

(2011) 11 AP CK 0072

In the Andhra Pradesh High Court

Case No : A.S.M.P. No. 2058 of 2011 in Appeal Suit No. 3580 of 2004

T. Venkatapadmavathamma and Others

APPELLANT

Vs

Tirumala Tirupathi Devasthanams and Others

RESPONDENT

Date of Decision : 04-11-2011

Acts Referred:

Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 — Section 14
Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, Order 6 Rule 17, 151, 152
Limitation Act, 1963 — Section 17, 5

Citation : (2011) 11 AP CK 0072

Hon'ble Judges : V. Eswaraiah, J; K.S. Appa Rao, J

Bench : Division Bench

Advocate : T.K. Raghavan, Party in Person, for the Appellant; M. Adinarayana Raju, Advocate of the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Appa Rao

1. Review A.S.M.P. No. 951 of 2011 is filed to review the judgment and decree dated 27-10-2006 passed in A.S. No. 3580 of 2004 and A.S.M.P. No. 952 of 2011 is filed to suspend the operation of the said judgment and decree. On 25-08-2011, during the course of hearing, this Court took an objection that the review petition ought not to have been numbered unless there is an application to condone the delay in the filing the application, by duly explaining the reasons for not filing the review petition in time. In compliance thereof, the review petitioners filed A.S.M.P. No. 2058 of 2011 to condone the delay of 1613 days in filing the review petition in A.S.M.P. No. 951 of 2011.

2. Since the reliefs sought in these three petitions are connected to each other and the parties are also common, these petitions are clubbed and disposed of by this common order.

3. The petitioners in these petitions are the some of the respondents in A.S. No. 3580 of 2004, and they are being represented by the General Power of Attorney Sri T.K. Raghavan. The first respondent in all the three petitions is the appellant in the said appeal. The respondent Nos.2 to 14 herein are proforma respondents and they are not necessary parties according to the petitioners.

4. Before going into the merits of the case, it is pertinent to refer to the first round of litigation which went upto the Apex Court, as stated by the petitioners/respondents in their affidavit, as follows:

The petitioners/respondents are the descendants of Great Saint and Devotee Sri Tallapaka Annamacharya. The petitioners/respondents and the first respondent/appellant have a dispute over the title of the property in Sy.Nos.645, 686 and 679/2 for an extent of 28-32 cents in Tirumala. Originally the said property belongs to the petitioners/respondents since it was given to them as inam by the emperors of Vijayanagar Dynasty to Sri Tallapaka Annamacharya's family for rendering services to the Lord, and since then they are enjoying the said property. The dispute arose between the parties when one of the family members noticed in the revenue records that the names of the Thallapaka family are changed and the name of the first respondent/appellant was incorporated during the enquiry in the year 1959-60. Then one of the members of the Tallapaka family i.e., late Sri Tallapaka Venkata Srinivasacharyulu, the husband of petitioner No. 1 and father of petitioner Nos.2 to 4 herein, filed an application in the year 1982 before the then Commissioner, Survey, Settlements & Land Records, Hyderabad, stating that without notice to the inamdars, the patta has been granted to the respondent/appellant for the said property in Sy.Nos. 645, 686 and 679/2 situated in Tirumala. Then the Commissioner gave a direction to the Inam Deputy Tahsildar to issue notices to both the parties and to conduct an enquiry as per the provisions of the A.P. (A.A.) Inams (Abolition & Conversion into Ryotwari) Act, 1956. Accordingly, the Inam Deputy Tahsildar conducted enquiry after issuing notices to all the parties mainly between the petitioners/respondents and respondent/appellant in the year 1983 and revealed the fact that earlier no notice was given while granting patta in respect of the said land to the respondent/appellant and after hearing both sides and after verification of the records, he came to the conclusion that the said land is Inam land belonging to Tallapaka family and granted patta in favour of the petitioners/respondents. Against the said order, an appeal was filed by the respondent/appellant in the year 1984 before the Revenue Divisional Officer who also confirmed the order of the Inam Deputy Tahsildar and dismissed the appeal filed by the respondent/appellant. Then the respondent/appellant filed a Revision Petition before the Commissioner, Survey, Settlement & Land Records, Hyderabad in the year 1985-86 and the said Revision Petition was also dismissed by confirming the orders of the lower Revenue Tribunals. Aggrieved by the same, the respondent/appellant filed W.P. No. 11895 of 1986 to quash the said order and the writ petition was allowed. Against the order in W.P. No. 11895 of 1986, the petitioners/respondents filed W.A. No. 4 of 1993 and the writ appeal was allowed

by this Court. Aggrieved by the same, the respondent/appellant filed S.L.P.(Civil) Appeal Nos.3468-69 of 1993 before the Apex Court and the same was dismissed by the Apex Court in the year 1995 by confirming the order of the Division Bench of this Court.

A review petition was filed and the same was also dismissed by the Apex Court in the year 1995. After the orders of the Apex Court, the petitioners/respondents approached the revenue authorities for mutation of their names in the revenue records since the name of the respondent/appellant was mutated in view of the earlier order in W.P. No. 11895 of 1996. Accordingly, the revenue authorities again issued notices to both the parties and conducted enquiry and then granted patta in favour of the inamdars i.e., Tallapaka family in the year 1995.

5. Now the second round of litigation, as stated by the petitioners/respondents in their affidavit, is as follows:

Subsequent to the granting of patta in favour of the petitioners/respondents, the respondent/appellant preferred an appeal before the Revenue Divisional Officer against the orders of granting patta and also filed a civil suit in O.S. No. 69 of 1995 on the file of the Principal Senior Civil Judge, Tirupati, seeking declaration of title and certain other reliefs. Challenging the filing of the civil suit in the lower Court and appeal before the Revenue Divisional Officer, the petitioners/respondents filed a writ of Prohibition and a contempt case against the respondent/appellant before this Court, and this Court through a common judgment allowed the writ petition and closed the contempt case with a direction to the lower Court and Revenue Divisional Officer by prohibiting them not to entertain the civil suit and appeal filed by the respondent/appellant. Aggrieved by the same, the respondent/appellant filed SLP before the Apex Court and the Apex Court granted leave only, but not granted any stay against the order of this Court. In the year 2003, the Apex Court, after hearing the appeal, remanded the matter to the lower Court directing to frame and decide, as expeditiously as possible and in any case within six months from the date of the order, the preliminary issues as to maintainability of the suit in view of Section 14 of the A.P. (A.A) Inams (Abolition & Conversion into Ryotwari) Act, 1956 and whether the suit is barred on the principles of res judicata/estoppel. Accordingly, the suit was taken up by the lower Court. During the course of hearing, the respondent/appellant filed an application in I.A. No. 1377 of 2003 seeking amendment of the plaint under Order 6 Rule 17 of C.P.C. by incorporating some paras regarding the establishment of fraud, misrepresentation and collusion which has taken place by obtaining the earlier orders from the Revenue Tribunals, High Court and Apex Court by the petitioners/respondents and also to declare that all the judgments obtained in the first round of litigation are vitiated by fraud and collusion, and they are non-est in the law.

The lower Court, after hearing arguments from both parties, finally came to the conclusion for removing certain paras from the amendment petition filed by the respondent/appellant in I.A. No. 1377 of 2003 through the order dated

28-01-2004. Against the said order, dated 28-01-2004, the petitioners/respondents filed C.R.P. No. 869 of 2004 before this Court and the same was dismissed on 23-02-2004. After the amendment, the respondent/appellant filed a fair affidavit before the lower Court. During pendency of the suit proceedings, against the order dated 28-01-2004 the respondent/appellant filed C.R.P. No. 2151 of 2004 before this Court seeking a direction to the lower Court to allow the remaining paras also which were rejected in the amendment application in I.A. No. 1377 of 2003. The C.R.P. No. 2151 of 2004 was listed for hearing on 24-06-2005 and by that time, the suit was already dismissed by the lower Court. Aggrieved by the said order in the suit, the respondent/appellant filed A.S. No. 3580 of 2004 before this Court. Subsequently, as the respondent/appellant informed the Court that they have filed amendment application in the regular appeal, the C.R.P. No. 2151 of 2004 was dismissed on 24-06-2005. The respondent/appellant filed an amendment petition under Order 6 Rule 17 of C.P.C. in A.S. No. 3580 of 2004, which was numbered as A.S.M.P. No. 14538 of 2004 and the same was listed on 09-11-2004. Thereafter, it was never listed and the same was not brought to the notice of the Court. Even in the written arguments and simulations submitted in the booklet format by the learned senior counsel, there is no plea taken or submission made regarding the amendment application. Without passing any order in A.S.M.P. No. 14538 of 2004 and without filing the fair affidavit, the judgment dated 27-10-2006 in A.S. No. 3580 of 2004 was delivered while allowing the appeal, basing on the averments in the said application.

Aggrieved by the said judgment in A.S. No. 3580 of 2004, the petitioners/respondents filed SLP (Civil) Appeal No. 6194 of 2007 before the Apex Court and the same was dismissed on 16-04-2007. A review application was filed before the Apex Court to review the order in the SLP and the same was dismissed on 26-09-2007 and finally a Curative Application was also filed before the Apex Court and the same was dismissed confirming the orders in S.L.P.(Civil) Appeal No. 6194 of 2007. Therefore, all the doors were closed to prove that the petitioners/respondents have not committed any fraud, collusion or misrepresentation in the earlier orders or judgments before the Revenue Tribunals or Courts. They have finally come to the conclusion to file declaration of title suit and during the course of discussion with the counsel, they came to know surprisingly that there is no order passed in the amendment petition in A.S.M.P. No. 14538 of 2004 and there is no fair affidavit in the file as endorsed by the copying section on the copy application. Then on the advise of the senior counsels, they filed the present review petition to bring to the notice of the Court that the respondent/appellant played fraud upon the Court for obtaining the judgment and decree dated 27-10-2006 in A.S. No. 3580 of 2004 in their favour and once fraud is proved, all the advantages gained by playing fraud can be taken away at any point of time and there is no limitation and there is no question of non-executing of the statutory remedies, or the statutory bars like doctrine of res judicata etc., are not attracted and the fraud and collusion are

apparent on the face of the record and can be challenged before any Court or authority at any time in appeal, revision, writ or review even in collateral proceedings and the said judgment and decree dated 27-10-2006 in A.S. No. 3580 of 2004 has to be recalled and shall be treated as nullity.

It is further urged that on 06-01-2011 only, it came to the notice of the petitioners/respondents that the respondent/appellant obtained the judgment and decree in their favour without filing the fair affidavit, when the copy application filed by them was returned with an endorsement that "Fair Affidavit not found in file. Hence, C.D. returned". It is further urged that suppression of any material fact/document amounts to fraud on Court. Every Court has an inherent power to recall its own order obtained by fraud as order so obtained non-est.

It is further urged that section 17 of the Limitation Act, 1963, states that within one year from the date of discovery of the fraud played by the parties, the application can be made. Here the fraud played on the Court by the respondent/appellant was without getting the amendment order and that without filing fair affidavit as per the endorsement of copying section that "No fair affidavit found in the file", obtaining the judgment in favour of the respondent/appellant is nothing but fraud on the Court and this fact was disclosed to the petitioners/respondents on 06-01-2011 only. As per Section 17 of the Limitation Act, the petitioners/respondents filed the review petition as soon as it came to their knowledge that the respondent/appellant played fraud on Court by obtaining the judgment in their favour by suppressing a vital document which is more important in the appeal. Hence, there is a delay of 1613 days in filing the review petition.

6. The respondent/appellant filed a common counter affidavit in all three petitions. The brief averments are as follows:

There is inordinate delay of 1613 days in filing the review petition and the petitioners/respondents did not give any acceptable reasons for the said inordinate delay. The petitioners/respondents, in fact, filed an application for certified copy of the order in A.S.M.P. No. 14538 of 2004 as early as on 10-05-2007 and the same was returned on 11-05-2007 with an endorsement that "No order was passed in A.S.M.P. No. 14538/04". Therefore, the contention that the petitioners/respondents came to know about the amendment petition not being ordered only on 06-01-2011 was false and on that ground alone, the delay petition is liable to be set aside.

It is further averred that the respondent/appellant filed A.S.M.P. No. 2477 of 2006 under Sections 151 and 152 of C.P.C. for correction of certain typographical mistakes in the judgment dated 27-10-2006 in A.S. No. 3580 of 2004 and the same was ordered by this Court on 09-03-2007, and the petitioners/respondents did not oppose the said application. Accordingly, necessary corrections were carried out in the judgment.

It is further averred that the petitioners/respondents also approached the Apex Court by way of SLP (Civil) Appeal No. 6194 of 2007 against the judgment and decree dated 27-10-2006 in A.S. No. 3580 of 2004 and the Apex Court was pleased to issue notice before admission to the respondent/appellant who in turn engaged a senior advocate Sri K.K. Venugopal and also prepared a detailed parawise remarks. After due enquiry, the said SLP was dismissed on 16-04-2007 at the admission stage. Against the said order in the S.L.P., the petitioners/respondents filed Review Petition No. 964 of 2007 and the same was dismissed on 26-09-2007. Finally they filed a Curative Application before the Apex Court and the same was dismissed confirming the earlier order in S.L.P.(Civil) Appeal No. 6194 of 2007. Therefore, the petitioners/respondents, after exhausting all the remedies and after lapse of more than four and half years, filed the present petitions, which are baseless and untrue, and the method adopted by the petitioners/respondents is nothing but abuse of process of the Court, and hence the application for reviewing the judgment and decree in A.S. No. 3580 of 2004 is not maintainable.

7. As both the learned counsel advanced arguments regarding the delay condonation petition, and the maintainability of the review petition, we feel it appropriate to consider all the arguments for passing appropriate orders in both the petitions.

8. In view of the averments of the petitions and the arguments advanced by the learned counsel, the points arise for consideration are:

1. Whether there are any grounds to condone the delay of 1613 days (nearly four and half years) in filing the review petition? and

2. Whether there are any tenable grounds to review the order of this Court, dated 27-10-2006 passed in A.S. No. 3580 of 2004?

POINT No. 1:

9. The learned counsel appearing for the petitioners/respondents urged that the petitioners/respondents came to know only on 06-01-2011 about the respondent/appellant obtaining the judgment and decree in their favour, without filing the fair affidavit, when the copy application filed by the petitioners/respondents was returned with an endorsement that "Fair affidavit not found in file. Hence, CD returned." Therefore, suppression of any material fact/document amounts to fraud on Court and every Court has inherent power to recall its own order obtained by fraud as the order so obtained is non-est, and drawn the attention of this Court to Section 5 of the Limitation Act and urged that as per Section 17 of the Limitation Act, from the date of discover of the fraud played by the parties, within one year that can be questioned and accordingly, these review petitioners filed the review petition as soon as it came to their knowledge that the respondent/appellant played fraud on the Court and obtained the judgment in their favour by suppressing the vital document which is important in the above appeal.

10. At this juncture, it is pertinent to note Section 17 of the Limitation Act which reads as follows:

17. Effect of fraud or mistake:-- (1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,-

(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or

(b) the knowledge of the right or title on which a suit or application is sounded is concealed by the fraud of any such person as aforesaid; or

(c) the suit or application is for relief from the consequences of a mistake; or

(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him; the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:

Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which -

(i) in the case of fraud, has been purchased for valuable consideration, by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or

(ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or

(iii) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.

(2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the court may, on the application of the judgment-creditor made after the expiry of the said period extend the period for execution of the decree or order:

Provided that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be.

11. It is further urged that the judgment dated 27-10-2006 in A.S. No. 3580 of 2004 is based on the amendment petition in A.S.M.P. No. 14538 of 2004, which was listed on 09-11-2004, and thereafter it was never listed and it came to their notice only after the copy application was returned with an endorsement that "No order was passed in A.S.M.P. No. 14538/2004" and subsequently, they filed copy

application on 06-12-2010 for copy of the fair affidavit and the same was returned on 06-01-2011 with an endorsement that "Fair affidavit not found in file". Therefore, as per Section 17 of the Limitation Act, the limitation starts from 06-01-2011, and within one year the order can be questioned, and accordingly, they filed the review petition within the limitation period. Hence, the learned counsel urges to condone the delay of 1613 days in view of the above circumstances. In support of his contention, the learned counsel placed reliance on the decision reported in Ramesh B. Desai and Others Vs. Bipin Vadilal Mehta and Others,

12. Now let us see whether there are any bona fides in the plea of the petitioners/respondents to condone the delay in the circumstances stated in the affidavit filed in support of the petition.

13. During the course of arguments, the learned counsel for the respondent/appellant, while placing reliance on the decision of the Apex Court reported in Oriental aroma Chemical Industries Ltd. v. GIDC and Another 2010 (3) ALD 116(SC), brought to the notice of this Court that the petitioners/respondents in fact applied for the certified copy of the order in A.S.M.P. No. 14538 of 2004 as early as on 10-05-2007 vide C.D. Application No. 16873 of 2007 and the same was returned on the next day i.e., 11-05-2007 with an endorsement that "No order was passed in A.S.M.P. No. 14538 of 2004" and urged that the petitioners/respondents had knowledge about status of the said application on 11-05-2007 itself, and the plea of the petitioners/respondents that they had knowledge about the same on 06-01-2011 is not true. The said fact was not disputed by learned counsel appearing for the petitioners/respondents. The fact remains that there is documentary evidence dated 11-05-2007 to that effect. By the endorsement dated 11-05-2007, the petitioners/respondents were informed that no order was passed in A.S.M.P. No. 14538 of 2004. They filed the present delay condonation petition stating that they came to know about the said petition only on 06-01-2011. The time gap between 11-05-2007 and 06-01-2011 is nearly 3 years and 8 months. Having knowledge that no order was passed in A.S.M.P. No. 14538 of 2004, through the endorsement dated 11-05-2007, which was subsequent to the order dated 27-10-2006 in A.S. No. 3580 of 2004, the petitioners/respondents kept quite all these years, and filed the present petition with an inordinate delay.

14. Therefore, in any view of the matter, the contention that the petitioners/respondents learnt about the written endorsement only on 06-01-2011 cannot be believed by any stretch of imagination in view of the written endorsement dated 11-05-2007 that "No order was passed in A.S.M.P. No. 14538 of 2004" while returning the C.D. application filed by them for certified copy of the order. Furthermore, except taking the plea that they got knowledge about the pendency of A.S.M.P. No. 14538 of 2004 only on 06-01-2011, there is no other ground shown by the petitioners/respondents for such inordinate delay. As clarified already, that plea has been falsified by the written endorsement dated

11-05-2007 made in the C.D. application filed by the petitioners/respondents themselves. Nothing prevented the petitioners/respondents to take necessary steps immediately after they came to know about the petition on 11-05-2007. The cause of action dated 06-01-2011 as pleaded by the petitioners/respondents is contrary to the documentary evidence dated 11-05-2007 which was not disputed by them. Therefore, the limitation starts from the date of knowledge of the petitioners/respondents about the status of A.S.M.P. No. 14538 of 2004 i.e., from 11-05-2007, but not from 06-11-2011. Thus we see no force in the argument advanced by the learned counsel appearing for the petitioners/respondents.

15. Accordingly, there are no merits in A.S.M.P. No. 2058 of 2011, and it deserves to be dismissed.

POINT No. 2:

16. The second fold of argument advanced by the learned counsel appearing for the review petitioners/respondents is that by allowing the appeal, the prayers sought in A.S.M.P. No. 14538 of 2004 were granted even though the amendment petition is not ordered and the judgment is based on the contents of the affidavit filed in support of the said petition, and thus the respondent/appellant played fraud on the Court in obtaining the said judgment dated 27-10-2006 and that even in the petition in A.S.M.P. No. 14538 of 2004, there was no opportunity to the review petitioners/respondents and no counter is filed and no arguments were advanced and no order was passed except the order dated 09-11-2004 as "Post this M.P. along with the Appeal." Therefore, the judgment and decree dated 27-10-2006 in A.S. No. 3580 of 2004 is not sustainable in law and it has to be reviewed.

17. It is further argued that every Court has an inherent power to recall its own order obtained by fraud as the order so obtained is non-est. In support of his arguments, the learned counsel for the review petitioners/respondents drawn the attention of this Court to the decision reported in A.V. Papayya Sastry v. Govt. of A.P. 2007 (4) Sec 221 wherein it was held 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. It was further held that fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam.

18. The learned counsel appearing for the review petitioners/respondents further placed reliance on the decision of the Apex Court reported in Meghmala and

Others Vs. G. Narasimha Reddy and Others, wherein it was held that fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of Courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression "fraud" involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage. 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. The learned counsel also placed reliance on the decision of the Apex Court reported in Gangadhara Palo Vs. The Revenue Divisional Officer and Another,

19. On the other hand, it is the contention of the learned counsel appearing for the respondent/appellant that the amendment application in I.A. No. 1377 of 2003 was partly allowed by the lower Court, and the amendments sought in A.S.M.P. No. 14538 of 2004 are consequential to the main amendments already allowed in I.A. No. 1377 of 2003 and they are in the nature of explaining the existing pleas and elaborating the earlier pleadings, and the amendment application is absolutely inconsequential. Therefore, it is absolutely incorrect to allege that the respondent/appellant played fraud on the Court in obtaining the judgment in the appeal in their favour.

20. The tenor of the argument advanced by the leaned counsel appearing for the respondent/appellant is that there is no fraud played by the respondent/appellant and it is the petitioners/respondents who played fraud as held by this Court in the order dated 27-10-2006 in A.S. No. 3580 of 2006, and urged that there are absolutely no merits in the review petition and it is filed only to drag on the litigation with frivolous intention.

21. As rightly argued by the learned counsel appearing for the review petitioners/respondents, while placing reliance on A.V. Papayya Sastry's case (supra) and Meghmala's case (supra), there is no dispute with regard to the settled proposition of law that in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away. In such an eventuality, the questions of non-executing of the statutory remedies or statutory bars like doctrine of res judicata are not attracted. Suppression of any material fact/document amounts to a fraud on the Court. Every Court has an inherent power to recall its own order obtained by fraud as the order so obtained is non-est. It is well settled principle of law that once it is established that the order was obtained by a successful party by practicing or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non-est and cannot be allowed to stand. This is the fundamental principle of law.

22. However, let us examine whether there is any fraud played by the respondent/appellant in obtaining the order dated 27-10-2006 in A.S. No. 3580 of 2004 in the light of the aforesaid settled propositions of law.

23. It is the contention of the learned counsel appearing for the review

petitioners/respondents that by suppressing the material fact about the pendency of the petition in A.S.M.P. No. 14538 of 2004, the respondent/appellant obtained the orders in A.S. No. 3580 of 2004 which is nothing but fraud played on the Court.

24. A perusal of the entire record including the counter affidavit filed on behalf of the respondent/appellant and the arguments advanced by the learned counsel appearing for the respondent/appellant, it is apparent that subsequent to the passing of the judgment in A.S. No. 3580 of 2004, the respondent/appellant filed an application in A.S.M.P. No. 2477 of 2006 u/s 151 and 152 of C.P.C. seeking correction of certain typographical mistakes in the judgment in A.S. No. 3580 of 2004 and the same was ordered by this Court on 09-03-2007, and the review petitioners/respondents did not oppose the said application. Accordingly, necessary corrections were carried out in the judgment. Later, the review petitioners/respondents approached the Apex Court by way of filing S.L.P (Civil) Appeal No. 6194 of 2007 as against the judgment and decree of this Court in A.S. No. 3580 of 2004 and the Apex Court was pleased to issue notices before admission to the respondent/appellant who in turn engaged a senior counsel and also prepared a detailed parawise remarks, and on hearing the same, the Apex Court dismissed the SLP on 16-04-2007 at the admission stage with the following order:

Heard.

We see no reason to interfere. The special leave petitions are dismissed.

As against the said order, dated 16-04-2007, the review petitioners/respondents filed Review Petition No. 964 of 2007 before the Apex Court and the same was dismissed on 26-09-2007 with the following order:

We have carefully gone through the review petition and the annexures thereto. We find no merit therein. Hence, the review petition is dismissed.

The review petitioners/respondents further filed a Curative Application before Apex Court and the same was also dismissed confirming the order dated 07-03-2007 in SLP (Civil) Appeal No. 6194 of 2007.

25. It is also a matter of record that the respondent/appellant filed I.A. No. 1377 of 2003 in the suit before the lower Court for amendment of the plaint by incorporating some paras regarding the establishment of fraud, misrepresentation and collusion which has taken place in obtaining the earlier orders from the Revenue Tribunal, from this Court and also from the Apex Court, by the review petitioners/respondents. The said petition was allowed partly and the amendment was carried out.

26. Further it is significant to note, particularly the statement in para-6 of the affidavit of the review petition filed by the review petitioners/respondents, that "The Respondent/Appellant filed amendment petition under Order 6 Rule 17 of CPC in the above Appeal and same was numbered as ASMP 14538/2004, and

same was listed for first and last time on 09-11-2004 and then after it was never listed and never argued about this amendment by either the learned senior Counsel or their counsel and was never brought to the notice of the Hon''ble Court. Even in the written arguments and simulations submitted booklet format by the learned senior Counsel in the books there is no plea or place taken for the amendment application nor submissions." In view of the said statement made by the review petitioners/respondents, there is no occasion for the respondent/appellant for playing fraud on the Court while obtaining the judgment and further as per the orders of this Court in A.S. No. 3580 of 2004 dated 27-10-2006.

27. It is an admitted fact that the judgment in A.S. No. 3580 of 2004 was confirmed by the Apex Court even though the petitioners/respondents have taken diligent steps till reaches its finality. This Court, after framing the necessary issues including preliminary issues, considered both the oral and documentary evidence and formulated 46 instances of fraud in the light of the evidence and arguments. It was also held that in the light of the instances of fraud and the legal position referred therein, the earlier judgments given by the revenue authorities and the Courts will not operate as res judicata and they are nullity and non-est in the eye of law. Further the suit covered by O.S. No. 69 of 1995 was decreed with costs throughout.

28. It is thus clear from the judgment in A.S. No. 3580 of 2004 that there is no mention or reference in any part of the judgment about the contents of the amendment application in A.S.M.P. No. 14538 of 2004, and the contention of the review petitioners/respondents that the entire judgment is based on the contents of the amendment application is purely an imaginary and illusory and invented for the purpose of this review petition. Further the review petitioners/respondents did not file any counter in the amendment application in A.S.M.P. No. 14538 of 2004 in A.S. No. 3580 of 2004 nor took any objection to the same and that there is no whisper or reference about the same either in S.L.P.(Civil) Appeal No. 6194 of 2007 or in the Review Petition or in the Curative Application filed before the Apex Court. Therefore, in the totality of the circumstances, it is evident that the judgment in A.S. No. 3580 of 2004 is not based upon the contents of the amendment application. Furthermore, the litigation was finally settled once for all by the Apex Court in S.L.P.(Civil) Appeal No. 6194 of 2007. Therefore, the review petition cannot be entertained.

29. At thin juncture, it is pertinent to refer to the decision in Meghmala''s case (supra), wherein the Apex Court, while dealing with the similar issues, held that:

The issue stands crystallized to the effect that in case a litigant files a review petition before filing the SLP before this Court and it remains pending till the SLP stands dismissed, the review petition deserves to be considered. In case it is filed subsequent to dismissal of the special leave petition, the process of filing review application amounts to abuse of process of the court.

(Emphasis supplied)

30. In the backdrop of the aforesaid observation of the Apex Court, we have to see whether the petitioners/respondents have committed abuse of process of the Court in the instant case on hand.

31. Admittedly the review petitioners/respondents are not in possession of the suit schedule property for all these years till date. They have taken all steps agitating the judgment in A.S. No. 3580 of 2004 by way of Special Leave Petition, Review Petition, and Curative Petition before the Apex Court and they are unsuccessful and all their avenues are closed even as per their own admission. Now they filed the present petition alleging that the impugned orders were obtained by playing fraud on the Court. No changed circumstances were made out by the review petitioners/respondents after passing the judgment in A.S. No. 3580 of 2004. They have not raised little finger about the said plea of fraud in the special leave petition, review application, and curative application before the Apex Court having knowledge that "no order was passed in A.S.M.P. No. 14538 of 2004" through the endorsement dated 11-05-2007 made while returning the C.D. application filed by them. Having exhausted all the remedies, they filed the present review petition with abnormal delay of 1613 days (nearly 4 1/2 years). Even the delay condonation petition also is misconceived in view of the above discussion in Point No. 1.

32. In view of the above circumstances and the law laid down by the Apex Court, we are of the view that there is no error apparent on the face of the record, much less the fraud played on the Court, as pleaded by the review petitioners/respondents, for invoking the jurisdiction of this Court under Order 47 Rule 1 of C.P.C. to review the judgment and decree dated 27-10-2006 in A.S. No. 3580 of 2004, and that filing of the review petition by the review petitioners/respondents at the belated stage, after exhausting all the remedies, amounts to abuse of process of the Court and it cannot be entertained. In spite of completion of several rounds of litigation upto the Apex Court, the review petitioners/respondents claim a right to abuse the process of the Court with the perception that the dispute shall be protracted and will never come to an end. There are absolutely no tenable grounds in the review petition and the same is not bona fide and intended to drag on the litigation. Therefore, the review petition is liable to be dismissed.

33. In view of the findings and conclusions in the review petition in Point No. 2, A.S.M.P. No. 952 of 2011 filed to suspend the judgment and decree dated 27-10-2006 in A.S. No. 3580 of 2004, deserves to be dismissed.

34. In the result, the three A.S.M.Ps are dismissed as devoid of merits with costs.