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IN THE HIGH COURT OF AT MADRAS

DATED: 04-11-2026

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THE HON'BLE MR.JUSTICE S. SOUNTHAR

CRP No. 6165 of 2026

and CMP.No.26685 of 2026

CNR: {HCMA012272072026}

Case QR

D.Thangavel

..Petitioner(s)

Vs

1. D.Rajammal

2. D.Dhanapal

..Respondent(s)

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the compromise decree and judgement dated 03.07.2025 made in I.A.No.2 of 2025 and O.S.No.97 of 2024 on the file of the District Munsif Court, Komarapalayam by exercising the power conferred under Article 227 of the Constitution of India.

For Petitioner(s): Mr.N.Manokaran
for Mr.D.Gopal

For Respondent(s): Mr.R.Marudhachalamurthy

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ORDER

This Civil Revision Petition is filed challenging the compromise decree passed by the trial Court in final decree application in a partition suit in I.A.No.2 of 2025 in O.S.No.97 of 2024 on the file of the District Munsif Court, Komarapalayam.

2. According to the petitioner, the suit 'A' and 'B' schedule properties are ancestral and self acquired properties of his father SN.Duraisamy. The 1st respondent is the mother of the petitioner and second respondent is the brother of the petitioner. After the death of SN.Duraisamy, the 1st respondent filed a suit for partition against the 2nd respondent without impleading the petitioner herein. As per the plaint averment, the said SN.Duraisamy during his lifetime executed a Will dated 20.10.2019 bequeathing the suit 'A' schedule property in favour of respondents 1 and 2. It was also pleaded that SN.Duraisamy by another Will dated 15.09.2020 bequeathed the suit 'B' schedule property in favour of respondents 1 and 2. Thus, the respondents are claiming exclusive right over both 'A' and 'B' schedule properties under the Wills executed by SN.Duraisamy.

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3. The 1st respondent filed a suit without impleading the petitioner and got compromise decree. It is stated that as per the compromise decree, the entire properties have been given to the 2nd respondent, the same has been done without impleading the name of the petitioner. Aggrieved by the compromise decree, the petitioner filed the instant Civil Revision Petition to set aside the same on the ground that it was obtained by collusion and fraud.

4. The learned counsel appearing for the petitioner would vehemently contend that the respondents suppressed the existence of yet another son of SN.Duraisamy namely the petitioner herein and obtained compromise decree by playing fraud and collusion and suppressing material facts. Therefore, according to him, the compromise decree obtained by them is liable to be set aside. The learned counsel relied on the judgment of Apex Court in ***Geeta Bai and others Vs. K.Arjun Singh and others passed in SLP (Civil).No.20008 – 20010 of 2026.***

5. The learned counsel appearing for the respondents would submit that the above mentioned SN.Duraisamy executed two Wills bequeathing the suit properties in favour of the respondents 1 and 2. Therefore, according to him, the petitioner has no right or interest in the said properties. In such circumstances, the learned counsel submitted that the

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petitioner is not entitled to question the compromise decree entered between the respondents 1 and 2.

6. It is seen from the plaint averment that the suit 'A' schedule properties are ancestral properties of SN.Duraisamy, father of the petitioner and the 2nd respondent and husband of the 1st respondent. The suit 'B' schedule properties are his self acquired properties. The above said SN.Duraisamy died on 13.04.2021. The respondents relied on two Wills allegedly executed by SN.Duraisamy in their favour dated 20.10.2019 and 15.09.2020.

7. The Will dated 20.10.2019 has been marked as Ex.A1 before the trial Court. A perusal of the same would indicate that there is a reference about the younger son of SN.Duraisamy namely the petitioner. Therefore, as per the plaint document Ex.A1 filed by the 1st respondent, SN.Duraisamy has got another son namely the petitioner. The validity of the Wills allegedly executed by SN.Duraisamy shall be tested only in the presence of all the legal heirs of SN.Duraisamy.

8. In the case on hand, the 1st respondent filed a collusive suit suppressing the existence of another heir of SN.Duraisamy and relied on the Wills and obtained a compromise decree. The averments found in the

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plaint and the plaint documents would clearly establish that the petitioner is a necessary party to the suit. The 1st respondent suppressed the existence of another heir and obtained a decree so as to defeat his right. Therefore, the contention of the petitioner that a fraud has been played by the respondents is clearly established in the light of the averments found in the plaint and also the plaint document marked as Ex.A1.

9. The Apex Court in ***Satluj Jal Vidyut Nigam Ltd. v. Raj Kumar Rajinder Singh (Dead) through LRs,*** reported **in 2019 (14) SCC 449**, after observing fraud vitiates every solemn act held that supervisory jurisdiction of the Court can be exercised in case of error apparent on the face of record, abuse of process and if the issues goes to the root of the matter. The relevant observation reads as follows:

> *75. In A.V. Papayya Sastry v. Govt. of A.P., (2007) 4 SCC 221, this Court as to the effect of fraud on the judgment or order observed thus: (SCC pp.231 &236-37, paras 21-22 & 38-39)*
>
> > *"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;*

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'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 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.

……

38. The matter can be looked at from a different angle as well. Suppose, a case is decided by a competent Court of Law after hearing the parties and an order is passed in favour of the applicant/Plaintiff which is upheld by all the courts including the final Court. Let us also think of a case where this Court does not dismiss Special Leave Petition but after granting leave decides the appeal finally by recording reasons. Such order can truly be said to be a judgment to which Article 141 of the Constitution applies. Likewise, the doctrine of merger also gets attracted. All orders passed by the courts/authorities below, therefore, merge in the judgment of this Court and after such judgment, it is not open to any party to the judgment to approach any court or authority to review, recall or reconsider the order.

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> *39. The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and nonest and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as nullity, whether by the court of first instance or by the final court. And it has to be treated as nonest by every Court, superior or inferior.*

Supervisory jurisdiction of the court can be exercised in case of error apparent on the face of the record, abuse of process and if the issue goes to the root of the matter.

10. The Apex Court in State of ***The State of Andhra Pradesh & Anr vs T.Suryachandra Rao*** reported in ***2005 (6) SCC 149***, while explaining the expression “fraud” observed that 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*. The relevant observation reads as follows:

> *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*

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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, 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. In ***Geeta Bai case*** cited supra, the Apex Court held that a compromise decree obtained by the brothers, without impleading necessary party to the suit, was a nullity in the eyes of law. The relevant observation reads as follows:

12. The compromise decree obtained by the brothers/legal heirs being the plaintiffs and the defendants without impleading Late Smt. Ballo Bai or her legal heirs, despite her

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being a necessary party to the suit, was a nullity in the eyes of law.

12. In the case on hand, as discussed earlier original owner Duraisamy [father of petitioner and 2nd respondent and husband of 1st respondent] died. He allegedly executed two Wills bequeathing suit properties to the 1st respondent and 2nd respondent. The 1st respondent filed a collusive suit for partition against one of her son 2nd respondent without impleading her other son 1st petitioner. She relied on the Will which disinherit one of the son namely, the petitioner. The validity of the Will has to be tested in the presence of the petitioner. In the plaint, the 1st respondent did not whisper about existence of another son (the petitioner). Hence, the motive behind non-impleadment is clearly to defeat the right of the petitioner. During the course of arguments of Civil Revision Petition, the petitioner's status as son of Duraisamy was not disputed. In fact, Ex.A1 Will relied on by the respondents refers about existence of another son, namely the petitioner. In view of admitted position and also in the light of facts established by averment in plaint and Ex.A1, Will, this Court feels it is a fit case to exercise the supervisory power under Article 227 of Constitution of India, as respondents suppressed material facts, abused process of Court and obtained a collusive compromise decree without impleading necessary party, whose rights are seriously affected by compromise decree. In normal course, I would have relegated the

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petitioner to explore other options available to him before the trial Court or Appellate Court. In the undisputed facts narrated above the collusion to defeat the rights of the petitioner is so apparent and hence I am inclined to exercise supervisory power.

13. In the light of the above discussion, the compromise decree obtained by the respondents 1 and 2 is found to be collusive and the same is vitiated by suppression of material facts. Hence, the judgment and decree impugned in this revision are set aside and the Civil Revision Petition stands allowed and the matter is remitted back to the trial Court with liberty to the 1st respondent to implead the petitioner as party defendant and proceed with the suit in accordance with law. The first respondent has to file necessary impleading petition within a period of four weeks from the date of receipt of a copy of this order. In case, the first respondent failed to file necessary application for impleading the petitioner, within the time stipulated, the suit shall stand automatically dismissed on the ground of non-joinder of necessary parties. No costs. Consequently, connected miscellaneous petition is closed.

04-11-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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To

The District Munsif Court,
Komarapalayam.

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S.SOUNTHAR, J.
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CRP No. 6165 of 2026

04-11-2026

https://www.mhc.tn.gov.in/judis