

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No(s). 12251/2025

S. KALAIMAMANI & ORS.

Appellant(s)

VERSUS

DS.S.SUDHAKARAN & ORS.

Respondent(s)

O R D E R

1. We have heard learned Counsel for the parties.

2. This appeal impugns judgment and order dated 14.12.2023 passed by the High Court of Judicature at Madras¹ in Civil Revision Petition No. 2902/2023 and CMP No. 17968/2023 by which the High Court allowed the revision and set aside the preliminary decree dated 24.08.2022 in Original Suit No. 195/2009 and gave liberty to the parties to approach the court below by taking necessary steps to proceed further in the suit in the manner known to law.

3. The short and unimpeachable submission

1 1 High Court

made on behalf of the appellants is that the High Court clearly exceeded its jurisdiction by interfering with a preliminary decree passed in a regular civil suit in its supervisory jurisdiction under Article 227 of the Constitution of India when an appeal lay to the High Court under Section 96 of the Code of Civil Procedure, 1908 ("CPC").

4. The learned Counsel for the respondents, though admitted that the petitioners (respondents here) had the remedy of an appeal under Section 96 of the CPC before the High Court, claimed that since the decree was obtained by playing fraud upon the Court, and fraud vitiates all solemn proceedings, the decree being nullity could have been set at naught in any proceedings.

5. We have considered the submissions and have perused the record. We find that the ground on basis of which respondents claim that fraud was played upon the Court is debatable and, therefore, when an appeal

could have been filed before the High Court under Section 96 CPC, the High Court ought not to have exercised its supervisory jurisdiction under Article 227 of the Constitution of India. Our view is fortified by various decisions of this Court holding that where a remedy lies under CPC, the High Court must desist from exercising powers under Article 227 of the Constitution².

6. For the reason aforesaid, without entering upon the merits of the case, we deem it appropriate to set aside the order passed by the High Court and relegate the parties to avail remedy under the CPC.

7. At this stage, we have been informed that one of the parties to the suit, namely, PACE Builders (i.e. defendant No. 5 in the suit), had presented an appeal under Section 96 CPC before the High Court which was returned on account of the impugned order. Likewise, another party, namely, Ben

² 2 See: Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others v. Tuticorin Educational Society and others, (2019) 9 SCC 538; Mohd. Ali v. V. Jaya, (2022) 10 SCC 477

Foundation (i.e. defendant No. 6 in the suit), claims that it could not present an appeal because of the pending proceedings before the High Court under Article 227 of the Constitution of India. They are both willing to re-present and present their respective appeals against the preliminary decree passed in Original Suit No. 195/2009.

8. In such circumstances, we deem it appropriate to observe that if PACE Builders (defendant No. 5) re-presents its appeal within four weeks from today, the same shall be entertained by the High Court by treating it as not to have been returned. Likewise, Ben Foundation (defendant No. 6) may also present its appeal along with a delay condonation application within four weeks from today. If so presented, it shall be dealt with in accordance with law.

9. This appeal is allowed in the aforesaid terms.

10. Pending application(s), if any, shall
stand disposed of.

.....J
[MANOJ MISRA]

.....J
[S.V.N. BHATTI]

New Delhi;
November 27, 2025

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 12251/2025

S. KALAIMAMANI & ORS.

Appellant(s)

VERSUS

DS.S.SUDHAKARAN & ORS.

Respondent(s)

IA No. 63284/2025 - APPLICATION FOR VACATION OF INTERIM ORDER

Date : 27-11-2025 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MANOJ MISRA
HON'BLE MR. JUSTICE S.V.N. BHATTI

For Appellant(s) :

Mr. S. Nagamuthu, Sr. Adv.
Mr. M.p. Parthiban, AOR
Ms. Priyaranjani Nagamuthu, Adv.
Mr. Bilal Mansoor, Adv.
Mr. Shreyas Kaushal, Adv.
Mr. S. Geyolin Selvam, Adv.
Mr. Alagiri K, Adv.
Mr. Shivansh Sharma, Adv.
Mr. Rohan Singh, Adv.
Mr. Abhishek S, Adv.
Mr. S.r.shenbaga Baabu, Adv.
Mr. Saraswathi Muthiah, Adv.

For Respondent(s) :

Mr. Shyam Divan, Sr. Adv.
Mr. Sivagnanam Karthikeyan, Adv.
Ms. Ira S Mahajan, Adv.
Ms. Charita Singh, Adv.
Mr. Yashvardhan Singh, Adv.
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Mr. Tushar Giri, Adv.
Mr. Siddharth Anil Khanna, Adv.
Mr. Ritik Arora, Adv.
Mr. Shivam Mishra, Adv.
Mr. Mg Aravind Raj, Adv.
Mr Aravind Raj, Adv.
Mr S Mahajan, Adv.

Krishnamohan K., AOR
Mr. Krishnamohan K Aor, Adv.
Mrs. Prerna Jain Kala, Adv.
Ms. Dania Nayyar, Adv.
Mrs. Parul Sachdeva, Adv.

Mr. Sahil Bhalaik, AOR
Krishnamohan K., AOR
Mr. B. Karunakaran, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. The appeal is allowed in terms of the signed order which is placed on the file.
2. Pending application(s), if any, shall stand disposed of.

(CHETAN ARORA)
ASTT. REGISTRAR-cum-PS

(SAPNA BANSAL)
COURT MASTER (NSH)