

(2011) 01 MAD CK 0225

In the Madras High Court

Case No : S.A. No. 990 of 2004, C.R.P. (NPD) No. 1108 of 2004, C.M.P. No's. 7300 and 7301 of 2004, V.C.M.P. No. 80 of 2006 and M.P. No. 1 of 2010 S.A. No. 990 of 2004

Gopi

APPELLANT

Vs

H. David and Johnson
Harris David Vs Sivagnanam

RESPONDENT

Date of Decision : 07-01-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Registration Act, 1908 — Section 17(1), 18, 28

Transfer of Property Act, 1882 — Section 41

Citation : (2011) 1 CTC 694 : (2011) 1 LW 806 : (2011) 112 RD 748

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : K. Sreekumaran Nair, in S.A. Nos. 990 and 991 of 2004 and M.V. Venkataseshan, in C.R.P. NPD No. 1108 of 2004, for the Appellant; M.V. Venkataseshan in S.A. No. 990 of 2004 and K.N. Thampi in S.A. No. 991 of 2004 and C.R.P. (NPD) No. 1108 of 2004, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—The second Defendant in O.S. No. 61 of 1999 and the Plaintiff in O.S. No. 25 of 1999 on the file of the Sub Court,

Padmanabhapuramis the Appellant in these two second appeals.

2. The Appellant filed the suit in O.S. No. 25 of 1999 for declaration of his title, possession of the plaint schedule property and for permanent

injunction restraining the Defendant., the Respondent in S.A. No. 991 of 2004 from interfering with his possession and enjoyment of the suit

property. The case of the Appellant in O.S. No. 25 of 1999 was that the suit property originally belonged to the first Respondent in S.A. No. 990

of 2004 and he executed a sale deed in favour of the second Respondent in S.A.

Nos. 990 of 2004 on 22.6.1996 and thereafter, the second Respondent in S.A. No. 990 of 2004 was enjoying the property and under a registered sale deed dated 3.2.1997, the said second Respondent in S.A. No. 990 of 2004 sold the property to the Appellant and since then the Appellant is enjoying the plaint schedule property and the first Respondent in S.A. Nos. 990 of 2004 claimed to have entered into an agreement of sale with the Respondent in S.A. No. 991 of 2004 in respect of the same property and the said Sivagnanam also filed O.S. No. 46 of 1997 against the first Respondent in S.A. No. 990 of 2004 and obtained a decree and on the basis of the decree, the Respondent in S.A. Nos. 991 of 2004 was attempting to interfere with the possession and enjoyment of the plaint schedule property and the first Respondent H. David has no right to execute an agreement of sale in favour of the Respondent in S.A. No. 991 of 2004, as even prior to the agreement of sale dated 1.10.1996, the first Respondent H. David has sold the property to the second Respondent in S.A. No. 990 of 2004 and therefore, the Respondent in S.A. No. 991 of 2004 cannot claim right and title over the suit property and on that basis, filed the suit for the relief's stated above.

3. The suit in O.S. No. 61 of 1999 was filed by one Haris David who is the first Respondent in S.A. No. 990 of 2004 for declaration and recovery of possession of the plaint schedule property. The case of Haris David, the first Respondent in S.A. No. 990 of 2004 was that the property belongs to him and he obtained loan of Rs. 9.25 lakhs from the Tamil Nadu Industrial Investment Corporation (TIIC) by mortgaging the said property and he was in need of some more money and for that purpose, he borrowed amount from the second Respondent in S.A. Nos. 990 of 2004 and the second Respondent viz., Johnson was demanding security for the loan advanced and for that purpose, he agreed to execute a mortgage deed in favour of the second Respondent Johnson and taking advantage of the confidence reposed on Mr. Johnson, a document dated 22.6.1996 was executed as if the first Respondent executed a sale deed in favour of the said Johnson and in that sale deed, a property was mentioned as security and the said property which was mentioned as security did not belong to the first Respondent H. David and for the purpose of getting the document registered in Kerala, that piece of property was

deliberately included by the second Respondent Johnson in S.A. No. 990 of 2004 as if the property belongs to the first Respondent H. David and therefore, the sale deed in favour of the second Respondent dated 22.6.1996 is void and it is also hit by Section 28 of the Registration Act and even after the execution of the sale deed dated 22.6.1996, the first Respondent continued to be in possession of the property and in the year 1999, the Appellant forcibly entered into the property and thereafter, he came to know that the second Respondent in S.A. No. 990 of 2004 fraudulently obtained a sale deed from him in respect of the suit property and therefore, filed the suit for recovery of possession.

4. The Trial Court decreed the suit in O.S. No. 25 of 1999 filed by the Appellant and dismissed the suit in O.S. No. 61 of 1999 filed by the first Respondent. Aggrieved by the same, the Defendant in O.S. No. 25 of 1999 viz., the Respondent in S.A. No. 991 of 2004 filed appeal in A.S. No. 97 of 2002 and the first Respondent in S.A. No. 990 of 2004 filed A.S. No. 115 of 2002. Both the appeals were allowed and as against the same, these two second appeals were filed by the Appellant.

5. Both the suits viz., O.S. Nos. 25 of 1999 and 61 of 1999 were jointly tried and common judgment was pronounced and both the appeals viz., A.S. Nos. 97 and 115 of 2002 were jointly heard and common judgment was pronounced.

6. During trial, the evidence was recorded in O.S. No. 25 of 1999 and the parties were examined only in O.S. No. 25 of 1999 and the Appellant was examined as PW1 and the second Respondent in S.A. No. 990 of 2004 was examined as DW1. The first Respondent in S.A. Nos. 990 of 2004 was examined as DW2 and the Respondent in S.A. No. 991 of 2004 was examined as DW5.

7. The second appeals were originally heard by this Court and by order dated 19.10.2006, they were allowed and in the SLP No. 5992 of 2007, the Honourable Supreme Court set aside the judgment passed by this Court in S.A. No. 990 of 2004 and C.R.P. No. 1108 of 2004 and remanded the matter to this Court for fresh disposal after framing substantial questions of law.

8. The following substantial questions of law were framed in these two second appeals:

i) Whether the lower court is right in overlooking the judgments reported in 1989 T.L.N.J.242 S. Joseph Nadar and Anr. v.T. Dasammal Nadathi

and two Ors. and AIR 1932 Mad 311(D.B.) Venkataswami v. Venkatasubbayya?

ii) Whether it is open to the Plaintiff in O.S. No. 61 of 1999 to contend that he was not aware of the nature of transaction under Ex.A1 in the light

of the decision reported in 1989 (2) MLJ 398 Madhavakrishnan v. Sami?

iii) Whether the Appellant/2nd Defendant in O.S. No. 61 of 1999 is entitled to protection u/s 41 of the Transfer of Property act, inasmuch as he is

a bona fide purchaser under Ex.A3 dated 3.2.1997 from the first Defendant, who was the ostensible owner in whose name the property was

purchased under Ex.A1 dated 22.6.1996? and

iv) Whether the lower appellate court is right in directing the trial court to appoint an Advocate Commissioner and Chartered Accountant to give

accounts relating to income and expense of cashew factory, depreciation of value to machineries, for the purpose of ascertaining proportionate

share payable by the Plaintiff towards the loan amount discharged by the second Defendant, in the absence of any such case pleaded or proved

either by the Plaintiff or the Defendant and whether the lower appellate court has exceeded the jurisdiction in granting such a relief?

9. The question involved in respect of substantial questions of law 1 and 2 is whether any sale deed registered in contravention of Section 28 of the

Registration Act is void or not.

10. In this case, it is admitted that in respect of the sale deed, Ex.A1 dated 22.6.1996 executed by Haris David in favour of Johnson the second

Respondent in S.A. No. 990 of 2004, the property which was conveyed belonged to Haris David and is also situate within Kanyakumari District.

Under the sale deed, Ex.A1, a property was shown as security for the sale of the property and the property which was shown as security is

admittedly not situate within Kanyakumari District, but situate within Kerala State. It is also not in dispute that the property which was shown as

security in Ex.A1 does not belong to the first Respondent Haris David. Therefore, in such circumstances, we will have to see what is the legal

effect of the sale deed dated 22.6.1996 and what is the legal sanctity attached to the sale deed and whether the said sale deed is valid in the eye of

law.

11. The Trial Court held that Ex.A1 sale deed is a valid sale deed and under that sale deed, Johnson, the second Respondent in S.A. Nos. 990 of

2004 got absolute right over the property and Ex.A1 was not obtained by Johnson from Haris David by practicing fraud. The lower appellate

court, relying upon the judgment reported in Vadde Venkataswami and Another Vs. Bommaraju Venkata Subbayya and Others, , AIR 1936 91

(Privy Council) and Exs.A12 to A22, held that the property which was given as security was not available and that the property which was given

as security did not belong to the vendor Haris David and therefore, he could not have given that property as security and the property was already

mortgaged to TIIC and therefore, Haris David would have executed only a mortgage and he would not have executed as a sale deed as claimed by

the second Respondent in S.A. No. 990 of 2004 and by practising fraud on Haris David, the first Respondent in S.A. No. 990 of 2004, the

second Respondent Johnson obtained the sale deed Ex.A1 and therefore, the sale deed in favour of Johnson is not a valid sale deed and hence,

the Appellant, who claimed to have purchased the said property from Johnson would not have got title over the same and therefore, the suit filed

by the Appellant in O.S. No. 25 of 1999 is not maintainable. The lower appellate court further held that the Appellant has paid Rs.

1,50,000/= towards sale consideration and therefore, the first Respondent viz., Haris David has to pay a sum of Rs. 1,50,000/= with interest to the

Appellant and the Appellant has to render accounts for the income he received by running the factory.

12. It is submitted by Mr. K. Sreekumaran Nair, learned Counsel for the Appellant in both the appeals that the lower appellate court, without

properly appreciating the provisions of Section 28 of the Registration act and also the judgment reported in Vadde Venkataswami and Another

Vs. Bommaraju Venkata Subbayya and Others, and the subsequent judgments, came to a wrong conclusion that Ex.A1 is not a valid document

and it cannot be enforced in the eye of law. According to the learned Counsel for the Appellant Mr. Sreekumaran Nair, in the absence of any

collusion or fraud by both the parties to the document, the document cannot be rendered invalid by virtue of Section 28 of the Registration Act and

in this case, absolutely there is no pleading or any evidence to that effect viz., that there was collusion on the part of the vendor as well as

purchaser in getting the sale deed registered at Kerala and only when collusion or fraud between the parties to the document is established by

cogent evidence, the sale deed can be termed as a fraud on registration and in that case only the document can be rendered as void and in the

absence of any collusion or fraud, even assuming that fictitious property is included for the purpose of getting the sale deed registered in other State

or some other property not belonging to the vendor was included in the sale deed for the purpose of registering in another place, it will not make a

document a void one. He relied upon the following judgments in support of his contention:

i) Ramanathan Chetti v. Delhi Batcha Tevar 60 Mlj 302

ii) Vadde Venkataswami and Another Vs. Bommaraju Venkata Subbayya and Others,

iii) S. Joseph Nadar And Anr. v. T. Dasammal Nadathi And 2 Ors. 1989 Tlnj 242

iv) Judgment in S.A. Nos. 1306 and 1308 of 1993 dated 14.9.2005

13. Mr. M.V. Venkateshan, learned Counsel for the first Respondent in S.A. No. 990 of 2004 submitted that as per Section 28 of the

Registration Act, a document shall be presented for registration in the office of the Sub Registrar within whose jurisdiction the whole or some

portion of the property to which such document relates is situate and admittedly, the property which was shown as security is situate in Kerala and

it is also not disputed that the property which was shown as security does not belong to the vendor viz., the first Respondent in S.A. No. 990 of

2004 and in such circumstances, it has been held that it is only a fraud on registration and therefore, the document is invalid and once a document is

invalid, nobody can claim right and title over the same and the Appellant claimed title from Johnson, the second Respondent in S.A. No. 990 of

2004 who, in turn, did not get any valid title to the suit property and the sale deed in his favour is an invalid one and therefore, the Plaintiff viz., the

Appellant in these appeals will not get entitlement to the property. He further submitted that when once the document Ex.A1 executed by the first

Respondent in favour of the second Respondent in S.A. No. 990 of 2004 is rendered invalid, then the first Respondent is entitled to a declaration

in O.S. No. 61 of 1999 and therefore, the lower appellate court is right in decreeing the suit subject to the condition of payment of Rs. 1,50,000/=

by the first Respondent in S.A. No. 990 of 2004 to the Appellant towards the sale consideration paid by the Appellant. In support of his

contention, the learned Counsel for the first Respondent relied upon the following judgments:

- i) M. Mohamed Kassim and Others Vs. C. Rajaram and Others,
- ii) M. Manoharadhas Vs. C. Arumughaperumal Pillai and Another,
- iii) G. Selvin v. Uchimalai 2008(3) Tlnj 170 .

14. To appreciate the contention of both the counsel, we will have to see the provisions of Section 28 of the Registration Act as it stood prior to

1997. It reads as follows:

Section 28. Place for registering documents relating to lands--Save as in this Part otherwise provided, every document mentioned in Section 17,

Sub-section (1), Clauses (a), (b), (c), (d) and (e), Section 17, Sub-section (2) insofar as such documents affect immovable property and Section

18, Clauses (a), (b), (c), and (cc) shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some

portion of the property to which such document relates is situated.

15. Therefore, a reading of Section 28 as it stood prior to 1997, it is clear that a document shall be presented for registration in the office of the

Sub-Registrar within whose sub District the whole or some portion of the property to which such document relates is situated. The effect of

including some other property for the purpose of registering in another place has been discussed in the judgment reported in Lal Ray v. Haridasi

Debi AIR 1914 PC 67 as under:

Such an entry intentionally made use of by the parties for the purpose of obtaining registration in a district where no part of the property actually

charged and intended to be charged in fact exists, is a fraud on the Registration Law, and no registration obtained by means thereof is valid.

16. This was followed in AIR 1930 91 (Privy Council) wherein it has been held as follows:

Where the property sought to be transferred by a deed is situated in one district but a small strip of land situated in another district is included in the

deed, without any intention on the part of the parties that it should pass under the deed but solely with a view to obtain registration in the latter

district, it amounts to fraud on the law of registration, being advices to evade the Registration Act, and the registration obtained in such a way is not

valid. There being no effective registration, a suit for possession of (sic) basis of the deed does not lie.

17. Therefore, the Privy Council laid in the above two judgments that where fictitious properties were included in a sale deed or where insertion of

a property over which the vendor has no title or where no such intention to convey any title is there, it is a fraudulent document and as such it is

void. But, in the judgment reported in *Vadde Venkataswami and Another Vs. Bommaraju Venkata Subbayya and Others*, , the judgment reported

in AIR 1914 PC 67 and other judgments were considered and relying upon the maxim ""nemo allegans suam turpitudinem audiendus est"" and ""nullus

commodum capere potest de injuria sua proprio"" it has been held that a person, who was a party to the fraud cannot take advantage of his fraud

and he cannot maintain an action against the other party.

18. In the judgment reported in *Muhammad Abdul Razack v. Syed Meera Ummal* 1966 (I) Mlj 550, it has been held as follows:

Thus the question, that a release deed in respect of a property executed between two persons is void as being a fraud on registration on the ground

that it has been registered outside the registration district in which the property is situate, cannot be raised for the first time in appeal by the Plaintiff

when such a plea has not been taken in the plaint, nor was it argued during the trial. Unless there is collusion between the parties the document to

practice fraud, the registration will not amount to a fraud on registration and when there is no evidence on the record to show that the parties had

deliberately chosen a wrong registration office, this fact cannot be urged in the Court of appeal for the first time as an act of fraud on registration.

19. Therefore, it is seen from the above judgments that unless there is collusion or fraud practised by both the parties to the document for the

purpose of getting a document registered in another place, the document cannot be declared as invalid document or void document and one party

alone has committed fraud or when there is no collusion between the parties to the document, it cannot be stated that the document is a void or

invalid document. Further, a party to a fraud cannot take advantage of his wrong and claim that the property was not conveyed under the

fraudulent transaction and he is entitled to claim right over the same. This principle is also discussed in detail in the judgment reported in Immani

Appa rao v. G.Ramalingamurthi AIR 1962 SC 37 as under:

13. Out of the two confederates in fraud Respondent 1 wants a decree be passed in his favour and that means he wants the active assistance of the

Court in reaching the properties possession of which has been withheld from him by Respondent 2 and the Appellants. Now, if the defence raised

by the Appellants is shut out Respondent 1 would be entitled to a decree because there is an ostensible deed of conveyance which purports to

convey title to him in respect of the properties in question; but, in the circumstances, passing a decree in favour of Respondent 1 would be actively

assisting Respondent 1 to give effect to the fraud to which he was a party and in that sense the Court would be allowed to be used as an instrument

of fraud and that is clearly and patently inconsistent with public interest.

14. On the other hand, if the Court decides to allow the plea of fraud to be raised, the Court would be in a position to hold an enquiry on the point

and determine whether it is a case of mutual fraud and whether the fraud intended by both the parties has been effectively carried out. If it is found

that both the parties are equally guilty and that the fraud intended by them has been carried out the position would be that the party raising the

defense is not asking the Court's assistance in any active manner; all that the defence suggests is that a confederate in fraud should not be permitted

to obtain a decree from the Court because the document of title on which the claim is based really conveys no title at all. It is true that as a result of

permitting Respondent 2 and the Appellants to prove their plea they would incidentally be assisted in retaining their possession; but this assistance

is of a purely passive character and all that the Court is doing in effect is that the facts proved it proposes to allow possession to rest it lies. It

appears to us that this latter course is less injurious to public interest than the former.

20. In this case, the first Respondent claims that he was defrauded by the second Respondent in getting the sale deed Ex.A1 and therefore, he filed

the suit for declaration and for recovery of possession for which the lower appellate court held that the first Respondent viz., Haris David only

intended to execute a mortgage deed in favour of the second Respondent and he

never intended to execute a sale deed in favour of the second

Respondent. A reading of evidence of the first Respondent viz., DW2 would make it clear that he was aware that he executed only a sale deed and

not a mortgage deed. Admittedly, the first Respondent obtained a loan from TIIC for the factory and after the sale of the property in favour of the

second Respondent under Ex.A1, the first Respondent did not make any payment towards the loan payable to TIIC and the loan was paid only by

the Appellant after he purchased the property from the second Respondent in S.A. No. 990 of 2004. Further, the first Respondent admitted that

he had studied up to Sslc and he knows to read and write Malayalam and Ex.A1 was written in Malayalam and it is a registered document.

Further, he also admitted that he had received Rs.1,00,000/= from the second Respondent and also admitted that there are documents to prove

that even after execution of Ex.A1 sale deed in favour of the second Respondent, he was running the factory and he has got accounts to prove the

same, but, did not produce any such accounts.

21. On the other hand, the Appellant has proved that from the date of his purchase, he was paying the dues payable to TII Cand therefore, the

finding of the lower appellate court that the first Respondent Haris David only executed a mortgage deed and he never intended to execute a sale

deed is not correct and I am of the view that the first Respondent, with full knowledge, executed the sale deed in favour of the second Respondent

after receipt of Rs.1,00,000/=. Therefore, the question to be considered is when Respondents 1 and 2 were aware that Ex.A1 was a sale deed,

can the document be declared as void one having regard to the fact that it was registered in Kerala by including a property which does not belong

to the first Respondent herein.

22. As stated supra, in the judgment reported in 60 MLJREPORTS 302, it has been held that the fact that an item of property, which does not

belong to the mortgagor, has been included will not render the registration invalid unless such inclusion was made with a view to commit a fraud on

the registration laws and the mortgagor and mortgagee were parties to the fraud. If the properties were non-existent, their inclusion would invalidate

the mortgage, but, where it is in existence, there should be strong evidence of the mortgagees' collusion, and the onus of proving such collusion will

be on those who attack the validity of the registration.

23. In this case, it cannot be stated that the property which was shown as security is a fictitious property and as a matter of fact, the first

Respondent filed M.P. No. 1 of 2010 in S.A. No. 990 of 2004 to receive additional documents under Order XLI Rule 27 of the Code of CPC

and one of the documents is the certificate issued by the Village Officer of Kunathukal wherein the Village Officer has certified that the property

which was shown as security belongs to one Rev. Jothi Is sac. Therefore, the property which was shown as security is in existence, but, the

property does not belong to the first Respondent herein and in such circumstances, as held by the judgment reported in AIR 1932 Mad 311, the

first Respondent cannot be permitted to maintain an action that the document is invalid and no title was passed on the basis of the said document to

the second Respondent.

24. In the judgment reported in M. Mohamed Kassim and Others Vs. C. Rajaram and Others, , the facts are different and in that case, the parties

had deliberately chosen to register the document in Kerala with a view to defeat the laws of this State and the parties have also admitted that for

the purpose of paying lesser stamp duty, they registered the document in Kerala by including some property in Kerala over which the vendor has

no title. Therefore, the Honourable Division Bench, relying upon the judgment reported in AIR 1914 PC 67 and other judgments, held that there

was collusion between the parties to commit fraud on the registration and therefore, the document is not a valid document and no title was passed.

In the same judgment, the Honorable Division Bench also referred to a judgment in A.S. No. 212 of 1979 in the matter of Mytheen Beevi And

others v. Podi Pillai And Anr. and held that the facts of that case are different.

25. It is seen from the said judgment in A.S. No. 212 of 1979 that the property shown in the document really existed in Kerala and therefore, the

Division Bench in A.S. No. 212 of 1979 held that it is not a case of non-existing property having been shown to exist with a view to persuade the

registering authorities to effect the registration of a document presented for registration. The Division Bench further held in A.S. No. 212 of 1979

that there was no collusion between the parties to the document. Therefore, the Honourable Division Bench in the judgment reported in M.

Mohamed Kassim and Others Vs. C. Rajaram and Others, distinguished the judgment in A.S. No. 212 of 1979 and held that when there was

collusion between the parties, then the parties committed fraud and the sale deed is void.

26. In this case, as stated supra, there is no evidence that there was collusion between the parties to commit fraud on registration by executing the

sale deed in the State of Kerala by including some property situate in Kerala. Though the first Respondent in S.A. No. 990 of 2004 pleaded in the

suit in O.S. No. 61 of 1999 that fraud has been practised on him when Ex.A1 was obtained from him and he was under the impression that it was

only a mortgage and he never intended to execute a sale deed, no allegation of collusion was pleaded. Further, even on his own pleading, there

was fraud only on the part of the second Respondent in S.A. No. 990 of 2004 and in the case of fraud by one party, the document cannot be

declared as void and the document can be declared as void only when both the parties to the document commit fraud and there was collusion

between the parties. This has been clearly explained in S.A. Nos. 1306 and 1307 of 1993 dated 14.9.2005 and the learned Single Judge, after

referring to the judgment reported in M. Mohamed Kassim and Others Vs. C. Rajaram and Others, , judgment rendered in A.S. No. 212 of

1979, judgment rendered in A.S. No. 406 of 1977 and the judgment reported in 1989 T.L.N.J. 242, held as follows:

In the judgment of the Division Bench M. Mohamed Kassim and Others Vs. C. Rajaram and Others, , on the facts and circumstances of the case,

on the definite averments in the pleadings and the evidence adduced by the parties, the Division Bench found that the three Sale Deeds have been

executed with intention to defeat the lawful claim of the creditors of the first Defendant and that they are not transfers in good faith and for

consideration. Under such facts and circumstances of the case, the Division Bench found that the document should be registered only before the

Sub Registrar and that a document not registered in accordance with the provisions of the Act has no effect on the immovable property comprised

therein.

65. In 1989 TLNJ 242, the learned Single Judge had considered the decision of the Division Bench reported in M. Mohamed Kassim and Others

Vs. C. Rajaram and Others, . In the circumstance of that case, the learned Single Judge has found that there was no collusion between the parties

to the documents and the learned Judge has relied upon an unreported Division Bench decision in A.S. No. 212 of 1979. Referring to that

judgment, the learned Single Judge pointed out that in the decision before the Division Bench,A.S. No. 212 of 1979, the subject matter was not a

bogus property and that the vendor has got title to the same and the Bench held that there was no collusion between the parties to the document.

In reference to A.S. No. 212 of 1979, the learned Single Judge has found:

The decision in 1988 I MLJ 447 relied on by the learned Counsel for the Appellants as in that case on the admitted facts a Bench of this Court

held that there was fraud on registration. But, in that case, the effect of absence of collusion between the parties has not been considered. On the

other hand, the Bench affirmed the view in the decision, in the Appeal No. 406 of 1977 wherein such question has been elaborately considered

and it was observed that there must be collusion between the parties and it should be established by cogent, clear and strong evidence to hold that

a particular document is void and a fraud on the law of registration. Hence, the substantial question is answered against the Appellants and in

favour of the Respondents.

27. Further, in the judgment reported in 1989 T.L.N.J. 242,the learned Single Judge followed the judgment of the Division Bench in A.S. No. 406

of 1977 and distinguished the decision reported in M. Mohamed Kassim and Others Vs. C. Rajaram and Others, and held that to declare a

document void for having contravened the provisions of Section 28 of the Registration Act, there must be cogent evidence of fraud and collusion

between the parties and in the absence of such cogent evidence, the document cannot be held as invalid. It has been held as follows:

On the other hand, the Bench affirmed the view in the decision, Appeal No. 406 of 1977 wherein such a question has been elaborately considered

and it was observed that there must be collusion between the parties and it should be established by cogent, clear and strong evidence to hold that

a particular document is void and a fraud on the law of registration.

28. As stated supra, the document Ex.A1 was not proved to be a collusive document and both the parties, with the intention of committing fraud on

registration, executed the document. Therefore, considering these aspects, I answer substantial questions of law 1 and 2 in favour of the Appellant

and the lower appellate court has committed error in not taking into consideration the judgments reported in 1989 T.L.N.J. 242 and AIR1932

Mad 311, judgment in S.A. No. 1306 and 1307 of 1993 dated 14.9.2005 (Madurai Bench) and also erred in holding that the document Ex.A1 is

a void one in the absence of any collusion between the parties as laid down in those judgments.

29. Further, as held in the judgment reported in 1989 (II)MLJ 398, when a person of full age signs a document, he cannot be heard to say that he

was not permitted to read the document and he was not aware of the contents of the document. It has been held therein as follows:

The general rule of law is that a party of full age and understanding is normally bound by his signature to a document whether he reads it or

understands it or not. Equity does not save people from the consequences of their own folly but will save them from being victimized by other

people.....

Whenever a person of full age and understanding puts his signature to a legal document without taking the trouble of reading it or without asking the

document to be read and explained to him but signs it relying on the word of another as to its character, contract or effect, he cannot be heard to

say that it is not his document.

30. Further, the judgments relied upon by the learned Counsel for the Respondent reported in M. Manoharadhas Vs. C. Arumugaperumal Pillai

and Another, and 2008(3) Tlnj 170 (CIVIL) cannot be relied and according to me, those judgments were rendered without considering the scope

of Section 28 of the Registration Act in the light of the judgments rendered in 60 MLJ 311, 1989 T.L.N.J. 242 and A.S. No. 406 of 1977 and

according to me those two judgments cannot be said to have laid down correct proposition of law.

31. Admittedly, the Appellant is a purchaser from the second Respondent in S.A. No. 990 of 2004 and there is no evidence that he was also a

party to the fraud and he was also aware that the sale deed Ex.A1 was fraudulently obtained by the second Respondent from the first Respondent.

Further, while answering substantial questions of law 1 and 2, it is held that the

sale deed Ex.A1 is not a void or invalid document. Therefore, when the sale deed, Ex.A1 is a valid document, the Appellant, who purchased the same under Ex.A3, also got valid title to the said property. Therefore, the third substantial question of law is also answered in favour of the Appellant.

32. As substantial questions of law 1 to 3 are answered infavour of the Appellant, there is no need to render accounts by the Appellant to the first

Respondent as the first Respondent is no longer the owner of the property and he has sold the property to the second Respondent, who, in turn,

sold it to the Appellant. Hence, the fourth substantial question of law is also answered infavour of the Appellant.

33. In the result, both the second appeals are allowed and the judgment of the lower appellate court is set aside and the judgment of the Trial

Court is restored. No costs. The connected miscellaneous petitions are closed.

34. M.P. No. 1 of 2010: This petition is filed to receive the documents as additional evidence. According to me, the documents are the certificate

issued by the Village Officer,Kunathukal and certified copy of the plaint in O.S. No. 16 of 2007 on the file of the Sub Court, Padmanabhapuram.

These two documents would also help the court to decide the substantial questions of law and therefore, this petition is allowed and documents

are received in evidence and marked as Exs.B28 and B29 respectively.

35. C.R.P. No. 1108 of 2004: The revision Petitioner was the Defendant in O.S. No. 46 of 1997 on the file of the Sub Court,Padmanabhapuram

and he is the first Respondent in S.A. No. 990 of2004. The Respondent in this revision is the Respondent inS.A. No. 991 of 2004. The

Respondent in this revision petition filed the above suit in O.S. No. 46 of 1997 to enforce the agreement of sale dated 1.10.1996 executed by the

revision Petitioner infavour of the Respondent in this revision. The suit was decreedex parte and therefore, the revision Petitioner filed I.A. No.

1078of 2003 to condone the delay of 663 days in filing the application to set aside the ex parte decree and that application was dismissed. As

against the same, this revision is filed.

36. It is stated in the affidavit that he borrowed a sum ofRs.1,63,000/= from the Respondent and under the guise of obtaining a security document,

the Respondent obtained an agreement of sale as if the revision Petitioner agreed to sell the property to him and he never intended to sell the

property and therefore, the decree passed in O.S. No. 46 of 1997 has to be set aside. It is also stated that he has filed O.S. No. 61 of 1999 for

declaration that he is the owner of the property and his advocate has played fraud on him and he was not aware of the decree passed in O.S. No.

46 of 1997.

37. The ex parte decree in O.S. No. 46 of 1997 was passed on 29.10.1998. The revision Petitioner was the Plaintiff in O.S. No. 61 of 1999 and

he also filed A.S. No. 115 of 2002 against the judgment and decree made in O.S. No. 61 of 1999. He was examined as DW2 in O.S. No. 25 of

1999 and O.S. No. 61 of 1999. In his evidence, which was recorded on 1.2.2002, 21.2.2002, 26.2.2002 and 28.2.2002, he admitted that the

decree passed in O.S. No. 46 of 1997 is a valid one, it is binding on him and Sivagnanam, the Respondent in the revision is entitled to get

possession of the property. He further admitted that he received summons through post and court and he was also aware of the paper publication

but, he did not appear in court and he also received summons in the Execution Petition filed by the Respondent and even thereafter, he did not

appear in court.

38. Therefore, considering the fact that he was prosecuting the other suit in O.S. No. 61 of 1999 and he was aware of the legal proceedings and

having kept quite in spite of the service of the summons, it cannot be stated that he was not aware of the proceedings and the Advocate has played

fraud on him and he was kept in darkness. Considering all these aspects, the court below has rightly dismissed the application for condoning the

delay. Further, I have held in S.A. No. 990 and 991 of 2004 that the sale deed Ex.A1 dated 22.6.1996 executed by the revision Petitioner in

favour of Johnson, the second Respondent in S.A. No. 990 of 2004 is a valid one and Gopi, the Appellant in the second appeals also obtained

valid title over the suit property. Therefore, there is no merit in this revision.

In the result, the civil revision petition is dismissed.