

## M. Ganesan Vs G. Anbumani

**Court:** Madras High Court

**Date of Decision:** Nov. 28, 2013

**Citation:** (2014) 2 LW 805 : (2014) 4 MLJ 131

**Hon'ble Judges:** B. Rajendran, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

B. Rajendran, J.

Since the issue involved in all these revisions petitions related to the same proceedings and between the same parties, they

were heard together and disposed of by this common order. For better appreciation, the facts involved in C.R.P. Nos. 4626 of 2012 are stated

below:--

The petitioners herein are the defendants in O.S. No. 61 of 2003. The suit was filed for specific performance by the plaintiff/first respondent

herein. The fourth respondent herein was granted power of attorney by the petitioners herein to sell the house plots. Subsequently, the defendant-

Nirmala filed a suit for partition, whereby a compromise decree was passed in the partition suit. Thereafter, the power of attorney given to the

fourth respondent herein was cancelled. Hence, the plaintiffs/respondents herein filed a suit for specific performance, which was pending. Though

the parties entered into a compromise, the Court below did not record the compromise on the ground that the defendants--Devarajan and

Nirmala--were not present in the Court and thereby rejected the petitions filed to record the compromise. As against the same, when the parties

preferred a revision petition before this Court in C.R.P.(PD). No. 3756 of 2009, this Court, by order dated 19.04.2011, directed the Court

below to record the compromise. Pursuant to the order passed by this Court, the Court below allowed the compromise petition and thereby a

decree was passed in terms of compromise petition, in the presence of parties as well as their respective counsel, vide I.A. No. 395 of 2011 in

O.S. No. 61 of 2003, dated 28.04.2011. The petitioners filed the present revision petition on the ground that some of the properties i.e. Plot Nos.

51, 52, 53 and 70 were already sold by the defendant D.R. Mohan and thereafter, the parties, who have purchased the properties, have started

putting up construction.

2. Learned counsel appearing for the petitioners submitted that in terms of Order XXIII Rule 3 of CPC, it has to be proved to the satisfaction of

the Court whether the defendant satisfied the plaintiff in respect of whole or any part of the subject matter of the suit and only after that, a

compromise decree can be passed by the Civil Court. But, in the instant case, the defendants did not satisfy the plaintiff in respect of whole or any

part of the subject matter of the suit, therefore, the compromise decree passed by the Court below is contrary to the above said provision. Further,

it is contended that the Court below ought to have seen that Item Nos. 51, 52, 53 and 70, which are mentioned under Schedule 3 to the

compromise decree, were sold to the third party and such sold items are allotted to the share of the petitioners under the compromise decree and

hence, when the same was brought to the notice of the Court below, the Court below erred in rejecting the said claim. Under the compromise

decree Mr. D. Rajamanickam and Mrs. Madheswari, who are parents of the second respondent, are the beneficiaries, but, they are not party to

the suit and hence, when the same was brought to the notice of the Court below, the Court below, without advertent to such legal issue, erred in

dismissing the petition filed to set aside the compromise decree, which suffers from perversity, impropriety and illegality and the same warrants

interference of this Court.

3. In support of his submissions, he has also relied upon a judgment of this Court in Chitra Construction Private Limited v. S. Subramanian and

others ((2008) 5 MLJ 126) for the proposition that when forged documents had played vital role in convincing the applicants to give their consent

for such compromise formula, then Court is empowered to set aside the compromise decree. Finally, he has contended that since a fraud has been

played by the plaintiffs/respondents herein by trying to siphon off the properties belonging to the defendants/petitioners herein, the Court has a

responsibility to protect the rights and interest of the petitioners and therefore, the compromise decree is required to be set aside and quashed.

4. Per contra, learned counsel appearing for the respective respondents would vehemently contend that the compromise decree had been

recorded after the respective parties and their counsel affixed their signature and thumb impression therein and they were also heard in the Court

and only thereafter, the compromise decree was passed. Therefore, having filed a compromise memo before the Court and having allowed the

Court to pass a decree based on the compromise memo, the petitioners cannot now turn around and say that the said compromise was a fraudulent

one. He further contended that the plaintiffs/respondents herein had already received the sale consideration for Plot Nos. 51, 52, 53 and 70 and

the same were already brought to the knowledge of the petitioners/defendants therein even at the time of entering into the compromise decree and

to that effect, he has also relied upon Exs. P1 to P4 to say that Plot Nos. 51 and-52 were sold on 28.01.2002 to one Sumathi and in the same

way, Plot No. 53 was sold to one Kamala, Loganathan on 28.01.2002. With these submissions, he prayed for dismissal of the revision petitions.

5. I heard the learned counsel appearing on either side and perused the materials available on record.

6. The learned counsel for the revision petitioner relied on the decision of the Honourable Supreme Court reported in The Rajasthan State

Industrial Development and Investment Corporation Vs. Subhash Sindhi Cooperative Housing Society Jaipur and Others, for the proposition that

there can be no estoppel against law or public policy and a party is not estopped from raising a question of law at any stage. Relying on the above

decision, it is contended by the counsel for the petitioners that the court below failed to consider that the petitioner is not at all a beneficiary under

the compromise decree and therefore, the decree of compromise passed by the Court below is contrary to Rule 3 of Order 23 of CPC. Such a

contention urged by the counsel for the petitioner cannot be accepted or the decision relied on by him has any application to his case. In the

present case, the property was sold through power of attorney agent and that was tacitly proved and accepted and such transfer shall form part

and parcel of the transaction. Moreover, the questions raised by the petitioner are not questions of law viz., non-availability of property allotted to

the share of the petitioner. This Court can only consider whether there was a compromise decree and it was executed with the full and clear

consent of the petitioner. It is not the case of the petitioner that he was coerced to accept the compromise or there was any fraud committed in

entering into such compromise. Therefore, the claim of the petitioner is hit by the principles of estoppel and consequently, the decision cited by the

petitioner cannot be made applicable to the facts of this case.

7. The learned counsel for the petitioner further relied on the decision reported in Pushpa Devi Bhagat (D) th. LR. Smt. Sadhna Rai Vs. Rajinder

Singh and Others, which arise out of rent control proceedings. This decision was relied on by the counsel for the petitioner to contend that the only

remedy available to a party to a consent decree to avoid such consent decree, is to approach the Court which recorded the compromise and made

a decree in terms of it and establish that there was no compromise. In para No. 23, it was held as follows:-

23. We will first consider the meaning of the words "'signed by parties'". Order 3 Rule 1 of CPC provides that any appearance, application or act in

or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by

any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or

acting, as the case may be, on his behalf. The proviso thereto makes it clear that the Court can, if it so desires, direct that such appearance shall be

made by the party in person. Rule 4 provides that no pleader shall act for any person in any Court, unless he has been appointed for the purpose

by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a

power-of-attorney to make such appointment. Sub-rule (2) of Rule 4 provides that every such appointment shall be filed in Court and shall, for the

purposes of sub-rule (1), be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as

the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

The question whether "signed by parties" would include signing by the pleader was considered by this Court in *Byram Pestonji Gariwala Vs. Union*

*Bank of India and others*, with reference to Order 3 of CPC

8. This decision would indicate that any act done by a pleader on behalf of the party would bind him. It is further held that even though an advocate

is empowered to sign on behalf of the party, it is always better to get such consent from the party in writing. As per Order 23 Rule 3-A of CPC, a

consent decree operates as an estoppel to set aside such decree on the ground that the compromise on which the decree is based is unlawful. It is

also well settled that the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the Court which

recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the Court which recorded

the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent

decree is nothing but contract between parties superimposed with the seal of approval of the Court. In the present case, a settlement has been

arrived at by all the parties by executing a consent deed duly signed by themselves and their respective advocate and it is not disputed by the

counsel for the petitioner. The petitioner only says that there is no compromise between the parties as the compromise was not accepted by all the

parties. It is also his contention that certain clauses has affected his rights and he is unable to enjoy the fruits of the compromise decree because the

properties allotted to him in the compromise have already been sold.

9. With this back ground, the question for consideration is whether there was a compromise in which the petitioner participated with his full

consent. The answer has to be in the affirmative especially when the petitioner has not pointed out any defect or procedural error in the matter of

execution of the compromise. Be that as it may, the terms of compromise is reduced in to writing. The compromise has been given effect to. Even

according to the petitioner, he accepted the property which was allotted to his share and he was aware throughout about the nature of the property

allotted to him, however, now, he tacitly contends that there is no property available to him and therefore the compromise is invalid. Such a

contention urged on behalf of the petitioner is hit by the principles of acquiesce and the petitioner cannot now turn around and question the

compromise entered into between the parties. Therefore, I am of the view that the decision cited by the counsel for the petitioner mentioned above

only supports the case or the respondents and not the case of the petitioner.

10. The learned counsel for the petitioner also relied on the decision reported in Horil Vs. Keshav and Another, wherein the Honourable Supreme

Court held that the compromise can be questioned if it is established that fraud has been committed in executing the same. As discussed above, in

the present case, even as per the contention of the petitioner, there is no element of fraud committed in the matter of compromising the dispute

besides that there is no evidence available to prove that fraud has been committed by any of the parties. Therefore, this decision cannot be made

applicable to the facts of the case on hand.

11. On the other hand, the learned counsel for the first respondent relied on the decision of the Honourable Supreme Court reported in Byram

Pestonji Gariwala Vs. Union Bank of India and others, wherein in para Nos. 33 to 39 and 43, it was held as under: -

33. In our own system of judicial administration, if strains have developed and cracks have appeared by the stresses and 2 pressures of the time; if

aberrations have become too obvious to be ignored or too deeprooted to be corrected by an internal mechanism; if the traditional role of the legal

profession requires urgent legislative scrutiny with a view to remedying the defects and strengthening and safeguarding the system; it is a matter

exclusively for Parliament to consider; but the amendment in question is not addressed to that purpose.

34. Aberrations there always have been in every system of administration; but whether they are merely peripheral or transient in character—mere

ripples on a placid pool—or symptomatic of deeper malady requiring structural modification by prompt legislative intervention—is a matter of grave

significance for the jurists, sociologists and political scientists to ponder over.

35. So long as the system of judicial administration in India continues unaltered, and so long as Parliament has not evinced an intention to change its

basic character, there is no reason to assume that Parliament has, though not expressly, but impliedly reduced counsel's role or capacity to

represent his client as effectively as in the past. On a matter of such vital importance, it is most unlikely that Parliament would have resorted to

implied legislative alteration of counsel's capacity or status or effectiveness. In this respect, the words of Lord Atkin in *Sourendra* (supra)

comparing the Indian advocate with the advocate in England, Scotland and Ireland, are significant: There are no local conditions which make it less

desirable for the client to have the full benefit of an advocate's experience and judgment. One reason, indeed, for refusing to imply such a power

would be a lack of confidence in the integrity or judgment of the Indian advocate. No such considerations have been or indeed could be advanced,

and their Lordships mention them but to dismiss them.

36. Similar is the view expressed by the Rajasthan High Court in *Mohan Bai Vs. Jai Kishan*, ; *Smt. Mohan Bai Vs. Smt. Jai Kishan and Others*,

and by the Gujarat High Court in *Nadirsha Hirji Baria and Others Vs. Niranjankumar @ Nireshkumar Dharamchand Shah and Others*, . A

contrary view has been expressed by the Andhra Pradesh High Court in *Kesarla Raghuram Vs. Narasipalle Vasundara*, , and it does not

commend itself to us.

37. We may, however, hasten to add that it will be prudent for counsel not to act on implied authority except when warranted by the exigency of

circumstances demanding immediate adjustment of suit by agreement or compromise and the signature of the party cannot be obtained without

undue delay. In these days of easier and quicker communication, such contingency may seldom arise. A wise and careful counsel will no doubt arm

himself in advance with the necessary authority expressed in writing to meet all such contingencies in order that neither his authority nor integrity is

ever doubted. This essential precaution will safeguard the personal reputation of counsel as well as uphold the prestige and dignity of the legal

profession.

38. Considering the traditionally recognised role of counsel in the common law system, and the evil sought to be remedied by Parliament by the

C.P.C. (Amendment) Act, 1976, namely, attainment of certainty and expeditious disposal of cases by reducing the terms of compromise to writing

signed by the parties, and allowing the compromise decree to comprehend even matters falling outside the subject-matter of the suit, but relating to

the parties, the legislature cannot, in the absence of express words to such effect, be presumed to have disallowed the parties to enter into a

compromise by counsel in their cause or by their duly authorised agents. Any such presumption would be inconsistent with the legislative object of

attaining quick reduction of arrears in Court by elimination of uncertainties and enlargement of the scope of compromise.

39. To insist upon the party himself personally signing the agreement or compromise would often cause undue delay, loss and inconvenience,

especially in the case of non-resident persons. It has always been universally understood that a party can always act by his duly authorised

representative. If a power-of-attorney holder can enter into an agreement or compromise on behalf of his principal, so can counsel, possessed of

the requisite authorisation by vakalatnama, act on behalf of his client. Not to recognise such capacity is not only to cause much inconvenience and

loss to the parties personally, but also to delay the progress of proceedings in court. If the legislature had intended to make such a fundamental

change, even at the risk of delay, inconvenience and needless expenditure, it would have expressly so stated. Accordingly, we are of the view that

the words "in writing and signed by the parties", inserted by the C.P.C. (Amendment) Act, 1976, must necessarily mean, to borrow the language

of Order III rule 1 C.P.C.....

43. A judgment by consent is intended to stop litigation between the parties just as much as a judgment resulting from a decision of the court at the

end of a long drawn out fight. A compromise decree creates an estoppel by judgment. As stated by Spencer-Bower & Turner in *Res Judicata*.

12. In this case, it is evident that the Honourable Supreme Court held that for expeditious disposal of case, the terms of settlement can be reduced

in writing and in terms of compromise signed by the parties, and allowing the compromise decree to comprehend with respect to matters even

falling outside the subject-matter of the suit, but relating to the parties. It was further held that legislature cannot, in the absence of express words to

such effect, be presumed to have disallowed the parties to enter into a compromise by counsel in their cause or by their duly authorised agents.

Any such presumption would be inconsistent with the legislative object of attaining quick reduction of arrears in Court by elimination of

uncertainties and enlargement of the scope of compromise.

13. In the present case, admittedly, the interest of all the parties to the compromise has been safeguarded and based on the same, the trial court

had passed a decree in terms of the compromise entered into between them and such decree by consent is valid and has the force of law.

14. The learned counsel for the respondents also relied on the decision reported in *Shanti Budhiya Vesta Patel and Others Vs. Nirmala Jayprakash*

*Tiwari and Others*, for the proposition that if the compromise entered into between the parties is not vitiated by fraud, misrepresentation,

misunderstanding or mistake, it is binding on the party who signed it and operates as *res judicata* as also estoppel between the parties. In Para

Nos. 31 to 35, it was held as under:-

31. It is settled position of law that the burden to prove that a compromise arrived at under Order 23 Rule 3 of the CPC was tainted by coercion

or fraud lies upon the party who alleges the same.

However, in the facts and circumstances of the case, the appellants, on whom the burden lay, have failed to do so. Although, the application for

recall did allege some coercion, it could not be said to be a case of established coercion. Three criminal complaints were filed, but the appellants

did not pursue the said criminal complaints to their logical end.

32. It is a plain and basic rule of pleadings that in order to make out a case of fraud or coercion there must be a) an express allegation of coercion

or fraud and b) all the material facts in support of such allegations must be laid out in full and with a high degree of precision. In other words, if

coercion or fraud is alleged, it must be set out with full particulars.

33. In *Bishundeo Narain and Another Vs. Seogeni Rai and Jagernath*, it was held thus:

24. We turn next to the questions of undue influence and coercion. Now it is to be observed that these have not been separately pleaded. It is true

they may overlap in part in some cases but they are separate and separable categories in law and must be separately pleaded.

25. It is also to be observed that no proper particulars have been furnished. Now if there is one rule which is better established than any other, it is

that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the

particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of

which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and

coercion. (See Order 6 Rule 4 of the Civil Procedure Code)

34. In the present case, the appellants have, however, failed to furnish the full and precise particulars with regard to the alleged fraud. Since the



particulars in support of the allegation of fraud or coercion have not been properly pleaded as required by law, the same must fail. Rather the

Affidavits-cum-Declarations executed by the appellants indicate that no coercion or fraud was exercised upon the appellants by respondent no. 8

or 9 at any point of time and thus the consent decree cannot be said to be anything but valid.

35. In this regard, we wish to refer to the judgment of this Court in the case of Shankar Sitaram Sontakke and Another Vs. Balkrishna Sitaram

Sontakke and Others, wherein this Court while dealing with the nature of a consent decree held in para 9 as under:

9. The obvious effect of this finding is that the plaintiff is barred by the principle of res judicata from reagitating the question in the present suit. It is

well settled that a consent decree is as binding upon the parties thereto as a decree passed by invitum. The compromise having been found not to

be vitiated by fraud, misrepresentation, misunderstanding or mistake, the decree passed thereon has the binding force of res judicata.

15. In this case, even according to the petitioner, there is no coercion in executing the compromise deed for the simple reason that the matter was

kept pending for more than two years and ultimately it was compromised. The petitioner was also aware of the sale after cancellation. The

compromise also provides for attornment in respect of property sold. The petitioner also not produced any documentary evidence to prove that

fraud has been committed in getting the compromise executed by which, properties, which are not subject matter of the plaint, has been included.

It is also to be mentioned that the parties to the suit are close relatives which would indicate that the compromise was arranged for the purpose of

getting peace and to give a quietus to the dispute existing between them. Therefore, the petitioner is estopped from questioning such compromise.

16. The learned counsel for the respondents also relied on the decision reported in Angathal and Others Vs. Ramasamy and Another, wherein in

para Nos. 9, 10, 11 and 12, it was held as follows:-

9. It appears that this application was filed along with a delay petition and the delay was not condoned by the Court below. Against the said order

a revision was filed and this Court condoned the delay and directed the Court below to consider the application and pass orders on merit.

Therefore, it was submitted on behalf of the petitioners that the application cannot be rejected on the ground of laches. While the application

cannot be rejected on the ground of laches the conduct of the party will be a relevant factor in deciding the issue. That apart we have to see

whether the petitioners' case that they did not know the implications of the compromise memo is acceptable. The xerox copy of the compromise

memo has been annexed in the typed set of papers. It is written in English. The first petitioner, the second petitioner and the second respondent

have affixed their thumb impressions. The third petitioner has signed in English they are the defendants. The Advocate for the defendants has also

signed underneath the signatures of the party. The respondent has signed as the plaintiff and Mr. G. Subramaniam has signed as Advocate for the

plaintiff. On the reverse of this joint memo the endorsement of the Presiding Officer is found,

Both the plaintiff and the defendants and their counsels were present. Parties heard. They admit the compromise memo. The compromise memo is

recorded.

10. The first petitioner was examined as P.W. 1 and the third petitioner was examined as R.W. 2. The petitioner has denied that the Judge had

asked them whether they signed the compromise memo after reading it P.W. 2 had stated that Ex. A-1 is the agreement between the parties which

was decided after the Panchayat. R.W. 1 had stated that nobody had compelled the parties to sign the document and that the Presiding Officer

asked everyone whether the compromise memo was read out in Tamil and understood by the parties and that each person told the Presiding

Officer the percentage of share that they were entitled to under the memo. In cross-examination he has consistently said that it was explained to

them. R.W. 2 who is the third petitioner herein admitted in her chief examination that the Presiding Officer explained the details of the compromise

memo and they signed it only thereafter. But in the cross-examination she had stated that she was not informed regarding the shares allotted to

each party. But at the same time she has also admitted that in 1991 she affixed her thumb impression after it was read out but that she does not

remember it now. It is seen from Paragraph No. 5 of the affidavit filed in support of this application that the Commissioner came to measure item

No. 3 of the suit property on 7.11.1992. Item No. 3 alone is the bone of contention since that was alleged to have been settled by the first

defendant on his wife, the respondent's mother the first petitioner herein. Then again, it is alleged that in 1994, the second respondent forcibly

attempted to vacate the first petitioner from item No. 3 of the property and they came to know about the ex parte decree some time in 1996 and

yet this application though filed on 27.8.1997 is moved only in 2002. The delay in filing this application has been condoned by this Court. Yet the

conduct is unnatural. It is difficult to accept the case of the petitioner that there was fraud or the compromise decree is unlawful. They had signed

the compromise memo and though in the affidavit they have referred to the fraud committed by their then Advocate nothing has been established in

their evidence nor has any effort being taken to prove this. The Court below has considered all the grounds urged by the petitioner.

11. It is specifically stated that Mr. C.N. Vennal, the counsel for the petitioners is a very senior member of the Bar and the allegation that he acted

against their interest cannot be accepted especially when the averment in the affidavit has not been otherwise proved. The Court below also refers

to the endorsement of the Presiding Officer which clearly shows that the Presiding Officer had enquired the parties and was satisfied that they

admit the compromise memo.

12. In fact in Suleman Noormohamed, etc. v. Umarbhai Janubhai, it is observed that, While recording the compromise under Order 23, Rule 3 of

the Code, it is not necessary for the Court to say in express terms in the order that it was satisfied that the compromise was a lawful one. It will be

presumed to have done so unless the contrary is shown.

17. In the above decision, this Court, referring to the decision of the Honourable Supreme Court reported in Suleman Noormohamed and Others

Vs. Umarbhai Janubhai, held that while recording compromise under Order 23 Rule 3 of the Code, it is not necessary for the Court to say in

express term in the order that it was satisfied that the compromise was a lawful one. It will be presumed to have done so unless the contrary is

shown. Here, in this case, it is not the case of the petitioner that the compromise is an unlawful compromise or he had proved the contrary. The

petitioner has not denied the execution of the compromise. It is now contended that the compromise is not suitable for him because the property

allotted to him in the compromise is not available. On the contrary, it is established by the respondents that the petitioner has received the sale

consideration through his power agent for the property, which he now says is not available and therefore also, the plea of the petitioner cannot be

accepted.

18. The learned counsel for the respondents lastly relied on the larger bench decision of the Honourable Supreme Court reported in Ashok

Leyland Ltd. Vs. State of Tamil Nadu and Another, to contend that it is for the petitioner, who allege that the compromise has no force under law,

to prove it in a manner known to law especially when the petitioner did not plead that the compromise is vitiated by fraud. In Para No. 9 of the

decision of the Honourable Supreme Court, in Para No. 114, relying on the earlier decision reported in Shrisht Dhawan it was held as follows:-

114. In Shrisht Dhawan, this Court has held (SCC p. 553, para 20)

20. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human

conduct. Michael Levi likes a fraudster to Milton's sorcerer, Comus who exulted in his ability to, "wing me into the easy-hearted man and trap him

into snares". It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary fraud in equity has been defined

as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public

policy forbids as being prejudicial to another. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of

inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of

fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which

deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as

criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a

representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section

17 of the Contract Act defines fraud as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even

otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be untrue yet he succeeds in misleading the

representee by making him believe it to be true. The representation to become fraudulent must be of the fact with knowledge that it was false. In a

leading English Case (Deny v. Peek (1886-90) All ER 1) what constitutes fraud was described thus:(ARR ER p. 22 B-C):

(F) Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly,

careless whether it be true or false.

19. It is seen from the order passed by the Court below and also other material records placed before this Court that the compromise was read

over, accepted by the parties as well as their respective counsel and only thereafter, a decree was passed in terms of such compromise. The

compromise decree was passed on 28.04.2011, which is impugned in this Civil Revision Petition. In the impugned order, it was also clearly

pointed out that as per the notice dated 17.11.2002, the first respondent was very well aware of the sale of plot Nos. 51 to 53 even in the year

2002. He was also a signatory for receipt of the sale consideration in the compromise in the year 2011. Therefore, he cannot be heard to contend

that the compromise has no force of law merely because the property allotted in his favour was not available for him.

20. The Court below has rightly pointed out that the petitioner himself has sold Plot No. 64, which was allotted to him in the compromise by a sale

deed dated 23.04.2007. The court below also, referring to the legal position that a compromise decree can be passed only in regard to the matters

within the scope of the suit, however, after amendment to CPC, a consent decree can be passed even though it comprehends matters falling

outside the subject matter of the suit. The court below also relied on the decision of this Court reported in (Navu Gounder vs. Govindasamy

Gounder and another) 2000 3 MLJ 609 in support of such conclusion. Therefore, on careful perusal of the order passed by the court below, I am

of the view that it did not suffer any perversity, illegality or irrationality warranting interference by this Court. In the result, all the Civil Revision

Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.