and by merely paying Rs. 150/- as court fee, the plaintiff is attempting to unsettle an amalgamation sanctioned by the High Courts of Karnataka and Madras over 27 years ago. The relief is also undervalued and is improperly stamped as well. The above suit is vexatious and frivolous and a fraud is being played upon this Court to usurp the property of the Petitioner, which has been transferred to the 2nd defendant in good faith and for valuable consideration. Petitioner is advised to submit that the Hon'ble Supreme Court in a catena of judgments has held such ill motivated, illegal action should be nipped in the bud without forcing the defendants



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6.1. It is further submitted that on 06.06.2022 the 2nd plaintiff/2nd appellant has approached this Court in W.P. No.15336/2022 seeking the similar relief and thereafter, the said writ petition was dismissed as withdrawn on 21.07.2022. Thereafter, the 2nd plaintiff filed an application before the Revenue Divisional Officer, Tambaram, on 19.09.2022 seeking cancellation of patta to the property in the name of the 2nd defendant and to assign patta in the name of the 1st plaintiff. The said application was rejected on 06.01.2023. Thereafter, the 2nd plaintiff filed



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an application before National Company Law Tribunal (NCLT), Division Bench-II, Chennai, seeking restoration of 1st plaintiff as a Company on the Registrar of Companies, Chennai. By order dated 23.11.2022, the NCLT has recorded the submission of the Registrar of Companies that 1st plaintiff company has already been merged with the 1st defendant after due compliances of all statutory requirements. Having failed in all their attempts to get similar reliefs from various forums, the plaintiffs have come forward with the present vexatious suit, which amounts to abuse of process of courts. The 2nd defendant is in possession of the entire suit property. It is further submitted that as per Section 10(6)(B) of Companies Act, 1956, and Section 430 of the Companies Act, 2013, no civil court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which the Tribunal or the appellate Tribunal is empowered to determine by or under this Act or any other law for time being in force. The plaintiffs having been aggrieved by the order of this Court in C.P.No.57/1995, failed to challenge the same before the statutory appellate authority and seek appropriate remedy. Hence, the suit filed by the plaintiffs is not maintainable since it is barred under the



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Companies Act. The courts below have well considered the above aspects and rightly rejected the plaint filed by the plaintiffs/appellants which warrants no interference by this Court.

7. Heard on both sides. Records perused.

8. The above suit has been filed by the plaintiffs/appellants to declare the sale deed dated 12.07.2021 executed by the 1st defendant in favour of the 2nd defendant in respect of suit property, registered as document number 8589/2021 in Sub Registrar Office, Guduvancherry, as null and void and for consequential permanent injunction restraining the 2nd defendant from alienating the suit property. According to the 1st defendant/respondent, M/s. Auto Fab Private Limited (1st plaintiff) is amalgamated with M/s. Krishna Fabrications Private Limited (1st defendant) by order dated 12.02.1996 passed in C.P. No.57/1995 by this Court. It is also not in dispute that the above order passed by this Court on 12.02.1996 in C.P. No.57/1995 was not put to challenge till date. Therefore, after 27 years of passing of the said order, the plaintiffs have



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filed the present suit, which is clearly time barred. Even assuming that the 2nd plaintiff was a Director of M/s. Auto Fab Private Limited, he has admittedly been away from its affairs since 1991 and he is deemed to have ceased to be a Director as per Section 283 (1)(g) of the Companies Act, 1956 (now Section 167(1)(b) of Companies Act, 2013). Moreover, even assuming the 2nd plaintiff was a shareholder of the said Company, he cannot claim any right or ownership over the Company's assets, as the Company has a distinct corporate personality, which is different from its members/shareholders. A perusal of the plaint shows that it does not contain any details of incorporation of the said Company and about the current legal status of the 1st plaintiff Company. No incorporation certificate along with Articles and Memorandum of Association of the Company were filed along with the plaint to establish the legal status of the 1st plaintiff Company. Apart from this, no certificate to show the details of the present Directors of the Company and about their right to sue is enclosed along with the plaint. Moreover, there is nothing on record to show that the order passed in C.P. No.57/1995 was not given effect. Even assuming that the amalgamation of the 1st plaintiff Company



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with the 1st defendant Company is confirmed or not, the legal effect of the order in C.P. No.57/1995 cannot be decided in a civil court, since it falls within the purview of Company Law. As rightly pointed out by the courts below, unless the order passed in C.P. No.57/1995 is set aside, the sale deed in question, which is subsequent to the orders passed in C.P.No.57/1995, relating to amalgamation, the present suit cannot be entertained.

8.1. Furthermore, according to the 1st defendant/respondent, the 1st defendant, on the basis of the order passed in C.P. No.57/1995, sold the suit property to the 2nd defendant. Moreover, the fact that the plaintiffs/appellants have filed an application in Comp. Appl. (CA)/4/(CHE)2022 before the National Company Law Tribunal, Division Bench-II seeking restoration of 1st plaintiff as a Company on the Registrar of Companies, Chennai, proves that no Company on the date of the suit by name 'Auto Fabs Private Limited' existed. Therefore, the 1st plaintiff is non exist in the eye of law as per the order passed by this Court in C.P. No.57/1995. The fact remains that, the said order is not set



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aside till date. But, the present suit is filed in the name of non existing Company by the 2nd plaintiff stating to be its Director when it is amalgamated with the 1st defendant before 27 years ago, which had attained its finality. Hence, the courts below have rightly concluded that the plaintiffs have no locus standi to file the suit. Furthermore, Section 10(6)(b) of Companies Act, 1956 and Section 430 of the Companies Act, 2013, the present suit is barred by law. Hence, the present suit is only sheer abuse of process of law.

8.2. Moreover, the plaintiffs/appellants have suppressed the material facts of filing the writ petition and about filing an application before the Revenue Divisional Officer, Tambaram, for similar reliefs. This Court in *Perumal and 3 others vs. Vijayakumar and 4 others* reported in **2017 (1) CTC 517**, has held that if there is suppression of material facts, no cause of action at all to institute the suit and material suppression made by the plaintiff would amount to fraud on the Court and plaint is liable to be rejected at the threshold. The courts below have well considered the maintainability of the suit and rightly rejected the



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same, which calls for no interference by this Court. Therefore, I do not see any question of law much less a substantial question of law in order to enable me to entertain this appeal.

9. In the result,

- i. The second appeal is dismissed. No Costs.
- ii. The decree and judgment dated 24.01.2025 made in A.S. No.37 of 2023 on the file of the Principal Subordinate Judge, Chengalpattu, confirming the decree and judgment dated 02.08.2023 in I.A. No.4 of 2023 in O.S. No.124 of 2022 on the file of the District Munsif Court, Chengalpattu, is upheld.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga



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To

1. The Principal Subordinate Judge, Chengalpattu.
2. The District Munsif Court, Chengalpattu.



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K.GOVINDARAJAN THILAKAVADI,J
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