

(1967) 04 MAD CK 0010
In the Madras High Court

Jagannadh

APPELLANT

Vs

Perumal Naidu and Others

RESPONDENT

Date of Decision : 18-04-1967

Acts Referred:

Citation : (1969) ILR (Mad) 389 : (1969) 82 LW 167 : (1969) 2 MLJ 558

Hon'ble Judges : K.S. Ramamurti, J

Bench : Division Bench

Judgement

K.S. Ramamurti, J.—The appellant who is the plaintiff, in the suit for partition and separate possession, Original Suit No. 66 of 1947, has

preferred this appeal against the order of the lower Court dismissing his application for the passing of the final decree on the ground that he

committed fraud on the lower Court in obtaining the preliminary decree for partition.

2. The main facts which are not in controversy may be stated. The B schedule properties of which A schedule also forms part, belonged to four

brothers the first defendant, the third, the sixth and the father of the seventh defendant. The second defendant is the son of the first defendant,

defendants 4 and 5 are sons of the third defendant and the other defendants are alienees. One Chunilal Sowcar (hereinafter" referred to as

Sowcar) obtained a decree in Original Suit No. 102 of 1930, against the first defendant on 2nd September, 1930. Later on in 1931, defendants 3

and 6 executed security bonds offering themselves liable as sureties for the decree amount. There was first an attachment for the realisation of the

amount due under the decree, viz., Rs. 2,673-4-0 of the share of the first, third and sixth defendants and the executing Court passed an order that

in the first instance, the share of the first defendant should be sold and for any deficiency, the shares of the third and sixth defendants could be

pursued later. In accordance with this order there was Court-auction sale and on 13th October, 1937, Jagannadha (the plaintiff in the suit, Original

Suit No. 66 of 1947 aforesaid) purchased the A schedule properties for a sum of Rs. 70 subject to prior encumbrances in the region of about Rs.

15,000. Later on the Sowcar executed the decree for the recovery of the balance as against the shares of defendants 3 and 6 as well as for

execution against them personally by way of concurrent execution. Defendants 3 and 6 paid the entire balance of the decree amount to the Sowcar

on 25th January, 1944 and thereupon the execution petition was dismissed, full satisfaction having been recorded. This payment of the entire

balance decree amount by defendants 3 and 6 is also evidenced by the receipt, Exhibit B-12, dated 25th January, 1944. That receipt runs as

follows:

Decree discharge receipt executed on 25th January, 1944 in favour of (1) Perumal Naidu, residing at Sirangunam "Village, Mathurantakam taluk",

(2) Govindarajulu Naidu and (3) Venugopal Naidu, the , said individuals 2 and 3 being the younger brothers of the aforesaid person and acting on

his behalf, by K. Chunilal Sowcar carrying on money-lending business in Chingleput Bazaar. The sale in respect of the E.P. No. 1097 of 1942, in

OS. No. 102 of 1930 filed by me against you in the Court of the District Munsif, Chingleput is fixed for 26th January, 1944. I have on this day

received from you in cash Rs. 2,537-12-0 (Rupees two thousand five hundred and thirty-seven, and annas twelve) being the decree auction

warrant amount and have the entire decree satisfied. I shall file a petition in Court for entering full satisfaction and shall have the same discharged.

To this effect is the decree discharge receipt executed with my consent.

3. Jagannadha who purchased the A schedule properties in Court-auction is admittedly the power of attorney agent of the Sowcar. In July, 1947,

he filed the present suits, Original Suit No. 66 of 1947, for partition and separate possession claiming the share of not only the first defendant but

the shares of the third and sixth defendants as well. The trial Court negatived this contention and held that the plaintiff had purchased only the share

of the first defendant in the A schedule properties and did not purchase the

shares of the third and sixth defendants.

4. At this stage, it may be mentioned that all the defendants raised a further plea that at the time when the third and sixth defendants made the

payments of Rs. 2,537-12-0 as evidenced by the receipt Exhibit B-12 there was an oral understanding between them on the one side and the

Sowcar on the other that the Sowcar had relinquished the rights in the aforesaid purchase in execution in the name of the Sowcar's agent,

Jagannadha and that the sum was received in full satisfaction of all the claims of the Sowcar and that the family of the defendants would be entitled

to all the properties unaffected by the execution sale aforesaid. The first defendant raised the further plea that the plaintiff, Jagannadha was only an

alias of or benamidar for the Sowcar and, therefore, was not entitled to any relief and the suit was bad for non-joinder of the Sowcar.

5. The plaintiff filed a rejoinder denying this case of benami; he claimed that the properties were purchased by him in his own name for his own

benefit and not on behalf of the Sowcar. He also pleaded that he was not aware of any arrangement claimed to have been entered into between

the members of the defendants' family on the one side and the Sowcar on the other in 1944, seven years after the execution sale, and that the

subsequent agreement with the Sowcar even if it were true would not affect his rights.

6. Twelve issues were framed in the suit. Issue No. 1 related to the share or shares to which the plaintiff was legally entitled to on the basis of the

sale in execution. Issue No. 8 related to this oral agreement at the time of Exhibit B-12, as to whether the Sowcar had relinquished all his rights

including those under the execution purchase. The trial Court held what the plaintiff had purchased only the 1/4th share of the first defendant. On

the question of settlement, the trial Court found against the defendants in the view that the receipt Exhibit B-12, was merely an acknowledgment of

the money received and contained no words or terms to infer a release or surrender of the rights under the execution sale. It also took the view that

the receipt is inadmissible for want of registration, that a regular conveyance by the auction-purchaser would be necessary to convey back to the

family and that on this ground alone the defendants were bound to fail independently of the question of the truth or validity of the agreement relied

upon by them. It also held that the evidence which was sought to be adduced by the first defendant on the question of relinquishment was

inadmissible as by a mere oral agreement even if true, title to immovable properties over the value of Rs. 100 would not pass. From this judgment

and decree, the plaintiff Jagannadha preferred the appeal, Appeal Suit No. 521 of 1949, which was dismissed, by a Bench of this Court. The

second defendant, the son of the first defendant, preferred the appeal. Appeal Suit No. 818 of 1949, on the ground that the execution sale of

1937, did not affect his half share, viz., 1/8th share in all the family properties, and that at the most it would pass only his father's 1/8th share. He

also raised the plea that the plaintiff's claim for partition was barred by limitation. This appeal too, which came before the same Bench, was

dismissed. It is relevant to mention that the first defendant himself did not prefer any appeal nor file any memorandum of cross-objections in either

of the appeals, with the result that the decision of the trial Court that the plaintiff Jagannadha was entitled to 1/4th share in the A schedule

properties as a result of his purchase in the execution sale was confirmed by the decision of this Court in July, 1954. The present application for the

passing of the final decree was filed in June, 1956. In the meanwhile the third and the sixth defendants were dead and their legal representative

were brought on record. This application was resisted by the second defendant the son of the first defendant and defendants 4, 5, 11 and 12 on

the main ground that on 25th November, 1945 (long before the suit, Original Suit No. 66 of 1947 was filed) the plaintiff Jagannadha had executed

a registered deed of release which has been marked as Exhibit B-15 in favour of his principal the Sowcar relinquishing whatever rights the former

had in the execution purchase aforesaid, that as a result of that deed of relinquishment, the plaintiff had no right nor locus standi to file the suit for

partition and that he had committed fraud upon the Court in his having suppressed this information. The learned Subordinate Judge took the view

that there was no need for the contesting defendant to institute a separate suit to set aside the preliminary decree as being vitiated by fraud and that

it was open to them (as defendants) to raise such a plea even in the final decree proceedings. He also held that the conduct of the plaintiff in having

suppressed the deed of relinquishment, Exhibit B-15 executed by him in favour of the Sowcar, was a clear fraud upon the Court vitiating the

preliminary judgment and decree. Hence this present appeal by the plaintiff.

7. A perusal of the judgment of the learned Subordinate Judge shows that he quite readily accepted the position that the circumstances of the case

amounted to collateral extrinsic fraud, vitiating the proceedings and that the only legal aspect which, according to him, required investigation was,

whether a party can set up the plea of fraud in defence, or whether his only remedy was to file a separate suit to vacate the judgment on the ground

of fraud. All his discussion in the judgment relates only to the latter aspect and the learned Judge held that the party aggrieved is entitled to set up

that fraud in defence and not necessarily obliged to file a separate suit for that purpose. On the first question, the learned Judge has completely

misconceived the legal position. We have no hesitation in holding that the facts established do not amount to extrinsic or collateral fraud so as to

vitate and render the proceedings void. Shorn of all other unnecessary details, the question is whether the plaintiff who is merely a benamidar for

the Sowcar was entitled to sue for partition relying upon his ostensible title after he had executed the registered document Exhibit B-15, in which

the plaintiff had in unambiguous terms accepted and acknowledged that he was merely a benamidar having no beneficial interest and that he had

relinquished in favour of the Sowcar (the real owner) whatever rights he had in the properties and that any proceedings in regard to those

properties may be initiated or may be defended by the real owner without reference to and without any hindrance whatsoever from the benamidar.

One point that is raised is whether Exhibit B-15 was executed merely for the purpose of having a document in which the benamidar acknowledged

the real title of the beneficial owner; or, this document, by itself, completely erased the benamidar from the picture altogether, he having no right in

regard to the properties including the right to take or defend proceedings in a Court of law concerning these properties. Let us assume for the

purpose of argument that this document, Exhibit B-15, was of the latter category and the plaintiff, the benamidar, had completely divested himself

of all rights of every description. Even so, it cannot be held that his failure to disclose the execution of Exhibit B-15 would amount to collateral or

extrinsic fraud. The utmost that can be said in favour of the defendants is that a plaintiff who had no title (at the time when the suit was filed) to the

properties, had falsely asserted title and one of the questions that would arise either expressly or by necessary implication is whether the plaintiff

had a subsisting title to the properties. It was up to the defendants to plead and establish by gathering all the necessary materials, oral and

documentary that the plaintiff had no title to the suit properties. It is their duty to obtain an encumbrance certificate and find out whether the plaintiff

had still a subsisting title at the time of the suit. The plaintiff did not prevent the defendants, did not use any contrivance, nor any trick nor any deceit

by which the defendants were prevented from raising proper pleas and adducing the necessary evidence. The parties were fighting at arm's length

and it is the duty of each to traverse or question the allegations made by the other and to adduce all available evidence regarding the basis of the

plaintiff's claim or the defence of the defendants and the truth or falsehood concerning the same. A party litigant cannot be indifferent, and negligent

in his duty to place the materials in support of his contention and afterwards seek to show that the case of his opponent was false. The position

would be entirely different if a party litigant could establish that in a prior litigation his opponent prevented him by an independent, collateral

wrongful act such as keeping his witnesses in wrongful or secret confinement; stealing his documents to prevent him from adducing any evidence,

conducting his case by tricks and misrepresentations resulting in his misleading of the Court. Here, nothing of the kind had happened and the

contesting defendants could have easily produced a certified registration copy of Exhibit B-15 and non-suited the plaintiff; and it is absurd for them

to take advantage of or make a point of their own acts of omission or negligence or carelessness in the conduct of their own defence.

8. Learned Counsel for the respondents urged that if fraud is practised upon the Court by putting forward deliberately a false case, fake to the

knowledge of the plaintiff, and a decree is obtained, then that would amount to committing fraud upon the Court, the fraud consisting of

suppression of a material fact and keeping the Court ignorant of the same. In support of this, learned Counsel relied upon some leading decisions

of the Calcutta High Court and a decision of this Court in (Valluru) Basavayya and Another Vs. Govindaraju Veerabhadra Rao and Others, .

Learned Counsel urged that in the instant case, it was the plaintiff's duty to disclose to the Court that he had already executed Exhibit B-15 and

the suppression of the same amounts to his putting forward a false case, false to his knowledge, namely, that he had still a subsisting title. It is true

that in some early decisions of the Calcutta High Court in Kedar Nath Das v. Hemanta Kumari Debi (1913) 18 C.W.N. 447, Lakshmi Churan

Saha v. Nur Ali ILR (1911) Cal. 936, Manindranath Mitra v. Harimundal (1919) 24 C.W.N. 133, the Calcutta High Court drew a distinction

between a case in which a decree was obtained by perjured evidence and a case in which a false case was placed before the Court by a party

knowing it to be false, the learned Judges who decided those cases taking the view that the decisions in England in Aboulff v. Oppenheimer (1822)

10 Q.B.D. 295 and Vadala v. Lawes (1890) 25 Q.B.D. 310, struck a note different from the one indicated in the earlier case Flower v. Lloyd

(1878) 10 Ch. D. 327.

9. In (Valluru) Basavayya and Another Vs. Govindaraju Veerabhadra Rao and Others, Madhavan Nair, J., followed the aforesaid decisions of the

Calcutta High Court. Our attention was not drawn to any other decision .of this Court taking a similar view as in (Valluru) Basavayya and Another

Vs. Govindaraju Veerabhadra Rao and Others, but an investigation of the decisions of this Court to which our attention was drawn shows that this

Court has been consistently taking the View that such conduct on the part of the plaintiff suppressing a material and crucial fact from the

knowledge of the Court and putting forward a false case, false to the knowledge of the plaintiff himself, would not amount to extrinsic fraud coming

within The Duchess of Kingston's case (1776) 2 S. L.C. E 1731.

10. Before we proceed further, it is necessary to refer to the classical statement of the law by James, L.J., in the leading decision Flower v. Lloyd

(1878) 10 Ch. D. 327. In that case, the plaintiff brought an action charging the defendants with an alleged infringement of a patent process and the

suit was ultimately dismissed by the Court of Appeal. The plaintiffs, brought a second action for a declaration that the prior judgment was vitiated

by fraud and for other consequential reliefs. The alleged fraud consisted in the defendants keeping back from an expert who had been appointed to

inspect the defendant's process certain materials relating to the process in his possession and in making a false statement relevant to the matter of

enquiry. The Court of Appeal held that the plaintiffs had failed to make out their

case. While pointing out the nature of the fraud which would vitiate the prior judgment James, L.J., with the concurrence of Thesiger, L.J., made the following observations:

I have to add some observations which have been seen by the Lord Justice Thedger and in which he concurs. We have thought it right and due to the defendants to go through the allegations made against them; and their Counsel, in fact, scarcely asked for any judgment except one based on their acquittal of the fraud charged against them. But we must not forge that there is a very grave general question of far more importance than the question between the parties to these suits. Assuming all the alleged falsehood and fraud to have been substantiated, is such a suit as the present sustainable? That question would require very grave consideration indeed before it is answered in the affirmative. Where is litigation to end if a judgment obtained in an action fought out adversely between two litigants sue juris and at arm's length could be set aside by a fresh action on the ground that perjury had been committed in the first action, of that false answers had been given to interrogatories, or a misleading production of documents or of a machine, or of a process had been given? There are hundreds of actions tried every year in which the evidence is irreconcilably conflicting, and must be on one side or other wilfully and corruptly perjured. In this case, if the plaintiffs had sustained on this appeal the judgment in their favour, the present defendants, in their turn, might bring a fresh action to set that judgment aside on the ground of perjury of the principal witness and subordination of perjury; and so the parties might go on alternately ad infinitum. There is no distinction in principle between the old common law action and the old Chancery suit; and the Court ought to pause long before it establishes a precedent which would or might make in numberless casts judgment supposed to be final only the commencement of a new series of actions. Perjuries, falsehoods, frauds, when detected, must be punished and punished severely; but, in their desire to prevent parties litigant from obtaining any benefit from such foul means, the Court must not forget the evils which may arise from opening such new sources of litigation, amongst such evils not the least being that it would be certain to multiply indefinitely the mass of those very perjuries, falsehoods and frauds. The other learned Judge Baggallay, L.J., reserved his opinion on this question of

law for a future occasion. In *Aboulff v. Oppenheimer* (1882) 10 Q.B.D. 295, the decision in *Flower v. Lloyd* (1878) 10 Ch. D. 327, was referred to and distinguished. There a suit was filed in England on a judgment obtained in Russian Court which directed the defendant to return to the plaintiff certain goods belonging to him or to pay the plaintiff the value thereof. This suit in England on the foreign judgment was resisted by the defendant on the ground that it was obtained by gross fraud by the plaintiff and her husband inasmuch as the goods sued for, in the Russian Court, were, at the time of the suit and the judgment, in the possession of the plaintiff and her husband and that fact was concealed from the Russian Court. The Court in England held that the plaintiff was entitled to have this plea tried and investigated. Reference to the observations of James, L.J., in *Flower v. Lloyd* (1878) 10 Ch. D. 327, was made and distinguished on the ground that what happened in *Flower v. Lloyd* (1878) 10 Ch. D. 327, was not fraud committed before the Court. In *Vadala v. Lawes* (1890) 25 Q.B.D. 310, the decision in *Aboulff v. Oppenheimer* (1882) 10 Q.B.D. 295, the decision in *Flower v. Lloyd* (1878) 10 Ch. D. 327, was followed. In that case, the plaintiff brought an action in England to enforce a foreign judgment obtained in Italian Court in respect of certain bills of exchange. The defence raised in the Italian action was that the bills of exchange were given in respect of gambling transactions by an agent of the defendant and judgment was given for the plaintiff after trial of the defence on its merits. When the suit was brought in England on this foreign judgment the defendant raised another ground of defence to the action, that the plaintiff in the Italian Court fraudulently represented those bills as commercial bills when he knew that they were not, and he, therefore, misrepresented in the Court and obtained his judgment. It was held that the Italian Court was imposed upon by the fraud committed by the plaintiff. Lindley, L.J., delivering the judgment made some general observations about the nature of the fraud which would vitiate the judgment and in particular referred to the observations and the reasons in *Aboulff v. Oppenheimer* (1882) 10 Q.B.D. 295 and *Flower v. Lloyd* (1878) 10 Ch. D. 327. In *Venkatappa Naick v. Subba Naick* ILR (1905) Mad. 179 : 16 M.L.J. 133, a Bench of this Court consisting of Boddam and Moore, JJ., took the view that a suit would lie to set aside a judgment

on the ground that it was obtained by fraud committed by the defendant upon the Court, the fraud consisting of perjury committed by the

successful party on the earlier occasion. A reading of the judgment which is a very brief one shows that the learned Judges were apparently of the

view that the law in England as to what would amount to fraud vitiating the legal proceedings will have to be found in the two later decisions

Aboulff v. Oppenhimer (1882) 10 Q.B.D. 295, and *Vadala v. Lawes* (1890) 25 Q.B.D. 310, and the observations of James, L.J., in *Flower v.*

Lloyd (1878) 10 Ch. D. 327, had been otherwise explained and dealt with in those two later decisions. In other words this Bench Judgment

proceeded on the footing, that the correctness of the view indicated by James, L.J., in *Flower v. Lloyd* (1878) 10 Ch. D. 327, was doubted in the

two later decisions. But this view in *Venkatappa Naick v. Subba Naick* ILR (1905) Mad. 179 : 16 M.L.J. 133, was not followed in the

subsequent cases of this High Court vide *Kumaraswami Chetty Vs. Kamakshi Ammal and Others*, .

11. The next important case to which reference is to be made is the judgment of *Benson and Sundara Ayyar, JJ.*, in *Logadapathi Chinnayya Vs.*

Kotla Ramanna, , in which it was held that a judgment in a previous suit cannot be set aside on the ground that the successful party practised fraud

upon the Court suppressing certain materials in the case in the view that it was the duty of the other party to have produced all the evidence in the

suit and that suppression of material evidence would not amount to fraud within the meaning of the rule in *The Duchess of Kingston Case* (1776) 2

S L.C. 731. It was laid down that in order that fraud may be a ground for vacating a judgment, it must be a fraud that is extrinsic or collateral to

everything that has been adjudicated upon but not one that has been or must be deemed to have been dealt with by the Court. In that case, a prior

judgment was sought to be set aside on the ground that a decree obtained for a particular sum was vitiated by fraud, the fraud complained of being

that successful party did not give credit for value of timber received from the other side and had suppressed that information and put forward a

false case knowing it to be false. Reference may be made to the following observations at page 208 as to what would amount to extrinsic or

collateral fraud:

There can be no undue advantage taken of another by a party in putting any matter before the Court to be adjudged by it to be true or false. Both parties are entitled to invoke the judgment of the Court and to convince it of the truth of the evidence adduced by them respectively. It is true that parties ought not to let in false evidence, and that it is highly improper and immoral to do so, but it is the function of the Court to decide whether the evidence is true or false. If the adducing of false evidence can be spoken of as a fraud, then the Court, in deciding the case, must be taken to have adjudged whether such fraud has been committed or not, and what it has once adjudged, it cannot be called upon to decide again. The test to be applied is the fraud complained of not something that was included in what has been already adjudged by the Court, but extraneous to it. If, for instance, a party be prevented by his opponent from conducting his case properly by tricks or misrepresentation, that would amount to fraud. There may also be fraud upon the Court, if, in a proceeding in which a party is entitled to get an order without notice to the other side, he procures it by suppressing facts which the law makes it his duty to disclose to the Court. But where two parties fight at arm's length, it is the duty of each to question the allegations made by the other and to adduce all available evidence regarding the truth or falsehood of it. Neither of them can neglect this duty and afterwards claim to show that the allegation of his opponent was false. Assuming that he could prove the charge, that would not amount to proving fraud on the part of his opponent, because the Court has already decided that this opponent's allegation was true and not false. If he could show that his opponent prevented him by an independent collateral wrongful act, such as by keeping his witnesses in confinement, or by stealing his documents from adducing his evidence, that would be an act of fraud which would entitle him to get the Court's decree set aside. Fraud must be something which would destroy or seriously impair the value of the judgment by showing that one of the parties was prevented by the other from conducting his litigation fairly or by being deprived of the materials which he was entitled to place before the Court. The Bench pointed out that the right of a party to insist on his opponent acting with truth and honesty in the conduct of the suit must in the interests of finality of litigation be taken to be exhausted with the adjudication by the Court, and that because a person against whom a decree has been

passed alleges that it was wrong find that it was obtained by prejury committed by the other party, the proceedings cannot be said to be vitiated by

collateral fraud. One important aspect to be noticed in this Bench decision is that the observations of James, L.J. in *Flower V. Lloyd* (1878) 10

Ch. D. 327, are referred to with approval and the two latter English decisions are explained with reference to the particular facts of those cases. A

Full Bench of this Court in *Kadirvelu Nainar v. Kuppuswami Naicker* ILR (1918) Mad. 743: 34 M.L.J. 590, overruled the earlier Bench decision

in *Venkatappa Naick v. Subba Naick* ILR (1905) Mad. 179 :1905 16 M.L.J. 133, and affirmed the correctness of the view in *Logadapathi*

Chinnayya Vs. Kotla Ramanna, . In the order of reference in *Kadirvelu Nainar Vs. Kuppuswami Naicker*, , *Sadasiva Iyer, J.*, has referred to the

fact that the Bench in *Venkatappa Naick v. Subba Naick* ILR (1905) Mad. 179 :1905 16 M.L.J. 133, purported to follow the two later decisions

Abouff v. Oppenheimer (1882) 10 Q.B.D. 295, and *Vadala v. Lawes* (1899) 24 Q.B.D. 310, in the view that the decisions in *Flower v. Lloyd*

(1878) 10 Ch. D. 327, was overruled by these two later English decisions. From the separate order of reference of *Sundaram Iyer, J.*, it will be

seen that the statement of law in *Flower v. Lloyd* (1878) 10 Ch. D. 327, by James, L.J., has been completely followed and applied. In fact, the

learned Judge has observed that the considerations mentioned by James, L.J., applied with very great force in India and that it will be dangerous to

allow a fresh suit to be brought by an unsuccessful litigant to set aside a decree on the ground that the appellant had imposed on the Court by

letting on perjured evidence. The Learned Judge observed at page 747:

The passion for litigation wherever it exists in this country is likely to turn into almost incurable mania and the doctrine of *res judicata* would

become practically useless if *Lakshmi Charan Saha v. Nur Ali* ILR (1911) Cal. 936, is followed in Indian Courts.

Wallis, C.J., delivering the judgment on behalf of the Full Bench held that *Venkatappa Naick v. Subba Naick* ILR (1905) Mad. 179 :1905 16

M.L.J. 133, was wrongly decided.

12. The next case of importance is the decision of *Devadoss, J.*, in *(Mada Pedda) Subbanna and Others Vs. Kurnam Dhandra Bayamma alias*

Rama Bayamma, . In that case the point directly arose whether a judgment

obtained could be set aside as being vitiated by fraud on the ground that the plaintiff deliberately brought a false case to his knowledge. The learned Judge was not inclined to accept the view taken in the earlier decisions of the Calcutta High Court to which his attention was drawn. The learned Judge referred with approval to some of the decisions of the Calcutta High Court in which the rival view was taken that the knowledge of the plaintiff that his case was false was immaterial and would not by itself afford a ground for vitiating the proceedings. The learned Judge while expressing his dissent from the Calcutta view observed as follows at page 642:

With great respect to the learned Judges, I may say, I am unable to follow the reasoning. A plaintiff comes into Court, with a case which is either true or false. If it is based on a transaction, to which he himself is not a party, but his servants or agents, it may be that he does not know whether the case is true or false. But his knowledge whether it is true or false is immaterial. The question is whether he adduces false evidence to prove his case. If a person brings a suit on a forged promissory note and goes into the box and proves that the note was executed by the defendant and that he witnessed the execution and if the Court believed Mm, it will give a decree on the strength of the evidence adduced before it. So his knowledge whether the promissory note was fabricated or genuine is immaterial as the Court is guided by the evidence before it. Some distinction was sought to be made between a case where the defendant is ex parte and a case where the defendant puts forward his plea and adduces evidence. It was suggested that in the latter case, the Court acts upon the testimony of one side or the other and if the testimony upon which the Court relies is perjured, the unsuccessful party cannot impeach the judgment in that case, by bringing a subsequent suit for a declaration that that judgment was obtained by fraud. But if the defendant is ex parte and the plaintiff alone adduces evidence, then it is suggested that the plaintiff obtained a decree by perpetrating a fraud upon the Court. This is a distinction without difference. The real question, in ĩ½.11 these cases, is what is the basis for the decision of the Court. If false evidence or false documents are believed by the Court to be true or genuine and a judgment is given in such belief, it is immaterial whether the party, who adduces such false evidence is aware that

the case is false. If the defendant comes forward and pleads that the plaintiffs' case is fake and adduces evidence, the Court will have to judge between two sets of evidence. Where the defendant pleads that the plaintiff's case is false and does not adduce evidence, the Court would no doubt give a decision with some care. But the real question is not with what care or circumspection the Court acts. A Court does not decide a case without evidence unless it be upon confession of judgment. But wherever the Court has to determine any matter, it sifts the evidence placed before it and comes to a conclusion; and if the oral evidence is perjured and the documents are spurious or forged, a suit to set aside the judgment based upon such evidence, would not lie.

With respect, this is the correct statement of law. In this decision Devadoss, J., has also referred to the decision of the Allahabad High Court in

Ram Rattan Lal v. Bhuri Begum ILR (1915) All. 7, where a view different from the Calcutta High Court has been taken. From this decision it

follows that except proceedings for probate and other proceedings where a duty is cast upon a party litigant to disclose all the facts, in all other

cases there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence. It would cut at the root of the

fundamental principle of law of finality of litigation enunciated in the maxim interest republic at sit finis litium if it should be held that a judgment

obtained by a plaintiff in a false case, false to his knowledge, could be set aside on the ground of fraud, in a subsequent litigation. At this stage, we

may refer to the decision in Ram Ratan Lal v. Bhuri Begam ILR (1915) All. 7, in which the facts were somewhat similar. The mortgagees instituted

a suit for sale and in the plaint they also asked for a personal decree, the Court granted a decree for sale but refused them the personal decree.

Several years later, the plaintiffs again applied for a personal decree and notice of this application was duly served upon the judgment debtors.

They did not appear and a personal decree was passed limiting it to the assets of the deceased mortgagor. Later on a suit was brought to have this

decree set aside on the ground of fraud, the fraud being that the decree holder did not bring to the notice of the Court on the second occasion

when they applied for personal decree that such a relief was refused on the earlier occasion. The Bench held that this would not amount to fraud

even though on the second occasion when the mortgagees applied for a personal decree they knew that that relief had already been refused. It was held that the omission on the part of the mortgagees to inform the Court or suppressing the fact that a previous attempt to get a personal decree was refused, would not amount to fraud within the meaning of *The Duchess of Kingston's case* (1776) 2 S L.C. 731. The principle of this decision applies to the instant case as here too the charge is that the plaintiff suppressed the information that he had relinquished all his rights in the properties under Exhibit B-15.

13. The next decision of relevance is the decision of Madhavan Nair, J., in (Valluru) Basavayya and Another Vs. Govindaraju Veerabhadra Rao and Others, . In that case the fraud consisted in the successful party (in the prior litigation) obtaining a decree against the defendants describing and treating them as tenants while the the plaintiff knew that the contesting defendants had become the owners as a result of a conveyance. The learned Judge distinguished the decision of Devadoss, J., in (Mada Pedda) Subbanna and Others Vs. Kurnam Dhandra Bayamma alias Rama Bayamma, on the ground that it related to a false case supported by perjured evidence and the principle of that decision would not apply to a case in which the plaintiff brings a false case wilfully and deliberately misleading the Court by refraining to disclose a fact which was his duty to disclose. The learned Judge was inclined to accept as correct the view indicated in some of the decisions of the Calcutta High Court. With respect this decision does not lay down correct law. We are of the view that it is implicit in the reasoning of the Bench decision in Logadapathi Chinnayya Vs. Kotla Ramanna, , affirmed by the Full Bench in Kadirvelu Nainar Vs. Kuppuswami Naicker, , that the fact that the plaintiff in a prior litigation suppressed a material fact and put forward a false case, false to his knowledge, would not amount to collateral or extrinsic fraud. We are unable to see any real difference in principle between the two categories of cases adverted to in the following observations of Madhavan Nair, J., at page 682:

False case supported by false evidence stands on a different footing from a false case in which the allegation relating to the falsehood amounts to a practising of fraud upon the Court.

14. The matter does not stop with this, so far as this Court is concerned. In a

later Bench decision of this Court of Pandrang Row and

Krishnaswami Iyengar, JJ., reported in S.A. Ramanathan Chettiar Vs. M.P. Palaniappa Chettiar and Others, , it was held that fraud, for vacating a

judgment, must be extraneous to everything which has been adjudicated upon by the Court or must be deemed to have been adjudicated upon by

the Court and that merely making a false statement, knowing it to be false, cannot be regarded as extrinsic to the proceedings in the Court. In that

case, the Rangoon High Court had passed a decree against two firms and a suit for contribution was filed against the members of one firm by the

other in the Sub-Court, Devakottah. That suit for contribution was decreed by the Sub-Court. But on appeal, the High Court set aside the

judgment on the ground that the joint decree on the basis of which contribution was claimed was not a valid decree as the defendant was a minor

at the time the decree was passed and was not represented by a guardian ad litem. The suit was, therefore, remanded back to the Sub-Court,

Devakottah, for disposal on an alternative basis of a right of contribution with reference to the original debt in respect of which that joint decree

was made. It was at that stage that the second suit was brought in the Sub-Court, Devakottah to declare the judgment of the High Court

remanding the matter as vitiated by fraud on the ground that the plea of minority alleged was false, false to the knowledge of the guardian of the

minor and that at that time the latter was a major. The ground of attack was that the plea of minority was advanced falsely with full knowledge that

it was fake. The High Court agreed with this view and held that that would not be a sufficient ground to render the judgment void. The Bench

pointed out that when the question of minority was alleged it was up to the defendants to adduce evidence and establish the contrary, and that the

mere making of a false allegation even with knowledge of its falsehood while it would amount to perjury would not amount to a fraud on the Court,

as the other party had ample opportunity of knowing the truth or correctness of what the other side alleged and it was open to him to deny it and

lead evidence on the point. The principles of the Full Bench decision in Kadirvelu Nainar Vs. Kuppuswami Naicker, , and the observations of

Sundaram Iyer, J., in Logadapathi Chinnayya Vs. Kotla Ramanna, , were followed in that case.

15. We may next refer to a Bench decision of this Court in M.R.M.N. Chockalingam Chettiar Vs. The Government of Madras, , of Krishnaswami

Ayyangar and Kunhiraman, JJ., in which the same principles were applied in an insolvency proceeding. In that case a person got himself adjusted

insolvent by this Court falsely alleging in the petition for adjudication that he was residing within the territorial limits of the original civil jurisdiction of

the High Court. The adjudication was questioned on the ground that this false allegation about the residence of the debtor within the limits of the

jurisdiction of this Court was falsely made in the petition and affidavit with full knowledge that it was false and that an order obtained by practising

such fraud cannot be treated as a nullity. But the Bench held that that would not be sufficient to hold that it was extrinsic fraud. Krishnaswami

Iyengar, J., who delivered the judgment on behalf of the Bench observed as follows at page 201:

It was also attempted to be argued that the order of the learned Judge can be supported on the ground that the order of adjudication is liable to be

impeached on the ground that it was procured by the fraud of the debtor. We are not satisfied that this aspect of the case is sufficiently indicated in

the written statement of the respondent or has been dealt with by the learned Subordinate Judge. We, however, consider it unnecessary to shut out

the respondent from raising this contention. But we are constrained to observe that there is no substance in this point. We have already referred to

the concession made by the learned Advocate for the respondent that it was competent to the Court to decide whether the debtor was residing

within the jurisdiction. If that is so, the mere fact that a false allegation was made in the petition and affidavit is no ground for holding that the order

was procured by fraud or treating it as a nullity. In Logadapathi Chinnayya Vs. Kotla Ramanna, , a Bench of this Court consisting of Benson and

Sundara Aiyar, JJ., examined the law bearing upon the point and laid down the following proposition:

In order that fraud may be a ground for vacating a judgment, it must be a fraud that is extrinsic or collateral to everything that has been adjudicated

upon but not one that has been or must be deemed to have been dealt with by the Court".

The principle of this decision governs the instant case. At the worst the plaintiff is guilty of fraud in having falsely alleged, at the time when he filed

the suit for partition, he had subsisting interest in the property though he had already executed Exhibit B-15. Even so, that would not amount to

extrinsic fraud because that is a matter which could well have been traversed and established to be false by the appellant by adducing the

necessary evidence. The preliminary decree in the partition suit necessarily involves an adjudication though impliedly that the plaintiff has a

subsisting interest in the property.

16. We may next, briefly refer, to the decision of the other High Courts in which the same view has been taken that the fact that a party litigant put

forward a false case, false to his knowledge would not amount to extrinsic fraud. In *Basdevanand V. Shantanand* AIR 1942 All. 302, one

Shantanand obtained a decree in an earlier litigation for possession of the math's properties on the ground that he was the disciple of one

Gyananand. This decree which Shantanand obtained was sought to be set aside on the ground inter alia that Shantanand was guilty of suppression

of an important fact that he did not disclose to his Guru Gyananand, i.e., Shantanand was a Sudia and that this fact would disqualify him from

recovery of possession of the property. The Bench held Shantanand was not guilty of such falsehood. Even otherwise it held that assuming that

Shantanand was guilty of that suppression and he put forward a claim, knowing it to be false would not render the judgment void. Verma, J., after

referring to the decisions of the Calcutta High Court observed that he was not inclined to accept the distinction made by the Calcutta decisions

between the case where the judgment was obtained by perjured evidence and a case where the plaintiff obtained a judgment and decree on false

evidence knowing it to be false. The Bench was of the view that it would be a dangerous doctrine to hold that a decree can be set aside on the

ground that the defendant did not raise a plea which was open to him because he did not know all the necessary facts. It is of significance to

mention that the observations of James, L. J. in *Flower v. Lloyd* (1878) 10 Ch. D. 327 already referred to were extracted in extenso as laying

down the correct law.

17. Even in the Calcutta High Court, the later decisions have not adhered to the view expressed in the earlier decisions. In *Muktamala Dasi Vs.*

Ram Chandra De and Others, the trial Court set aside a decree on the ground

that it was obtained by false evidence, the plaintiff knowing full well that his case was false, but on appeal the Bench reversed that decision holding that that was not a ground for setting aside the judgment. We may next refer to the Bench decision in *Kunjabehari Chakrabarty Vs. Krishnadhoni Majumdar*, in which a prior judgment and decree were sought to be set aside on the ground that the promissory note on the basis of which a claim was made a forgery, was a false claim, false to the knowledge of the plaintiff. The learned Judges constituting the Bench of the Calcutta High Court expressed their dissent from the view taken in the earlier decisions of the Calcutta High Court that a decree based upon a false claim known to the plaintiff to be false in the earlier case would amount to extrinsic fraud. After indicating that the law was stated in *Aboulff v. Oppenheimer* (1882) 10 Q.B.D. 295, and *Vadala v. Lawes* (1899) 25 Q.B.D. 310, in wider terms on a possible ground of distinction that those two cases related to actions on foreign judgments as distinguished from domestic judgments, the matter was put in these terms at page 494:

We are accordingly of opinion that a domestic judgment cannot be re-opened where the only allegation of fraud made by the plaintiff of the later action is that judgment had been given on a false claim. That allegation in substance means that the former adjudication was wrong, the Court determining on perjured evidence the claim as true which was in fact a false one. The principle of finality of litigation which is the cardinal principle applicable in the domestic forum would then have no meaning. In the case of a domestic judgment, falsity of claim in our judgment, may be one of the material facts only in the limited class of cases, namely where the judgment was an *ex parte* one where no summons had been served and the direct proof falls short of actual suppression of summons. We do not accordingly agree with the view expressed in *Kedar Nath Das v. Hemanta Kumari Debi* (1913) 18 C.W.N. 447 that simply because the claim on which the former judgment had been based in a domestic tribunal was a false one known to the decree-holder to be false, the former judgment was to be set aside.

The same view was taken in a decision in *Durgagati Banerjee and Others Vs. Taharulla Mia and Others*, where Edgley, J., after an elaborate review of all the decisions of the Calcutta High Court held that a party is not

entitled to have a decree against him set aside on the ground that it had been fraudulently obtained by reason of the fact that the claim in the original suit was false or the decree was obtained by suppression of facts. The learned Judge has stated that he was not inclined to follow the other decisions of the Calcutta High Court in which a different view was indicated.

18. In proceedings arising under the Companies Act, the same view was taken by a Bench of the Andhra Pradesh High Court in the decision

reported in *L. V. Apte v. R. G. N. Price* AIR 1962 A.P. 274. It was held that the decree cannot be set aside on the ground that it was obtained

on perjured evidence or that the claim was false and that it must be proved that the plaintiff was prevented by some trick or contrivance by the

defendant in placing materials before the Court. It is significant to notice that while referring to the decision in *Logadapathi Chinnayya Vs. Kotla*

Ramanna, , and *Kadirvelu Nainar Vs. Kuppuswami Naicker*, , by which the decision *Venkatappa Naick v. Subla Naick* ILR (1905) Mad. 179 :

16 M.L.J. 133 was overruled, reference was made to the fact that the view in *Venkatappa Naick v. Subba Naick* ILR (1905) Mad. 179 : 16

M.L.J. 133, that the statement of law by James, L.J. in *Flower v. Lloyd* (1878) 10 Ch. D. 327, was no longer good law in view of the two later

decisions was not correct. It only remains to refer to the latest decision of the Kerala High Court in *Papavinasom Subrahmoniam Vs. Daivani*

Nagaramma and Others, , where after a discussion of the relevant cases it was held that the fact a false case was made with knowledge that it was

false would not amount to fraud and that the falsehood or truth of the claim must be deemed to have been adjudicated by the Court when it

decreed the claim. Extrinsic fraud must be actual positive fraud, a meditated intentional contrivance to keep the opposite party in ignorance of the

real facts of the case. We, therefore, hold that even if the plaintiff was guilty of suppression of the release deed, Exhibit B-15, executed by him, the

preliminary decree cannot be said to be vitiated by extrinsic fraud.

19. One other ground on which it was claimed that the Court was misled into passing a preliminary decree by reason of the fraud committed by the

plaintiff was that if the Court had known that the plaintiff was a benamidar for the Sowcar, it would have assessed the truth of the case that the

Sowcar relinquished his rights under the execution purchase, from a totally different angle. The argument is that if this background is proved that the plaintiff was a benamidar for the Sowcar, the Court would have readily accepted the talks of relinquishment which are alleged to have taken place between the Sowcar and the defendant. We see no substance whatsoever in this contention. On the earlier occasion, the decision of the Court did not rest upon a finding about the truth of the case of relinquishment by the Sowcar. The Court took the view that such a plea was inadmissible in law and that as the rights relinquished related to rights over immovable properties exceeding Rs. 100 in value" the relinquishment could only be by a registered document in writing; that is to say even if the plaintiff had disclosed that he was a benamidar for the Sowcar, that fact would not have in any way improved the position of the defendants and the Court would not have awarded reliefs in a different manner. When the plaintiff contended that he had nothing to do with the Sowcar and so the alleged agreement of relinquishment entered into between the Sowcar and the defendants would not bind the plaintiff in any manner. It may be that the fact that the plaintiff is a benamidar for the Sowcar may have an important bearing upon the truth and binding nature of such an agreement and in that context the release deed Exhibit B-15 may constitute cogent and relevant evidence. But, even so, it avails the defendants nothing because the trial Court had held that the agreement not being evidenced by a registered document, cannot be proved nor given effect to. The decision of the trial Court that the agreement cannot be given effect to, because of those infirmities is a final decision binding upon the parties and cannot be re-opened.

20. It is settled law that the power of the Court to set aside a prior judgment on the ground of fraud is a discretionary one which would be

exercised in favour of the applicant only if he is free from fraud or any turpitude or lack of diligence in protecting his own interest. Logadapathi

Chinnayya Vs. Kotla Ramanna, . In the instant case every circumstance is against the exercise of the discretion in favour of the defendants. In the

first place, the purchase of one-fourth share of the first defendant has become final. He never preferred an appeal. The appeal preferred by the

second defendant as to the binding nature of the sale failed and it has become so as against him too. The other defendants also preferred an appeal

and they too failed. The result was that the decision that the plaintiff had purchased the share of the first defendant had become final. We are unable to understand on what basis reliefs could be granted to the other defendants who resisted the application for the passing of a final decree on the ground of fraud when so far as the first defendant was concerned, the purchase had become final? The relief arising out of fraud Vitiating the prior judgment could be awarded only to the party aggrieved and not to third parties. The contesting defendants, so far as the one-fourth share of the first defendant is concerned, are strangers; we do not see why the discretionary relief should be awarded at the instance of those who are not affected by the execution sale.

21. The fact that a person had no title to the property would not render the decree obtained by him as being vitiated by extrinsic fraud. It is the duty of the defendants to raise all the pleas while defending the suit. If the plaintiff obtained a preliminary decree and also a final decree, it may be he may have to hold the same for the benefit of the real owner despite Exhibit B-I 5, or it may be that the real owner may allow the plaintiff, benamidar, to enjoy the fruits of the litigation. Again it may be that the plaintiff, after obtaining possession may hand over the property to the real owner. These are all considerations with which the defendants are not concerned. The passing of the preliminary decree in favour of the plaintiff involves an adjudication that the plaintiff is entitled to the properties and the effect of that adjudication cannot be reopened.

22. For all these reasons, the appeal is allowed and a final decree shall be passed in favour of the plaintiff by the trial Court as indicated in this judgment. The plaintiff has purchased only one-fourth share in the A schedule properties as per the terms of the sale certificate. The plaintiff has not purchased the entire A schedule properties. The final decree should, therefore, be confined to one-fourth share in the A schedule properties. The final decree proceedings shall be disposed of by the trial Court accordingly after taking the same on its file. The appellant will have his costs both here and in the trial Court.