



SA No. 1093 of 2008



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2026

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CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

SA No. 1093 of 2008

1. Vasuki

W/o.Selvaraj, South Main Road,
Kulikkarai Village, Kudavasal,
Tiruvavur. and 3 Others

2.Kathamuthu

(transpose As Respondent 2)
S/o.Govindasamy, Kailasapuram,
Tiruchirappalli.

3.Indirani(transpose As Respondent 3)

W/o. Kathamuthu, Kailasapuram,
Tiruchirappalli.

4.Mohanraj(transpose As Respondent 4)

S/o.Kathamuthu, Kailasapuram,
Tiruchirappalli.

Appellant(s)

Vs

1. A.G.Subramaniam

S/o.A.S.Ayyasamy, 74, Mudaliar Street,
Kulikkarai, Kudavasal, Thiruvavur.

2.Kathamuthu

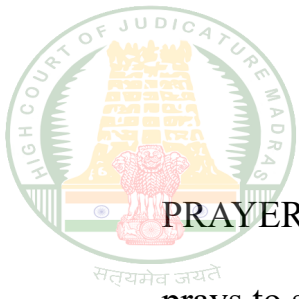
S/o.Govindasamy, Kailasapuram,
Tiruchirappalli.

3.Indirani

W/o. Kathamuthu, Kailasapuram,
Tiruchirappalli.

4.Mohanraj

S/o.Kathamuthu, Kailasapuram,
Tiruchirappalli.



Respondent(s)

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, prays to set aside the judgment and decree dated 21.04.2008, made in AS No.19 of 2007, on the file of the Subordinate Court, Tiruvarur, reversing the judgment and decree dated 16.12.2006, made in OS No.42 of 2005, on the file of the District Munsif Court, Tiruvarur.

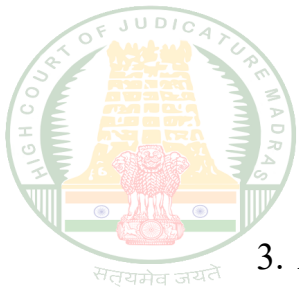
For Appellant(s): M/s.A.Muthukumar
P.Srividhya

For Respondent(s): M/s.K.Gnanasundaram
N.Sakthivel For R1
M/s.T.Banumathy
B.Satish Babu
D.Praveen For Rr2 To 4

JUDGEMENT

The 1st plaintiff / appellant has filed this appeal to set aside the judgment and decree dated 21.04.2008, made in AS No.19 of 2007, on the file of the Subordinate Court, Tiruvarur, reversing the judgment and decree dated 16.12.2006, made in OS No.42 of 2005, on the file of the District Munsif Court, Tiruvarur.

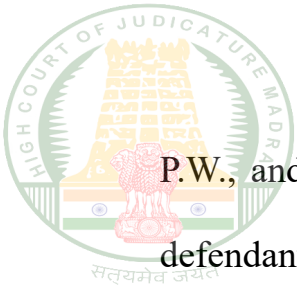
2. For the sake of convenience, the parties herein are referred to as they were ranked in the suit.



3. Aggrieved by the reversing findings of the first appellate Court, the first plaintiff has preferred the present Second Appeal. The other plaintiffs have been transposed as Respondents 2 to 4, as they are not supporting the first plaintiff.

4. Before the trial Court, the plaintiffs filed O.S. No. 42 of 2005 seeking a declaration that the decree obtained by the first defendant in O.S. No. 337 of 1995 is null and void, and consequently prayed for permanent injunction in respect of the four items of the suit properties described in the plaint schedule. The said suit was contested by the first defendant by stating that he had been in possession and enjoyment of the suit properties for several decades, and that the plaintiffs were neither the lawful owners of the properties nor entitled to challenge the decree obtained by him before the Court of law. According to him, upon establishing his prima facie case, he had obtained a decree for permanent injunction in O.S. No. 337 of 1995. Since the plaintiffs were not parties to the said suit, they were not entitled to challenge the decree by filing the present suit. Therefore, he prayed for dismissal of the suit.

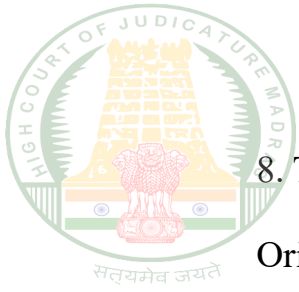
5. Before the trial Court, both the plaintiffs and the defendant adduced oral and documentary evidence. On the plaintiffs side, plaintiff was examined as



P.W., and Ex.A.1 to Ex.A20 documents were marked. On the defendant side, defendant was examined as D.W.1 and Ex.B1 to Ex.26 documents were marked.

6. Upon consideration of the oral and documentary evidence, the learned trial Judge held that the decree obtained by the defendant had been secured by suppressing material facts and was therefore fraudulent. Accordingly, the decree in O.S. No. 337 of 1995 was declared null and void. The trial Court also held that the plaintiffs were in possession and enjoyment of the suit properties and consequently granted the relief of permanent injunction as prayed for.

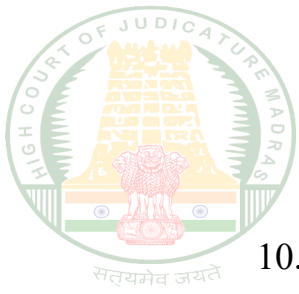
7. Challenging the said findings, the defendant preferred A.S. No. 19 of 2007 before the learned Subordinate Judge, Tiruvarur. The first appellate Court re-appreciated the evidence, framed separate points for consideration, and ultimately concluded that the plaintiffs were not the lawful owners of the suit properties and therefore had no right to challenge the decree obtained by the defendant in O.S. No. 337 of 1995. Accordingly, the appeal was allowed and the judgment and decree of the trial Court were set aside. Aggrieved by the reversing findings of the first appellate Court, the first plaintiff has preferred the present Second Appeal.



8. The brief facts of the case are as follows:

Originally, O.S. No. 42 of 2005 on the file of the District Munsif Court, Tiruvarur, was filed by four plaintiffs against the defendant Subramaniam seeking the reliefs of declaration and permanent injunction in respect of four items of properties. According to the plaintiffs, the first item of the suit properties was purchased by all the plaintiffs under separate sale deeds from one Krishnaswamy Mudaliyar. Thereafter, the first plaintiff borrowed a loan by mortgaging the title deeds. Subsequently, the first plaintiff purchased the property in the year 1997, while the other plaintiffs purchased their respective portions in the year 2003. Ever since their purchase, they have been in absolute possession and enjoyment of the suit properties. According to them, the defendant had no right, title, or interest over the suit properties.

9. The plaintiffs further contended that the defendant, claiming himself to be a relative of their vendor Krishnaswamy Mudaliyar and his legal heirs, relied upon the decree obtained in O.S. No. 337 of 1995. However, according to the plaintiffs, the defendant had earlier filed three suits for specific performance against one Kamalammal, the sister of Krishnaswamy Mudaliyar and the original owner of a larger extent of 54 acres, which included the suit properties. The said suits were O.S. Nos. 142, 143 and 144 of 1994, wherein the defendant alleged that Kamalammal had agreed to sell the properties to him and had also handed over possession pursuant to the sale agreements.



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10. Pending those suits, the defendant filed another suit in O.S. No. 13 of 1995, later renumbered as O.S. No. 337 of 1995, claiming that he was in possession of the properties based upon the alleged sale agreements. The specific performance suits filed by the defendant were dismissed by the trial Court, holding that the alleged agreements of sale were forged and fabricated. The defendant preferred appeals in A.S. Nos. 292 and 293 of 1998 before the District Court, Nagapattinam, and the same were also dismissed on 11.08.1997 and 16.07.1998 respectively.

11. Thereafter, O.S. No. 337 of 1995 filed by the defendant for bare injunction came up for hearing. Since the defendants therein remained ex parte, an ex parte decree for permanent injunction was passed on 06.09.1999 holding that the defendant was in possession of the suit properties on the strength of the alleged sale agreements.

12. The plaintiffs contended that the very same sale agreements had already been declared forged and invalid by the competent Court. However, suppressing the earlier adjudication, the defendant fraudulently obtained the decree for injunction and thereafter caused interference with the plaintiffs' possession and enjoyment of the suit properties. Therefore, the plaintiffs came forward with the present suit seeking declaration that the decree in O.S. No. 337

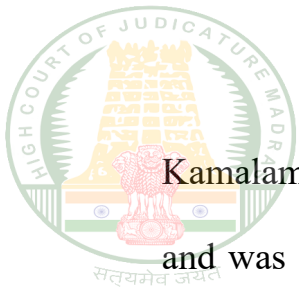


of 1995 is null and void, having been obtained by fraud, along with consequential reliefs.

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13. In the written statement, the defendant disputed the plaintiffs' title and possession and contended that the present suit had been instituted at the instigation of one Pakirisamy. According to the defendant, he had already obtained a decree for permanent injunction against Pakirisamy in O.S. No. 337 of 1995, and with a view to defeat the effect of the said decree, Pakirisamy created sale deeds in favour of the plaintiffs, who are his daughter-in-law and close relatives.

14. The defendant further contended that the plaintiffs had constructive knowledge of the decree passed in O.S. No. 337 of 1995. He also disputed the title of the plaintiffs' vendor and stated that the vendor had neither title nor possession over the suit properties. According to the defendant, an extent of 54 acres, including the suit properties and adjoining lands, originally belonged to one Gopalsamy Mudaliyar. After his death, his son Kalyanasundaram inherited the properties. Kalyanasundaram died issueless in the year 1959, leaving behind his wife Kamalammal, his brother Sokkappa Mudaliar, and three sisters. Since no partition had taken place, Kamalammal filed O.S. No. 59 of 1959 before the Subordinate Court, Mayiladuthurai, seeking partition. The said suit ended in a compromise decree, under which 54 acres of wet and dry lands were allotted to

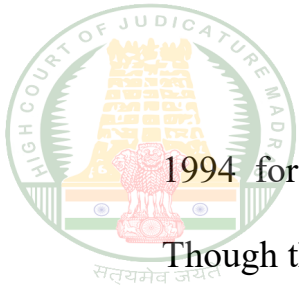


Kamalammal. According to the defendant, he was a relative of Kamalammal and was entrusted with the management and possession of the said lands from the year 1964 onwards, and he continued in possession thereafter.

15. The defendant further stated that in the year 1970 Kamalammal executed a registered settlement deed in favour of her brother Krishnaswamy in respect of 14½ acres of wet lands. With regard to the remaining lands, he claimed rights under separate registered sale agreements and also obtained patta in his favour. He further stated that several litigations had been initiated by Krishnaswamy in O.S. Nos. 27 and 28 of 1997 and on earlier occasions, all of which were dismissed.

16. According to the defendant, Kamalammal had borrowed money from several persons and, in order to discharge her debts, entered into sale agreements in his favour and in favour of his family members between the years 1989 and 1991 in respect of nearly 38 acres of land. He further contended that Krishnaswamy had lodged complaints before the Kodavasal Police Station, but those complaints were not sustainable in law.

17. The defendant further contended that while Kamalammal was under the care and custody of her brother Krishnaswamy and was prevented from executing sale deeds, he was constrained to file O.S. Nos. 142, 143 & 144 of



1994 for specific performance before the Subordinate Court, Nagapattinam.

Though those suits were dismissed, and the appeals in A.S. Nos. 292 and 293 of

1998 were also dismissed, she had preferred Second Appeals. The defendant also contended that, as Krishnaswamy had instigated several persons to interfere with his possession, he filed O.S. No. 337 of 1995 impleading Kamalammal, Krishnaswamy and others, including Pakirisamy. Since none of them contested the proceedings, they were set ex parte and an ex parte decree for permanent injunction was granted on 28.09.1995, which according to him still remains in force. He further stated that even during her lifetime Kamalammal filed O.P.No.40 of 1998 against the defendant, but the same was dismissed in the year 1999. Referring to the various litigations, the defendant contended that Krishnaswamy had made repeated attempts to dispossess him from the suit properties and had ultimately instigated the plaintiffs to file the present vexatious suit. On the said grounds, the defendant prayed for dismissal of the suit.

18. On consideration of the oral and documentary evidence, the learned trial Judge framed three issues for determination. Taking note of the fact that the sale deeds stand in the names of the plaintiffs and relying upon Exhibits A3 to A5, the trial Court held that the plaintiffs were the owners of the suit properties. The trial Court also relied upon the revenue records, namely patta and chitta,

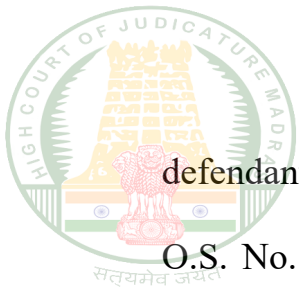


marked as Exhibits A1, A2 and A6 to A11, and held that after the purchase, the revenue records had been transferred and mutated in the names of the plaintiffs.

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19. The trial Court further considered the judgment and decree passed in O.S. No. 337 of 1995, marked as Exhibit A16. The learned trial Judge also took note of the judgments passed in O.S. Nos. 142 to 144 of 1994, wherein it had been specifically held that the defendant, who was the plaintiff in those suits, was not in possession of the suit properties and that the sale agreements relied upon by him were false, forged and fabricated. Consequently, those suits were dismissed. However, suppressing those findings, the defendant subsequently obtained a decree for permanent injunction in O.S. No. 337 of 1995 by claiming possession over the property on the strength of the very same sale agreements, though those agreements had already been declared invalid and unenforceable. Therefore, the trial Court held that by suppressing the earlier proceedings and by placing false facts before the Court, the defendant had obtained the decree in O.S. No. 337 of 1995 fraudulently, and accordingly declared the same as null and void. The trial Court further held that the plaintiffs had established possession through the sale deeds and revenue records and consequently granted the relief of permanent injunction as prayed for.

20. The trial Court also discussed the various litigations between the parties and, on an overall consideration of the evidence, ultimately held that the



defendant had suppressed material facts and fraudulently obtained the decree in O.S. No. 337 of 1995 and therefore the said decree was liable to be declared null and void.

21. Aggrieved by the said findings, the defendant preferred an appeal. The learned first appellate Judge framed separate points for consideration. While considering the validity of the decree in O.S. No. 337 of 1995, the first appellate Court observed in paragraph No. 20 that the specific performance suits filed by the defendant, wherein he had claimed possession based upon the alleged sale agreements, had already been dismissed and the relief of specific performance had been refused. The first appellate Court also observed that the sale agreements relied upon by the defendant had already been held to be fabricated and invalid and that the claim of possession based upon those documents had not been accepted by the civil Court.

22. The first appellate Court further observed that the defendant had obtained the decree in O.S. No. 337 of 1995 on the basis of the very same sale agreements, despite the earlier adjudication holding them to be invalid. It also discussed the various litigations between Krishnaswamy, the brother of the original owner Kamalammal, and the defendant, and held that disputes and police complaints had arisen between them on account of possession over the properties.

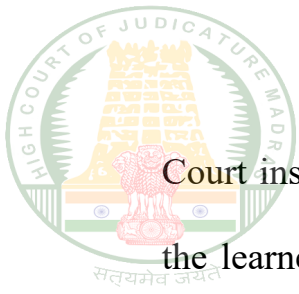


23. The first appellate Court further noted that after dismissal of the specific performance suits there had been certain compromise talks between the parties and that a Will said to have been executed by Kamalammal dated 02.04.2002 in favour of one Rajagopal had also been produced. On consideration of those documents, the first appellate Court ultimately held that the defendant was in possession of the suit properties. It further held that no sale deed had been executed by Kamalammal in favour of Krishnaswamy and that Krishnaswamy had claimed title only after the death of Kamalammal without producing valid documents in support thereof. Therefore, the first appellate Court held that the sale deeds relied upon by the plaintiffs did not confer valid title upon them and that they were not entitled to challenge the decree passed in O.S. No. 337 of 1995, notwithstanding the observation that the decree had been obtained by suppression of facts. Accordingly, the appeal was allowed. Aggrieved by the same, the present Second Appeal has been preferred.

24. The learned counsel for the appellant raised the following grounds.

(i) The Lower Appellate Court erred in holding that the plaintiffs have no locustandi to pray for declaration that the decree in O.S.No.337 of 1995 was obtained by fraud on Court and so null and void.

(ii) The learned counsel for the appellant contended that though the first appellate Court had itself concluded that the decree in O.S. No. 337 of 1995 had been obtained by fraud, it had erroneously set aside the findings of the trial



Court instead of declaring the decree as null and void. Therefore, according to the learned counsel, dismissal of the suit by the first appellate Court is illegal and unsustainable in law.

(iii) The learned counsel further submitted that the plaintiffs are persons claiming through Kamalammal and that Kamalammal herself had sold the first item of the suit properties to the plaintiffs. The certified copy of the sale deed is sufficient to establish title and possession. However, the first appellate Court failed to appreciate the same and erroneously proceeded on the ground that the original sale deed had not been produced, which according to the appellant is a clear misconception of both law and facts.

(iv). The learned counsel further argued that the alleged Will dated 02.04.2002, marked as Exhibit B26, had not been proved in the manner known to law and therefore ought not to have been relied upon by the first appellate Court. However, undue weight had been given to the said document, which according to the appellant is erroneous and liable to be set aside.

(v) He further contended that the defendant had claimed possession without producing any valid document. On the contrary, the plaintiffs had produced title deeds and revenue records to establish possession and enjoyment, which had been rightly appreciated by the trial Court. The first appellate Court failed to properly consider those documents and erroneously dismissed the suit. Therefore, the findings of the first appellate Court are perverse and liable to be interfered with.



25. By way of reply, the learned counsel for the first respondent/defendant contended that ever since the year 1964, when the larger extent of 54 acres including the suit properties had been allotted to Kamalammal under the compromise decree, the defendant had been placed in possession and management of the entire extent and had been cultivating and maintaining the lands on behalf of Kamalammal. According to the respondent, Krishnaswamy, the brother of Kamalammal, attempted to unlawfully dispossess him and initiated several litigations against him. At the instigation of the said Krishnaswamy, the plaintiffs have now come forward with the present vexatious suit. He further contended that the sale deeds relied upon by the plaintiffs are not valid in law. According to the respondent, the first appellate Court had rightly appreciated the evidence and no interference is warranted.

26. The learned counsel for the respondent further submitted that dismissal of the specific performance suits has no direct connection with the decree obtained in O.S. No. 337 of 1995. In the said suit, the defendant had only sought permanent injunction against several persons who were allegedly interfering with his possession. Since the defendants therein remained ex parte, a decree came to be passed in his favour. The said decree continues to remain in force and has not been set aside by any of the parties to the said proceedings. Since the present plaintiffs were not parties to O.S. No. 337 of 1995, they have no locus standi to challenge the decree by filing the present suit. On those



grounds, the learned counsel prayed for dismissal of the Second Appeal.

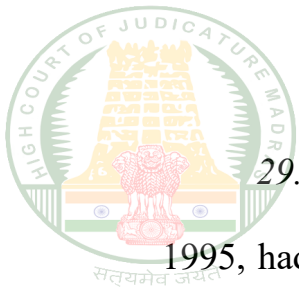
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27. On consideration of the rival submissions, the appeal was admitted on 31.03.2010, on the following substantial questions of law.

A. Whether a decree obtained by fraud played on court is a nullity and non-be est in law, which can either ignored or challenged not only by a person claiming through a party to such suit, but also by a third party?

B. Whether the lower appellate court has committed an error in law in non-suiting the plaintiff for the relief sought for on the ground that he had no locus standi to challenge the decree allegedly obtained by playing a fraud on the court in the prior suit while holding that such a decree could have been obtained by playing fraud on the court?

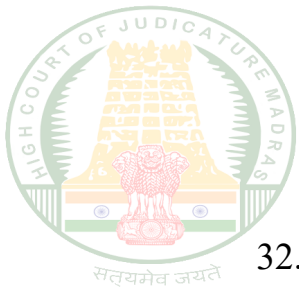
28. The principal contention of the plaintiffs is that the defendant, by suppressing material facts, fraudulently obtained an ex parte decree in O.S. No. 337 of 1995 and thereafter interfered with the plaintiffs' peaceful possession and enjoyment of the suit properties, which according to them belong to them by virtue of valid sale deeds.



29. It is an admitted fact that the defendant, as plaintiff in O.S. No. 337 of 1995, had filed the suit against nine defendants, and the present plaintiffs were not parties to the said proceedings. However, the father-in-law of the first plaintiff, namely Pakirisamy, was one of the defendants in the said suit.

30. According to the plaintiffs, the defendant claimed possession over the suit properties on the basis of sale agreements said to have been executed by Kamalammal. However, those very sale agreements had already been declared invalid, false and fabricated in O.S. Nos. 142 to 144 of 1994. After dismissal of those suits, the defendant proceeded with O.S. No. 337 of 1995 and claimed possession over the properties on the strength of the same sale agreements and obtained an ex parte decree. Therefore, the plaintiffs specifically contend that the decree in O.S. No. 337 of 1995 was obtained by suppression of material facts and by misleading the Court.

31. The judgment and decree in O.S. No. 337 of 1995 have been marked as Exhibits A16 and A17. It is also evident that the defendant had filed O.S. Nos. 142, 143 and 144 of 1994 relying upon the very same agreements of sale and all those suits were dismissed in the year 1997. The appeals preferred by him were also dismissed.



32. It is evident that as early as in the year 1997, the sale agreements relied upon by the defendant had already been declared invalid, false and fabricated and were held not to be genuine documents. Thereafter, despite such findings, the defendant obtained a decree in O.S. No. 337 of 1995 on 06.09.1999 by once again relying upon the very same sale agreements. In the said suit, he claimed possession over the suit properties and sought the relief of permanent injunction. However, admittedly, the very same agreements had already been disbelieved and declared invalid by the competent civil Court. Therefore, by suppressing the earlier proceedings and the findings rendered therein, the defendant fraudulently obtained an ex parte decree in O.S. No. 337 of 1995.

33. The first appellate Court has also rightly observed that once the sale agreements relied upon by the defendant had already been declared invalid, the defendant was not entitled to claim the relief of permanent injunction in O.S.No.337 of 1995 on the basis of those very documents. However, despite recording such a finding, the first appellate Court strangely proceeded to allow the appeal on the ground that the plaintiffs had no locus standi to challenge the said decree.

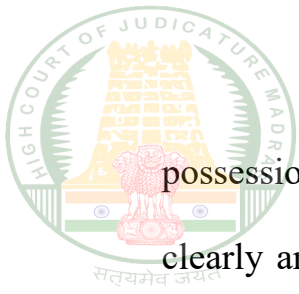
34. As rightly contended by the learned counsel for the appellant, the



plaintiffs trace their title through the sale deeds executed by Kamalammal and through the legal heirs of Kamalammal. It is not in dispute that Kamalammal died intestate and had no issues but her brother only took case of her. It is also an admitted fact that the suit properties had been allotted to her share under the earlier compromise decree. Even according to the defendant, he is only a relative of Kamalammal and was originally permitted to manage the properties on her behalf. However, he has now claimed title as well as possession over the suit properties based solely upon the sale agreements, which had already been declared false and invalid. Apart from the said agreements, no independent document has been produced by the defendant to substantiate either title or lawful possession.

35. Though several litigations had arisen between Krishnaswamy, the brother of Kamalammal, and the defendant, those disputes are not directly in issue in the present proceedings. The limited question for consideration is whether the decree obtained by the defendant in O.S. No. 337 of 1995 was obtained by suppression of material facts and by practising fraud upon the Court.

36. As already discussed, after dismissal of the suits for specific performance, the defendant suppressed the material facts and obtained a decree for permanent injunction by representing before the Court as though he was in

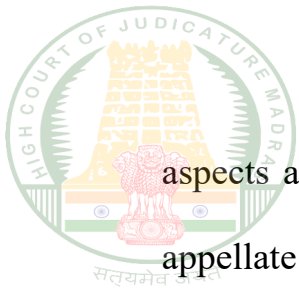


possession of the properties based upon valid sale agreements. Such conduct clearly amounts to abuse of the process of Court. Once it is established that a decree has been obtained by fraud practised upon the Court, the same can be questioned and set aside at any stage of the proceedings.

37. It is a settled principle of law that though a decree ordinarily cannot be challenged by way of a separate suit, an exception is recognized when such decree has been obtained by fraud practised upon the Court. The said principle squarely applies to the facts of the present case. In the case on hand, the defendant has not only suppressed the earlier judicial findings, but has also attempted to rely upon documents which had already been disbelieved by the competent Court in order to claim possession over the suit properties.

38. At the highest, the defendant himself admits that he had been permitted only to manage the properties on behalf of Kamalammal. However, after her demise, instead of permitting her legal heirs or persons claiming through her to enjoy the properties, he continued to assert exclusive possession and enjoyment on the strength of the decree obtained by suppression of facts. The conduct of the defendant clearly indicates an attempt to unlawfully claim and retain the properties.

39. The first appellate Court failed to properly consider these material



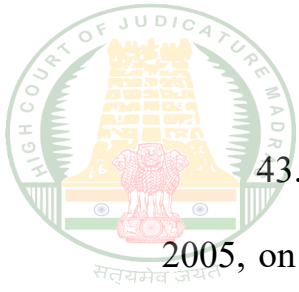
aspects and erroneously dismissed the suit. Therefore, the findings of the first appellate Court are liable to be set aside.

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40. Further, as on date, the plaintiffs have established title over the suit properties through Exhibits A3, A4 and A5. Being lawful owners under valid sale deeds, they are entitled to challenge the decree obtained by the defendant, even though they were not parties to O.S. No. 337 of 1995.

41. By practising fraud upon the Court and thereafter interfering with the plaintiffs' peaceful possession and enjoyment of the suit properties on the strength of the decree obtained in O.S. No. 337 of 1995, the defendant has given rise to a valid cause of action for the plaintiffs to institute the present suit. Therefore, the plaintiffs are entitled to maintain the present proceedings.

42. Merely because the plaintiffs were third parties to the earlier decree, their right to challenge the same cannot be denied when fraud is specifically pleaded and established. Accordingly, the substantial questions of law A and B are answered in favour of the appellant. It is held that even a third party is entitled to challenge a decree when it is shown that the same was obtained by fraud practised upon the Court.

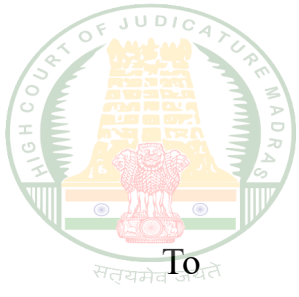


43. The findings rendered by the learned trial Judge in O.S.No.42 of 2005, on the file of the District Munsif Court, Tiruvarur, are sustained and the contrary findings of the first appellate Court in A.S.NO.19 of 2007, on the file of the Subordinate Court, Tiruvarur are set aside.

44. Accordingly, the Second appeal is allowed. There shall be no order as to costs.

08-06-2026

Index: Yes/No
Speaking/Non-speaking order
Internet: Yes
Neutral Citation: Yes/No
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SA No. 1093 of 2008



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1. The District Munsif, Tiruvarur.
2. The Subordinate Judge, Tiruvarur.
3. The Section Officer, VR Section,
High Court of Madras, Chennai.



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SA No. 1093 of 2008



T.V.THAMILSELVI J.

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