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A.Nos.5644, 5645 & 5646 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.07.2025

PRONOUNCED ON: 01.08.2025

CORAM

THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN

A.Nos.5644, 5645 & 5646 of 2024

in

E.P.No.83 of 2002

in

C.S.No.777 of 1995

1.M.G.Riaz Khan

2.M.G.Nabisa Banu

3.M.G.Syed Abuthahir

Applicants in all Applications

Vs

1.MMTC Limited

Chennai House,

No.7, Esplanade,

Chennai – 600 108.

2.S.Mohammed Gani

Respondents in all Applications

PRAYER in A.No.5644 of 2024: This Application is filed under Order XIV Rule 12 of Original Side Rules, prayed to set aside the order of the learned Master dated 11.09.2024 passed in E.A.No.6045 of 2011 in E.P.No.83 of 2002.



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PRAYER in A.No.5645 of 2024: This Application is filed under Order XIV Rule 12 of Original Side Rules r/w Section 151 of CPC, prayed to stay all further proceedings in E.P.No.83 of 2002 pending disposal of the appeal.

PRAYER in A.No.5646 of 2024: This Application is filed under Order XIV Rule 12 of Original Side Rules, prayed to set aside the order of the learned Master dated 11.09.2024 in E.P.No.83 of 2002 for sale proceedings of the property.

For Applicants : Mr.M.Balachandar

For Respondents : Mr.J.Srinivasan

COMMON ORDER

All these three applications have been filed by the 3rd to 5th judgment debtors in E.P.No.83 of 2002 questioning the order of the learned Master in E.A.No.6045 of 2011 wherein, by order dated 11.09.2024, the learned Master had dismissed the said application.



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2. In A.No.5644 of 2024 the applicants seek to set aside the order of the learned Master and in A.No.5645 of 2024 the applicants seek stay of all further proceedings in E.P.No.83 of 2002 in C.S.No.777 of 1995 pending disposal of these applications and in A.No.5646 of 2024 the applicants seek to set aside the order of the learned Master dated 11.09.2024 in E.P.No.83 of 2002 in C.S.No.777 of 1995 wherein, it had been directed that the sale proceedings of the schedule mentioned property can be proceeded with.

3. E.A.No.6045 of 2011 had been filed by the applicants to raise the order of attachment dated 21.12.2011 in E.P.No.83 of 2002. In the affidavit filed in support of the application in E.A.No.6045 of 2011 it had been contended by the applicants herein that the property described in the schedule to the Master Summons namely, the property at Door No.158A, Adam Sahib Street, Royapuram, Chennai – 600 013, originally belonged to their mother Mrs.A.L.Hamidha Beevi who had been arrayed as the 3rd respondent in the said application and that the applicants had become the absolute owners of the said property in view of a Deed of Hiba executed by her mother on 09.04.1993 in



their favour. It had been contended that the Hiba was attested by a Notary

Public. It had been further contended that at the time of grant of Hiba itself, the

applicants had been put in possession of the property. It had been further

contended that they were enjoying the same by paying taxes to the Revenue

Department. It had been further stated that the fact of grant of Hiba was

intimated to the Corporation of Chennai on 13.04.1993. It must also be

mentioned that the mother of the applicants A.L.Hamidha Beevi had died during

the pendency of E.A.No.6045 of 2011 and necessary amendment in that regard

had been made consequent to an order dated 08.07.2022 in A.No.4981 of 2021.

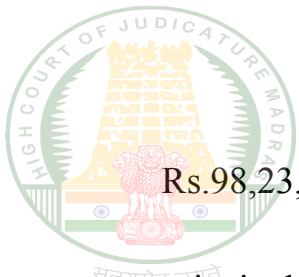
4.It had been further contended by the applicants that on 16.12.2011, they were visited by a person who claimed to be a representative of the 1st respondent / decree holder / plaintiff / MMTC Limited Chennai, and who stated that there is an application pending seeking attachment of the said property in E.P.No.83 of 2002 in C.S.No.777 of 1995. It had been further contended that the applicants informed him that they are the owners of the property. However, the person who so visited the house informed that on 21st or 22nd of December, he



would come again seeking eviction of the applicants. This information was forwarded to the counsel of the applicants, who made enquiries and stated that an attachment of the property had been made in E.P.No.83 of 2002 by the learned Master by order dated 21.12.2011. The applicants contended that they were not aware of the said proceedings and that the order of attachment had caused great prejudice to them and therefore had filed the said application in E.A.No.6045 of 2011 seeking to raise the order of attachment.

5.Before narrating further it would only be appropriate that further facts are stated for better understanding of the facts surrounding the order of attachment of the property in E.P.No.83 of 2002.

6.The plaintiff, MMTC Limited Chennai had filed C.S.No.777 of 1995 against i).S.Mohammed Gani, Proprietor, Fine Food Packers, No.158, Adam Sahib Street, Royapuram, Chennai – 600 013 and his wife, (ii).Mrs.A.L.Hamidha Beevi also residing at the same address seeking a judgment and decree against the 1st defendant to pay to the plaintiff a sum of



Rs.98,23,910.90/- together with further interest at the agreed rate on the principal sum of Rs.78,99,682.35/- from the date of the plaint till the date of payment and also for costs of the litigation.

7.In the suit, the defendants were represented by a eminent Senior Counsel. It had never been the case of the defendants that they were not provided adequate opportunity during the trial in the said suit. Finally, by judgment dated 20.07.2001, the suit was decreed with costs. It had been further decreed that in default of payment of the decreetal amount by the 1st defendant, the property which had been mortgaged by the 2nd defendant Mrs.A.L.Hamidha Beevi should be brought to sale and the sale proceeds shall be duly applied towards satisfaction of the decreetal amount.

8.This judgment and decree was challenged by the 2nd defendant, A.L.Hamidha Beevi in O.S.A.No.375 of 2001. By judgment dated 13.07.2009, after hearing the learned counsels on either side, the Division Bench had that there was an intention to create the equitable mortgage.

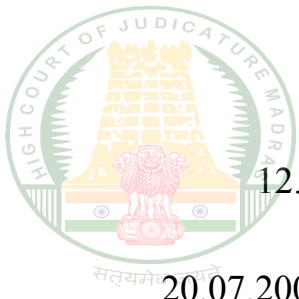


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9.It was further held on appreciating the evidence of the first and second defendants that the intention of the defendants in depositing the title deeds was only with the intention and purpose of creating an equitable mortgage in favour of the plaintiff for the purpose of securing the due repayment of the amount. It was further held that the defendants had not made out any case as to how the title deeds have reached the hands of the plaintiff and it was also not the case of the second defendant that the first defendant without her knowledge had handed over the title deeds to the plaintiff to her detriment.

10.The Original Side Appeal was therefore dismissed.

11.This judgment of the Division Bench was further challenged before the Hon'ble Supreme Court by the 2nd defendant, Mrs.A.L.Hamidha Beevi by filing a petition for Special Leave to Appeal (Civil) No.20570 of 2009. By order dated 26.10.2009, the Special Leave Petition was dismissed.



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12. It is thus evident that the decree in C.S.No.777 of 1995 dated 20.07.2001 had attained finality. Thereafter, the decree holder, MMTC Limited, filed E.P.No.83 of 2002 to bring the property for sale which had been mortgaged namely, the property in Door No.158 Adam Sahib Street at Royapuram in Chennai – 600 013.

13. The 2nd defendant Mrs.A.L.Hamidha Beevi had also filed A.No.358 of 2008 under Section 47 of the CPC seeking a direction to the learned Master to order an inquiry into the inexecutability of the decree in C.S.No.777 of 1995 dated 20.07.2001. It had been contended by the applicant therein, Mrs.A.L.Hamidha Beevi / 2nd defendant in the suit / judgment debtor that Ex.P4 which was marked during the trial in the suit dated 15.07.1993 and which reflected equitable mortgage was not signed by her and therefore, the decree had been obtained by fraud and suppression of vital facts. It had been further stated that in the Memorandum of Understanding dated 21.07.1993 which as marked as Ex.P5, the decree holder, in violation of the clauses therein had filed the suit and therefore, the decree is inexecutable. At the time when the said

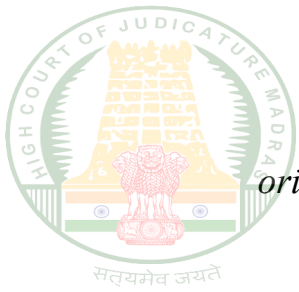


application was filed, O.S.A.No.375 of 2001 was pending adjudication. By order dated 25.08.2010 the learned Master dismissed the said application.

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14.It must be again reiterated that in the judgment in O.S.A.No.375 of 2001 dated 13.07.2009, the Division Bench had very specifically examined the very same contentions and had rejected by the Division Bench. The relevant portion of the reasoning of the Division Bench extracted for ready reference:

“14.All the above said documents clearly support the contention of MMTC that the husband and the wife have deposited the title deeds only with an intention to create the equitable mortgage. Having regard to the provisions Section 58(f) of the Transfer of Property which speaks about the equitable mortgage by deposit of title deeds, the physical delivery of the documents is not only mode of deposit and even constructive delivery is held sufficient, if the deposit is bonafide and are shown to have deposited with an intention to create a security thereon and that can be regarded as a creation of equitable mortgage. Of course, it is true that mere fact of deposit does not give rise to a presumption that such intention exist. Such an intention cannot be presumed from the possession, and that the mere possession of the deed is not enough without evidence as to the manner in which the possession is



originated and thereby the agreement be inferred.

15.The fact above narrated and the evidence of the first and second defendants considered above would clearly manifest the intention of the defendants in depositing the title deeds with the plaintiff that it is only with the intention and purpose of creating an equitable mortgage in favour of the plaintiff for the purpose of securing the due repayment of the amount. The evidence of D.Ws.1 and 2 above referred to speaks volumes about the intention of the parties to create the mortgage. The defendants have not made out any case as to how the title deeds have reached the hands of the plaintiff or it is not the case of the second defendant that the first defendant without the knowledge of the second defendant had handed over the title deeds to the plaintiff to her detriment.

16.For the foregoing reasons, we do not find any merit in the appeal and the appeal deserve to be dismissed and the same is dismissed. However, there is no order as to costs.”

15.It must be further stated that this judgment of the Division Bench had been affirmed by the Hon'ble Supreme Court by judgment dated 26.10.2009, dismissing the SLP (C) No.20570 of 2009.



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16. One very important fact to be noted in the affidavit filed in support of A.No.358 of 2008 was that the applicant / 2nd defendant / judgment debtor had never spoken a letter about her having executed a Hiba over the said property in favour of her two sons and daughter. She had also not whispered about the settlement deed which she had executed in the year 2006 over the same property, again in favour of her two sons and one daughter.

17. The suit in C.S.No.777 of 1995 was decreed on 20.07.2001. Both the defendants had filed their written statement in the said suit. Evidence was also tendered by them. Neither in the written statement nor during their deposition of evidence did they choose to inform about the alleged Hiba said to have been executed by the 2nd defendant, Mrs.A.L.Hamidha Beevi in favour of her two sons and one daughter dated 09.04.1993. They have also not stated about the settlement deed which was also said to have been executed by the 2nd defendant, Mrs.A.L.Hamidha Beevi in the year 2006.

18. The order of the learned Master dismissing A.No.358 of 2008 was not challenged in manner known to law and has thus attained finality.



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19. Thereafter, the learned Master proceeded with E.P.No.83 of 2002 and directed attachment of the property by order dated 21.12.2011. The execution could not be effected since the applicants herein / the two sons and daughter of Mrs.A.L.Hamidha Beevi claimed that the door number of the property was not 158, Adam Sahib Street, Royapuram, Chennai, but 158-A Adam Sahib Street, Royapuram, Chennai.

20. On receipt of this information, owing to which, execution could not be effected, the decree holder filed A.No.4232 of 2011 before the learned Master seeking amendment of the door number from 158 to 158-A. In support of this particular contention that both the door numbers 158 and 158-A referred to the same property, the decree holder had relied on a letter issued by the Assistant Revenue Officer – II, Zone – II, Corporation of Chennai, Basin Bridge Road, Chennai – 600 079 in ZO.II/RDC.No./1856/2011 wherein it had been stated that the property in Old Door No.158-A which had been renumbered as 106, Adam Sahib Street, Royapuram Chennai – 600 013 stood in the name of M.G.Syed Abuthahir and two others who are the appellants herein.



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21. Additionally, the decree holder further placed reliance on the communication from the Tahsildar, Fort Tondiarpet Taluk in R.C.No.B4/23226/2011 dated 29.08.2011 wherein, it had been stated with respect to the said property in Adam Sahib Street, Royapuram Chennai, that RS No.1027/47 related to Door No.158-A. It had been very specifically stated that the land is one and the same. It had been further stated that the door number has been assigned by the Corporation of Chennai. The details in the Permanent Land Register with respect to RS No.1027/47 was also given and it was stated that the property in Door No.158-A measuring 0.00.1584 Sq.Ft stood in the names of the applicants herein. Taking all these facts into consideration, the learned Master allowed A.No.4232 of 2011 and permitted amendment of the door number of the property from 158 to 158-A. The amendment was carried out in E.P.No.83 of 2002 with respect to the schedule of the property. This order had also not been challenged by the applicants herein. It had also attained finality.



22. During the pendency of the execution petition which had been filed in

the year 2002 strange occurrences happened within the office of the Original

Side of the High Court. In first instance, the bundle was lost. It could not be

traced for a period of three years. This was between the years 2003 and 2006.

The counsel of the decree holder had to run from pillar to post. Thereafter, on

04.12.2006 a note was put up by the Assistant Registrar (OS-I) seeking to

receive a copy of the Execution Petition and a copy of the decree as forwarded

by the counsel for the decree holder on 23.03.2006 and to reconstruct the

papers. The note was put up after a delay of nine months. The learned Master

permitted receipt of the papers and to reconstruct the records. The records were

then reconstructed.

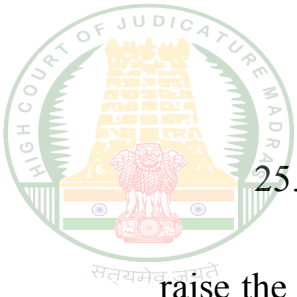
23. A perusal of the notes paper show that ingenious methods had been

adopted on behalf of the judgment debtors to drag the matter for years together.

24. The matter then got revived after the order of Hon'ble Supreme Court

dismissing SLP (C) No.20570 of 2009. It was only thereafter that the learned

Master directed attachment of the property by order dated 21.12.2011.



25. After that order, the applicants herein had filed A.No.6045 of 2011 to raise the order of attachment. This application was filed under Order XXI Rule 58 of CPC.

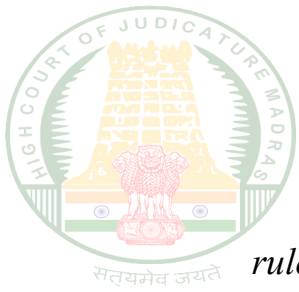
26. Order XXI Rule 58 of CPC is as follows:

“58. Adjudication of claims to or objections to attachment of, property.—(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained: Provided that no such, claim or objection shall be entertained—

(a) where, before the claim is preferred or objection is made, the property attached has already been sold; or

(b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.



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(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,—

(a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or

(b) disallow the claim or objection; or

(c) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or

(d) pass such order as in the circumstances of the case it deems fit.

(4) Where any claim or objection has been adjudicated upon under this rule, order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (I), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.”

27.The applicants have not raised any grievance over the procedure adopted during the course of the hearing of the application.



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28. The applicants were invited to tender evidence. PW-1 was examined and three documents were marked. Ex.P1 was the xerox copy of the deed of Hiba dated 09.04.1993. Ex.P2 was the letter seeking name transfer of the property addressed to the Corporation of Chennai allegedly dated 13.04.1993. Ex.P3 was the extract of property tax payment receipts.

29. It is not the grievance of the learned counsel for the applicants herein that the learned Master had not granted opportunity of evidence being adduced during the proceedings in A.No.6045 of 2011. No ground has been raised in these applications alleging violation of principles of natural justice and not granting adequate opportunity.

30. This fact is stated since a perusal of the records show that Mrs.A.L.Hamidha Beevi had never whispered about the Hiba allegedly executed by her as claimed by the applicants on 09.04.1993 either in her written statement or when evidence was recorded in C.S.No.777 of 1995 or in her application under Section 47 CPC in A.No.358 of 2008.



31. In the counter to the A.No.6045 of 2011, the decree holder / MMTC

Limited had very specifically raised a ground alleging fraud in the preparation of the said Hiba. Even when that particular stand had been taken by the decree holder, the applicants herein had not filed reply statement denying that allegation. They were granted opportunity to graze the witness box and mark documents. They had not thought it necessary to produce the Original Deed of Hiba or to examine any of the witnesses to the Deed of Hiba or even the Notary before whom the Hiba was executed or even the Advocate who had drafted the Hiba.

32. It is thus evident that the applicants were basing their claim on a document which was inadmissible since it was a xerox copy and had not been proved in manner known to law and which evidently had been created to frustrate the execution of the decree dated 20.07.2001 which decree had been confirmed by the Division Bench on 13.07.2009 and further confirmed by the Hon'ble Supreme Court by order dated 26.10.2009. In none of those proceedings was the fact of Hiba ever whispered by the alleged executant of the



document Mrs.A.L.Hamidha Beevi. I hold that the applicants have introduced the document to play fraud on the Court.

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33.The learned counsel for the applicant had pointed out that the applicants had addressed a letter to the Corporation of Chennai and the Corporation of Chennai had accordingly issued tax receipts in the names of the applicants.

34.It must however be pointed out that there was a registered settlement deed dated 20.11.2006 registered as Document No.3352 of 2006 in the Office of the Sub Registrar Royapuram executed by Mrs.A.L.Hamidha Beevi in favour of the applicants about which document also there was no mention. The learned Master in his order, had very clearly stated that it was only consequential to such settlement deed that the name in the Corporation records were changed to the names of the applicants herein. Even in that particular settlement deed, the settlor Mrs.A.L.Hamidha Beevi had not whispered about the alleged Hiba said to have been earlier executed by her on 09.04.1993. It is thus very clear that the applicants have come to the Court with fraud underlining their stand.



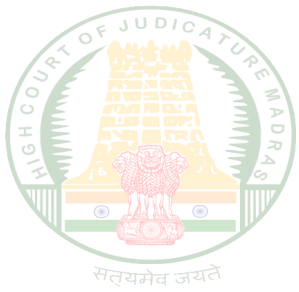
35.In **2005 6 SCC 149 [State of A.P., and another Vs. T.Suryachandra**

Rao], it had been held as follows:

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“9. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See **S.P. Changalvaraya Naidu v. Jagannath (1994 (1) SCC 1)**).

10. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully 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,



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*and injury enures therefrom although the motive from which the representations proceeded may not have been bad. 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. 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. (See **Ram Chandra Singh v. Savitri Devi and Ors. (2003 (8) SCC 319).***

11.

12.....

13.

*14. Suppression of a material document would also amount to a fraud on the court. (see **Gowrishankar v. Joshi Amba Shankar Family Trust (1996 (3) SCC 310)** and **S.P. Chengalvaraya Naidu's case (supra).***

15. "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



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*of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in **Ram Preeti Yadav's case (supra)**.*

16. In *Lazarus Estate Ltd. v. Beasley* (1956) 1 QB 702, : Lord Denning observed at pages 712 & 713, "No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

In the same judgment Lord Parker LJ observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. “

[Emphasis Supplied]

36. In *S.P.Chengalvaraya Naidu (Dead) By LRs. Vs. Jagannath (Dead)*

By LRs and others reported in **(1994) 1 SCC 1**, the Hon'ble Supreme Court held as follows:

“6. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. A litigant, who approaches the Court, is bound to produce all the documents executed by him which



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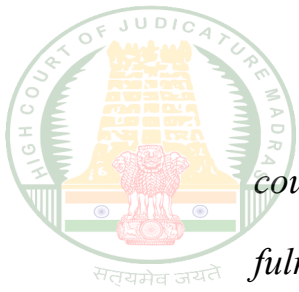
are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.”

(Emphasis Supplied)

37.In the instant case, the original of the Deed of Hiba had not been produced. A perusal of the xerox copy, Ex.P1 shows that the letter 'A' had been inserted after writing “Door No.158”.

38.In the decision of the Honourable Supreme Court reported in ***AIR 1977 SC 2421 1 (T.Arivanandam Vs. T.V.Satyapal)***, the father had contested the eviction proceedings, lost it, appealed against it, lost again, moved a revision, suffered rejection of the revision petition and after that, his son re-litigated by filing a suit seeking that the eviction order has been obtained by fraud and collusion. In the said decision, the Honourable Supreme Court had stated as follows:-

“2. Here is an audacious application by a determined engineer of fake litigations asking for special leave to appeal against an order of the High Court on an interlocutory application for injunction. The sharp practice or legal legerdemain of the petitioner, who is the son of the 2nd respondent, stultifies the

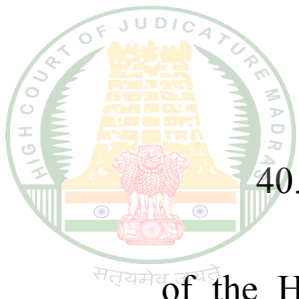


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court process and makes a decree with judicial seals brutum fulmen. The long arm of the law must throttle such litigative caricatures if the confidence and credibility of the community in the judicature is to survive. ..”

(Emphasis Supplied)

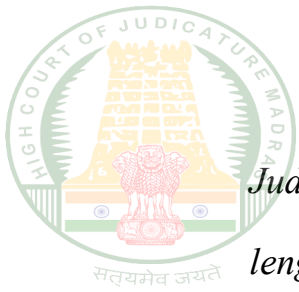
39.The learned counsel for the applicants raised a further issue alleging allegations against the learned Master. According to the learned counsel the order dated 11.09.2024 which is questioned in these applications was not pronounced in open Court. He stated that arguments concluded on 12.04.2023. It had been further contended that the order copy was also not made available for perusal. It was further contended that the learned Master had instructed the Court Officer to inform that the order copy was not ready. It was further contended that the applicants had filed an application seeking copy of the order on 12.09.2024. It was further contended that till 17.09.2024 the copy of the order was not available and was made available only on 01.10.2024. It was thus contended that the learned Master had committed irregularity while passing the order in the said application in A.No.6045 of 2011.



40. In this connection, the learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in ***Civil Appeal No.11000 of 2024, Ratilal Jhaverbhai Parmar and Others Vs. State of Gujarat and Others***, with specific reference to paragraph No.17 and to the passage extracted *infra* in paragraph No.19.

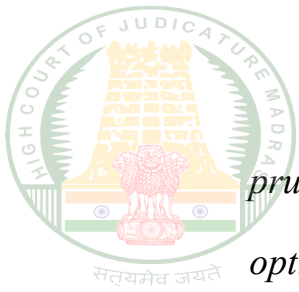
“17. Nonetheless, we regret to observe that the learned Judge having realised in April, 2024 of having omitted to assign reasons for dismissal of the petition although His Lordship had pronounced “dismissed” in open court proceedings on 1 st March, 2023, could have avoided committing an act of indiscretion, by breaching all norms of ethics, in proceeding to assign reasons more than a year later. In accordance with the highest standards of fairness, propriety and discipline, the need of the hour required the learned Judge to bring the matter back on board once again, recall the verbal order of dismissal and place it before the Hon’ble the Chief Justice of the High Court for assigning it to some other Bench for fresh consideration.

19.These orders are generally dictated in open court immediately after a hearing is over. On the other hand, if in any given case the judgment could justifiably be reserved after hearing of extensive arguments, it would not be proper to criticize a learned



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Judge if he dictates the judgment in open court notwithstanding the length of time to be taken therefor. As per the ordainment of Order XX, the learned Judge would be perfectly justified in doing so. In such cases, it could roughly take any time between 20 minutes to a couple of/few hours or even more spilling over to the next day (in rare cases) to accomplish the task. This approach could result in the board (if it is heavy) getting choked and the remaining cases on the board having slim chances of being considered. As the saying goes, necessity is the mother of invention. The necessity to strike a balance, in turn, has led to an innovative approach (many a times followed even by this Court) which, though not strictly in tune with Order XX, has transitioned into a regular practice by passage of time. This contemplates a rough assessment made by a learned Judge of the time to be taken for dictating a judgment after hearing in a matter is concluded and if, in such assessment, it is likely to take more than 20/25 minutes, the learned Judge proceeds to pronounce the operative part together with the outcome while expressing “reasons to/would follow” and then concludes the exercise of pronouncing the final judgment by providing the reasons as soon as possible thereafter. Having regard to the exploding docket of a majority of the high courts, learned Judges consider it wise and prudent to make optimum use of judicial time by not dictating lengthy judgments in court.However, while it would be



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prudent to leave it to the learned Judges to pick any one of the three options [(i) dictation of the judgment in open court, (ii) reserving the judgment and pronouncing it on a future day, or (iii) pronouncing the operative part and the outcome, i.e., “dismissed” or “allowed” or “disposed of”, while simultaneously expressing that reasons would follow in a detailed final judgment supporting such outcome], it would be in the interest of justice if any learned Judge, who prefers the third option (supra), makes the reasons available in the public domain, preferably within 2 (two) days thereof but, in any case, not beyond 5 (five) days to eliminate any kind of suspicion in the mind of the party losing the legal battle. If the pressure of work is such that in the assessment of the learned Judge the reasons in support of the final judgment cannot be made available, without fail, in 5 (five) days, it would be a better option to reserve the judgment.”

41.The learned counsel placed further reliance on the judgment of the Hon'ble Supreme Court reported in **(2009) 17 SCC 308, K.V.Rami Reddi Vs. Prema** with specific reference to the observations of the Hon'ble Supreme in paragraph Nos.14, 15, 16 and 17:

“14. CPC does not envisage the writing of a judgment after deciding the case by an oral judgment and it must not be resorted to and it would be against public policy to ascertain by evidence



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alone what the “judgment” of the court was, where the final result was announced orally but the “judgment”, as defined in CPC embodying a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision, was finalised later on.

15. Section 2(9) CPC defines a “judgment” to mean the statement given by the Judge of the grounds for a decree or order.

16. In *Balraj Taneja v. Sunil Madan* [(1999) 8 SCC 396] , it was inter alia held as follows : (SCC p. 414, paras 41-42)

“41. There is yet another infirmity in the case which relates to the ‘judgment’ passed by the Single Judge and upheld by the Division Bench.

42. ‘Judgment’ as defined in Section 2(9) of the Code of Civil Procedure means the statement given by the Judge of the grounds for a decree or order. What a judgment should contain is indicated in Order 20 Rule 4(2) which says that a judgment

‘shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision’.

It should be a self-contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the court and in what



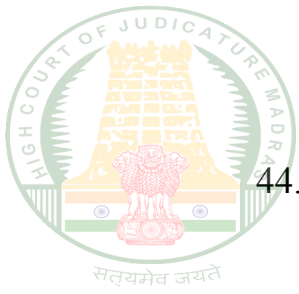
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manner. The process of reasoning by which the court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment.”

17. Undisputedly, the trial Judge had not completed the judgment before he delivered his decision. That being so, the impugned judgment does not suffer from any infirmity to warrant interference. What the High Court has directed is to hear only the arguments afresh. While dismissing the appeal, we direct that the arguments shall be heard afresh and the trial court shall deliver its judgment as early as practicable, preferably within three months from today. To avoid unnecessary delay, let the parties appear before the trial court on 5-3-2008 so that the date for arguments can be fixed.

42. This argument of the learned counsel necessitated the Court to call for the records in A.No.6045 of 2011 from the Court of the learned Master. The records were also forwarded.

43. A perusal shows that the notings on the hearing dates after commencement of arguments were as follows.



44. On 11.01.2023, it was noted by the learned Master as follows:

“Applicant side heard. At request for respondent side arguments by 03.02.2023.”

45. On 03.02.2023, it was noted by the learned Master as follows:

“At request of the respondent side adjourned to 22.02.2023.”

46. On 22.02.2023, it was noted by the learned Master as follows:

“Respondent side party heard. For continuation adjourned to 10.03.2023.”

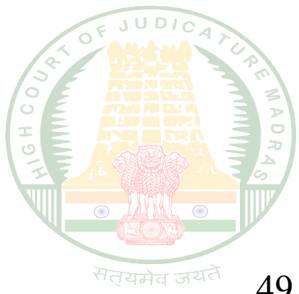
47. On 10.03.2023, it was noted by the learned Master as follows:

“At request continuation by 17.03.2023.”

48. On 17.03.2023, it was noted by the learned Master as follows:

“At request adjourned to 24.03.2023.”

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49. On 24.03.2023, it was noted by the learned Master as follows:

“DHC and JDC both are present. At request of both sides, adjourned for clarification by 12.04.2023.”

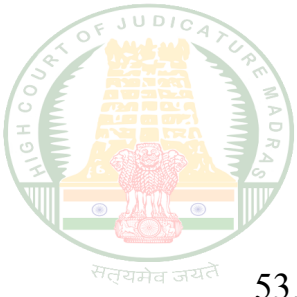
50. On 12.04.2023, it was noted by the learned Master as follows:

“Both sides heard. For reply adjourned to 26.04.2023.”

51. On 26.04.2023, it was noted by the learned Master as follows:

“Applicants filed written arguments. At request of the respondent adjourned to 14.06.2023.”

52. Thereafter, the bundle went missing. This had happened earlier when E.P.No.83 of 2002 was pending and orders had to be passed to bring the property on sale. The papers were reconstructed only in the year 2006. For a period of three years, the bundle just went missing and could not be traced.



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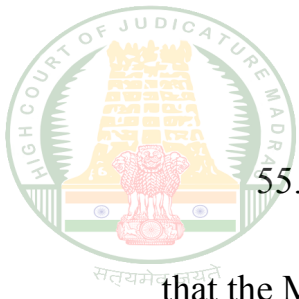
53. In the instant case, again the matter was not listed before the learned Master for a period of one year. It was again listed only on 22.08.2024. The learned Master had been extremely prudent to permit arguments to be heard again. It must be noted that written arguments had been earlier filed on 23.08.2024. This was the noting of the learned Master on 22.08.2024:

“This matter is listed after 1 ½ years. For clarification and for further arguments if any by 04.09.2024.”

54..It was then posted on 04.09.2024 and finally it was listed on 11.09.2024 for final orders. In the notes paper, on 11.09.2024, the learned Master had noted as follows:

“Orders pronounced. E.P.No.83 of 2002 is allowed and A.No.6045 of 2011 is dismissed. For detailed order vide separate sheet.

List the matter on 04.10.2024 for filing sale papers.”

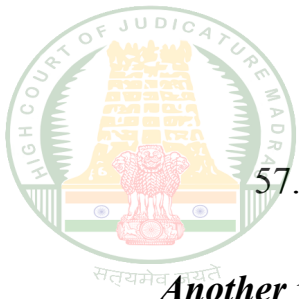


55. The learned counsel for the applicants created a hue and cry by stating that the Master had listed the matter after one year and therefore the matter must be remanded back for rehearing. There cannot be any more preposterous submission.

56. In ***Bank of Bihar V. Mahabir Lal and Others reported in 1963 SCC***

OnLine SC 209, the Hon'ble Supreme Court had held as follows:

“In our opinion where a statement appears in the judgment of a court that a particular thing happened or did not happen before it, it ought not ordinarily to be permitted to be challenged by a party unless of course both the parties to the litigation agree that the statement is wrong, or the court itself admits that the statement is erroneous. If the High Court had proceeded on an erroneous impression that Mr. De had conceded that the money was taken along with him by Ram Bharosa Singh to Patna, there was nothing easier for the bank than to prefer an application for review before the High Court after the judgment was pronounced or if the judgment was read out in court, immediately draw the attention of the court to the error in the statement. Nothing of the kind was done by the bank. It is too late for the bank now to say that the statement was wrong.”

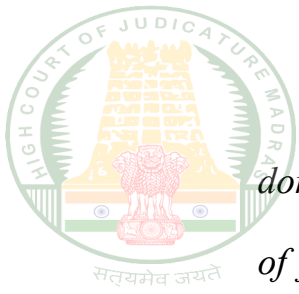


57. In ***Central Bank of India Vs. Vrajlal Kapurchand Gandhi and***

Another reported in (2003) 6 SCC 573, the Hon'ble Supreme Court had held as

follows:

“12. The only course open to a party taking the stand that an order does not reflect actual position is to move the High Court in line with what has been said in State of Maharashtra v. Ramdas Shrinivas Nayak [(1982) 2 SCC 463 : 1982 SCC (Cri) 478] . In recent decisions i.e. Bhavnagar University v. Palitana Sugar Mill (P) Ltd. [(2003) 2 SCC 111 : 2002 AIR SCW 4939] and Roop Kumar v. Mohan Thedani [(2003) 3 Scale 611 : (2003) 6 SCC 595] the view in the said case was reiterated. Statements of fact as to what transpired at the hearing recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by an affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call the attention of the very judges who have made the record. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. It is not open to a party to contend before this Court to the contrary. This Court cannot launch into an enquiry as to what transpired in the High Court. It is simply not



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done. Public policy and judicial decorum do not permit it. Matters of judicial record in that sense are unquestionable. However, the Court can pass appropriate orders if a party moves it contending that the order has not correctly reflected happenings in court.”

58. In State of **Maharashtra V. Ramdas Shrinivas Nayak** reported in **(1982) 2 SC 463**, it had been held as follows in paragraph No.4:

*“4.Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation". Per Lord Atkinson in **Somasundaran v. Subramanian A.I.R. 1926 P.C. 136** We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in*



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*a judgment, it is' incumbent, upon the party, while the matter is still fresh in the minds of the judges, to call attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. Per Lord Buckmaster in **Madhusudan v. Chanderwati A.I.R. 1917 P.C. 30** That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there.”*

(Emphasis Supplied)

59.It is the contention of the learned counsel for the applicant that the learned Master had not pronounced the order in the open Court and there was no noting in the order that it had been pronounced. He also contended that the order had also not been dictated in open Court.

60.In this connection reference was made to Order XX Rule 1 of CPC. It must be pointed out that order XX of CPC applies to 'Judgments' and 'Decrees'. An 'Order' is distinct.



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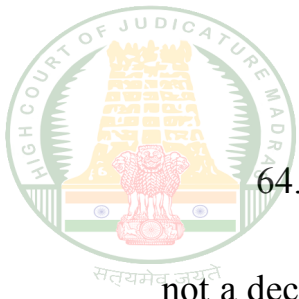
61.A judgment and a decree are formal expressions which conclusively determine the rights of the parties. The learned Master had only passed an 'Order' in E.A.No.6045 of 2011. This did not conclusively determine the rights of the parties. The application had been filed only to raise an order of attachment. The execution petition is still pending.

62.Further, unless the High Court had specifically granted permission, the Master who is a Civil Judge / Senior Division cadre cannot dictate judgment or orders in open Court.

63.An 'Order' had been defined under Section 2(14) of CPC and it is as follows:

*“Section 2(14): “**Order**” means the formal expression of any decision of a Civil Court **which is not a decree.**”*

(Emphasis Supplied)

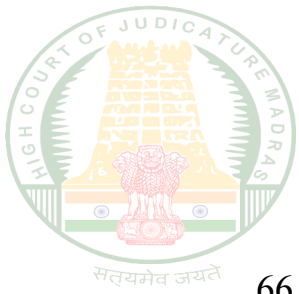


64.It is thus seen that though it is a formal expression of a decision, it is not a decree. There are distinct differences between a 'Judgment' and an 'Order'.

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While delivering an order the cause title need not be typed as was the practice when the order in E.A.No.6046 of 2011 was delivered. Further, the jure portion, “pronounced on this day” would not be found. It will also not be found at the end of this order. Therefore, the contentions of the learned counsel raising serious doubt over the conduct of the learned Master has to be rejected as having no basis whatsoever.

65.In the notes papers, the learned Master had very clearly stated on 23.08.2024 that the matter had been listed after 1 and ½ years. It was not his fault that the matter had not been listed. As anyone with a little knowledge of the procedure in the High Court is aware, once a bundle is kept inside the almirah and not taken out more often deliberately, it disappears for ever. The pendency is not due to the fact that the matters listed before the Court are not disposed but due to matters never being listed before the Court for adjudication and kept away hidden in the almirahs of the record sections.



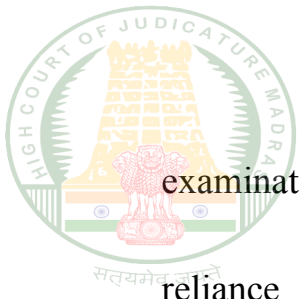
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66. Even in the notes paper relating to the execution petition / E.P.No.83 of 2002 the learned Master had noted that E.A.No.6045 of 2011 is pending. The original records show a continuous flow in the notings of the hearing dates which do not give room to any suspicion.

67. It is also to be noted that when the matter had been listed after 1 and ½ years, the learned counsels had filed written arguments, and all points raised had been considered in their correct perspective by the learned Master.

68. I therefore very categorically hold that no case has been made for remand of the matter back to the Court of the learned Master.

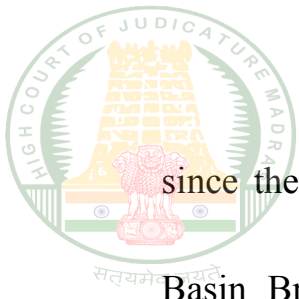
69. In the order under challenge, the learned Master had very clearly stated the reasons why he had dismissed E.A.No.6045 of 2011. Those reasons have not been challenged in full force except to state that the Tahsildar is not competent to speak about the door number of the property. A careful



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examination of the communication of the Tahsildar shows that he had placed reliance on the Permanent Land Register maintained in the office of the Tahsildar, Fort-Tondiarpet Taluk, which has the details of the property giving the name of the locality, the name of the street, the survey number, the door number, the extent of land and the names of the owners as given in the adangal. This Permanent Land Register is a Register maintained in the office of the Tahsildar by the Revenue authorities and not by the Corporation of Chennai. The Corporation of Chennai has only the details relating to the door number of the property for assessment of property tax without reference to the survey number or even the boundaries. The boundaries would be given in the patta which is again issued by the Tahsildar and is an extract from the Permanent Land Register. I therefore hold that the Tahsildar is the most competent officer to speak about the details of a property as found in the Permanent Land Register maintained in his/her office.

70.The arguments of the learned counsel that the Master should have relied on the details as given by the Corporation of Chennai are also rejected



since the Assistant Revenue Officer – II, Zone – II, Corporation of Chennai,

Basin Bridge Road, Chennai – 600 079 in his letter dated 17.11.2011 in

ZO.II/RDC.No./1856/2011 had very clearly spoken about the Old Door No.158-

A, Adam Sahib Street, Royapuram Chennai – 600 013 and about the property

tax for the said building.

71.The learned Master had given very conclusive and irrefutable reasons for rejecting the xerox copy of the Deed of Hiba marked as Ex.P1. He had dealt with it extensively. Quite apart from the witnesses and the notary and the scribe not having been examined, he had also raised suspicion about the very genuinity of the document, and had noted that except for the first sheet which was in stamp paper of twenty rupees, all other sheets were white sheets. The date had been typed in the first page, and thereafter mentioned in writing only by the advocate and notary and by none else.

72.The learned Master had also noted that the stamp paper had been purchased on 26.01.1993 and the Deed had been executed on 09.04.1993. Even



though it had been drafted by an advocate and attested by the notary no explanation has been given as to why a stamp paper of proximate date had not been used. The learned Master had very categorically come to the conclusion that the appellants had failed to prove the execution of the Hiba.

73. With respect to the mutation of the revenue records, it had been very clearly held by the learned Master that the revenue records were mutated only after the filing of the application and not immediately after the execution of the Hiba.

74. With respect to possession, it had been stated by the learned Master that it was only natural that the applicants were in possession since they were the legal heirs of the 2nd defendant in the suit / Mrs.A.L.Hamidha Beevi who was their mother. It was also noted that she had also executed a Settlement Deed in their favour, about which none of the parties had, very strangely not even whispered a single letter. It is not known why the Settlement Deed had been kept aside and strong reliance was placed on the Hiba. It has not been

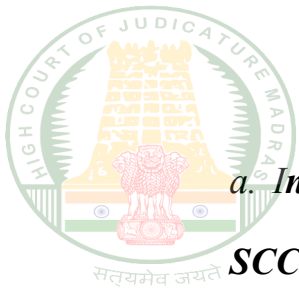


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explained why the Settlement Deed was ever executed. These factors only lead to the conclusion that the Settlement Deed was executed only because the Deed of Hiba never existed and had been created for the purpose of this case after the execution of the Settlement Deed. Either way I hold that fraud has been played on the Court by producing Ex.P1, a xerox copy without examining any of the witnesses to the document, without examining the scribe / advocate who drafted the document and without examining the notary / advocate before whom it was attested and without producing the original document.

75. In a very recent judgment of the Hon'ble Supreme Court reported in ***2025 SCC OnLine SC 1501, Vishnu Vardhan alias Vishnu Pradhan V. State of Uttar Pradesh and Others***, the issue of fraud had been discussed and the Hon'ble Supreme Court had gone to the extent of recalling an earlier order which had been obtained by fraud. The Hon'ble Supreme Court had held as follows:

61. In decisions abound, the Courts have consistently nullified orders obtained through fraudulent means. Key excerpts from some of these decisions read thus:



a. *In United India Insurance Co. Ltd. v. Rajendra Singh, (2000) 3*

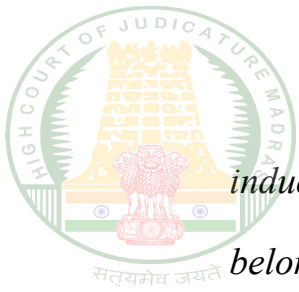
SCC 581, this Court reiterated that fraud unravels everything:

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3. ***“Fraud and justice never dwell together”*** (*fraus et jus nunquam cohabitant*) is a pristine maxim which has never lost its temper over all these centuries. Lord Denning observed in a language without equivocation that “no judgment of a court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything” (*Lazarus Estates Ltd. v. Beasley, [[1956] 1 Q.B. 702 : [1956] 1 All ER 341 : [1956] 2 WLR 502 (CA)]*).

b. *In Shrisht Dhawan (Smt) v. Shaw Bros, (1992) 1 SCC 534, it was held:*

20. ***Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence.*** It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, ‘wing me into the easy-hearted man and trap him into snares’. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of



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inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury.....

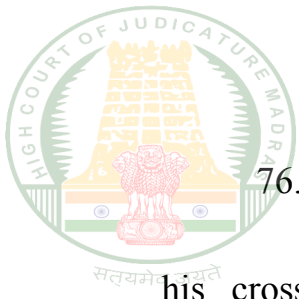
c. In A.V. Papayya Sastry v. Govt. of A.P., (2007) 4 SCC 221, this Court held:

21. “Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed:

“Fraud avoids all judicial acts, ecclesiastical or temporal.”

22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order—by the first court or by the final court—has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.”

(Emphasis Supplied)



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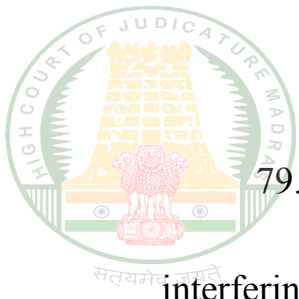
76.As a matter of fact, the falsity of PW-1 Syed Abuthahir is exposed in his cross examination when he was shown the Settlement Deed dated 20.11.2006 and he denied the same. The question and answer were as follows:

“Q:The certified copy of settlement deed dated 20.11.2006 registered as Doc.No.3352 of 2006 at SRO, Royapuram is show to the witness. This is the settlement deed executed by your mother in favour of you, your brother and your sister?

A: No.”

77.A careful perusal of Ex.P1 the xerox copy of the Deed of Hiba, also shows that in the schedule while giving the door number of the property, it is very evident that the letter 'A' after the words 'Door No.158' had been inserted and therefore, it creates a strong suspicion of an attempt to deliberately introduce a fraudulent document into Court. The original document has not been deliberately produced.

78.I find no grounds to differ from the reasonings of the learned Master. A reappraisal of the Deed of Hiba, Ex.P1 shows that the document is a xerox copy and it is not admissible in evidence and it had not been proved in manner known to law.



79.I therefore hold that the applicants have not made out any case for interfering with the order of the learned Master dated 11.09.2024. These applications stand dismissed.

80.In view of the concerted efforts taken to frustrate execution of a decree initially granted on 20.07.2001 more than 24 years back, I further hold that the applicants also have to bear the costs of the judicial proceedings. Accordingly, these applications are dismissed with costs of Rs.50,000/- for each application, total costs of Rs.1,50,000/- to be paid to the decree holder apart from the decretal amount. The costs should be paid within a period of four weeks from this date, failing which the decree holder / MMTC Limited, is at liberty to apply to the Collector, Chennai District, to recover the amount under the provisions of the Tamil Nadu Revenue Recovery Act, 1864.

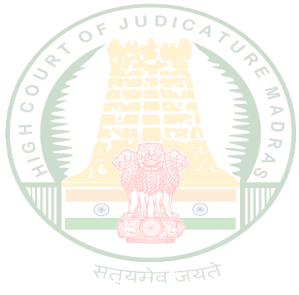
01.08.2025

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Index:Yes/No

Speaking/Non-speaking order

Neutral Citation:Yes/No



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48/48

A.Nos.5644, 5645 & 5646 of 2024



C.V.KARTHIKEYAN J.

smv

Pre-Delivery Order made in
A.Nos.5644, 5645 & 5646 of 2024
in
E.P.No.83 of 2002
in
C.S.No.777 of 1995

01.08.2025