

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.(NPD).No.4963 of 2014andC.M.P.No.7060 of 2016

Date of Reserving the Judgment	Date of Pronouncing the Judgment
15.12.2016	19.12.2016

1.Abdul Rahman
Rep by his Power Agent
Sahila Banu
W/o.Abdul Rahman

2.Rajapunnisha
W/o.Sahul Hammed .. Respondents/Defendants//Respondents/
Petitioners

-Vs.-

Kamal Mohammed
S/o.Mohammed Leabi Sahib .. Petitioner/Plaintiff//Appellant/
Respondent

Prayer:

Civil Revision Petition is filed under Article 227 of the Constitution of India as against the fair and decreetal order passed in C.M.A.No.4 of 2013 dated 10.03.2014 on the file of the Subordinate Judge, Mannargudi by reversing the fair and decreetal order passed in I.A.No.16 of 2012 in O.S.No.78 of 2003 dated 06.03.2012 on the file of the District Munsif Court, Thiruthuraipoondi.

For Petitioner : Mr.A.Muthukumar

For Respondents : Mr.K.Surendar

ORDER

The present Civil Revision Petition has been filed challenging the fair and decreetal order passed in C.M.A.No.4 of 2013 dated 10.03.2014 on the file of the Subordinate Judge, Mannargudi by reversing the fair and decreetal order passed in I.A.No.16 of 2012 in O.S.No.78 of 2003 dated 06.03.2012 on the file of the District Munsif Court, Thiruthuraipoondi.

2.The respondent herein as plaintiff has filed the suit in O.S.No.78/2003 for mandatory injunction and costs stating that the suit properties originally belong to his mother Jayenamabu Nachiaar, who had four sons, namely, Mohammed Hussain, Kamal Mohammed, Basheer Ahamed and Shahul Hameed. Initially, the plaintiff and his two brothers viz., Mohammed Hussain and Basheer Ahamed were enjoying the said property. Thereafter, one of the brother Mohammed Hussain constructed a new house and vacated the suit house and from then on, only the plaintiff and his younger brothers, Basheer Ahamed and Shahul Hameed alone were enjoying the property. Since the mother of the respondent/plaintiff was not in good health, the respondent/plaintiff has spent Rs.2,00,000/- for renovating the old house.

3.While so, the elder brother of the respondent/plaintiff viz., Mohammed Hussain had sold the front portion of the suit property in favour of the first defendant, claiming to have acquired the right over the same in view of the oral partition that took place in the year 1996. However, he has not acquired any such right over the suit property and it is only a joint family property. On the basis of the sale deed executed by Mohammed Hussain, the first revision petitioner/first defendant had demolished the front portion of the suit property and constructed two shops, inspite of the objection made by the plaintiff. Hence, the plaintiff was constrained to file the suit for mandatory injunction. The first defendant filed written statement and contested the suit. During the course of the proceedings, a compromise was arrived at between the parties and a compromise memo was filed and in pursuance of the same, the suit was dismissed on 22.11.2011 by recording the said compromise memo.

4.When that being so, on 30.11.2011, the respondent/plaintiff filed an application in I.A.No.16/2012 in O.S.No.78/2003 to set aside the compromise decree and decide the suit on merits. The Trial Court, after considering the argument advanced by both the parties had dismissed the application in I.A.No.16/2012 in O.S.No.78/2003 on 05.03.2012. Against the said order of dismissal, the respondent/plaintiff filed an appeal in C.M.A.No.4/2003 on the

file of the learned Subordinate Judge, Mannargudi. The said appeal came to be allowed on 06.03.2012 and as against the same, the present Civil Revision Petition has been preferred.

5.The learned counsel appearing for the petitioner would submit that the suit was filed in the year 2003. The defendants filed written statement and contested the suit. In the year 2011, an additional written statement was filed. While so, a compromise was arrived at between the parties, on the basis of which a petition under Order 23 Rule 3 was filed which was allowed and consequently, the suit was dismissed.

6.The learned counsel for the revision petitioner would further submit that the respondent herein has not disputed the signature in the compromise memo, whereas he had only pleaded that the said signature was obtained by undue influence and coercion. The learned counsel had drawn the attention of this Court to paragraphs 2 and 3 of the affidavit filed in I.A.No.16/2012 in O.S.No.78/2003, wherein he had pleaded that because of his ill-health he had signed in the said document and now, since his son wanted him to contest the suit, he wanted the case to be restored. He would further submit that to prove the undue influence and coercion in obtaining his signature in the compromise memo, the respondent/plaintiff has not let in any oral or documentary

evidence. Furthermore, there was no document to show that the respondent/plaintiff was suffering from serious illness and he is undergoing continuous treatment for the same. The first appellate Court without considering all these aspects had allowed the Civil Miscellaneous Appeal and hence, the learned counsel for the revision petitioner prays for allowing the revision by setting aside the fair and decreetal order made in C.M.A.No.4/2013.

7.Resisting the same, the learned counsel appearing for the respondent/plaintiff would submit that the respondent herein had filed the application in I.A.No.16/2012 in O.S.No.78/2003 to set aside the compromise decree within 8 days from the date of the said order. Hence, he would submit that atleast an opportunity must be granted to the respondent by remitting the mater back to the Trial court, so as to enable the respondent/plaintiff to let in oral and documentary evidence. Thus, the learned counsel for the respondent prayed for the dismissal of the revision.

8.Considering the rival submissions made by both sides and on perusal of the typed set of papers, it is seen that the respondent herein as plaintiff has filed the suit in O.S.No.78/2003 for mandatory injunction in respect of the entire property. The total extent of the property is 3959 sq.ft in Door No.116 [Old Door No.145]. But the property purchased by the revision petitioner is to

an extent of 725 sq.ft [East to West - 25 feet and North to South - 29 feet]. The defence taken by the revision petitioner is that the original owner of the property Jayenamabu Nachiaar had gifted the property to his son Mohammed Hussain on 07.08.1996 and the said Mohammed Hussain had sold the same in favour of the revision petitioner on 16.09.2002. Thereafter, the revision petitioner had demolished the structure in the said property and constructed two shops. Further, the construction in the property was completed even before the filing of the suit. The revision petitioner/defendant had also filed additional written statement. While so, a compromise was alleged to have been arrived at between the parties and on the basis of the said compromise, an application in I.A.No.464/2011 was filed under Order 23 Rule 3 CPC. The learned Trial Judge had allowed the said application and consequently, the suit was dismissed by recording the said compromise. The learned Trial Judge had made the following endorsement;

“Both parties and advocates present and filed petition under Order 23 Rule 3 CPC for compromise. Both parties and advocates admits for compromise. Hence, this petition is allowed without cost.”

9.It is true that the respondent/plaintiff had filed the application in

I.A.No.16/2012 in O.S.No.78/2003 to set aside the compromise decree within 8 days from the date of the said order. In the said application, the respondent/plaintiff had pleaded that because of his ill-health he had signed in the said document. However, he had not produced any document to prove that he is undergoing continuous treatment. Further, it is pertinent to note that the respondent/plaintiff had not disputed his signature in the compromise memo, but he had only pleaded that the said signature was obtained by undue influence and coercion. But, it is a well settled dictum that the person who plead undue influence and coercion has to prove the same in accordance with law. In the instant case, the respondent/plaintiff had not proved the same by letting in oral or documentary evidence. The learned Trial Judge after considering all these aspects had dismissed the application in I.A.No.16/2012 in O.S.No.78/2003 by holding that there is no valid ground for setting aside the order made in O.S.No.78/2003.

10.However, in the appeal filed against the order made in I.A.No.16/2012 in O.S.No.78/2003, the learned First Appellate Judge, in paragraph 10 of its order had held as follows:

“As a matter of fact, now it is contended by the appellant/plaintiff that he was compelled and threatened to accept the terms of the compromise which leads to suspicion in

the minds of the Court. Normally it is the bounden duty of the Court to uphold the truth and do justice. Every litigant is expected to state truth before the law court whether it is pleadings, affidavits or evidence. Based on the averments of the Appellant/petitioner since the Court suspects fraud being played on the basis of the compromise petition, this Court considers it necessary to allow the appeal.”

11. But the above finding of the first appellate Court is not correct. At this juncture, it would be appropriate to incorporate Order 6 Rule 4 CPC.

“4. Particulars to be given where necessary.- In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.”

12. In the pleading, the respondent/plaintiff has stated that he is taking treatment for ill-health, however, there is no scrap of paper before this Court to prove the same. Further, he has not let in any oral or documentary evidence to show that only due to coercion and undue influence, he had signed

the compromise and also no supporting affidavit of the learned counsel on record for the plaintiff was filed. Furthermore, in Criminal jurisprudence, the guilt of the accused has to be proved beyond all reasonable doubts, but in the Civil jurisprudence, the case has to be proved by preponderance of probability. In the instant case, even though the respondent/plaintiff has stated that taking advantage of his ill-health the defendants had obtained his signature in the compromise memo, admittedly, he has not proved the same by examining himself as witness or filing any documents. It is also pertinent to note the respondent herein had pleaded for an opportunity by remitting the matter to the Trial court. However, considering the fact that the suit is of the year 2003 and the parties had entered into a compromise in the year 2011, I am of the view that the intention of the respondent/plaintiff is only to drag on the proceedings and hence, I am not inclined to grant the said relief.

13. In such circumstances, the first appellate Court had allowed the appeal in C.M.A.No.4/2013 without any material records and hence, the same is liable to be set aside and accordingly, set aside. Consequently, the Civil Revision Petition is allowed.

14. In fine, the Civil Revision Petition is allowed. The fair order and

decreetal order passed by the first appellate Court in C.M.A.No.4/2013 on the file of the Subordinate Judge, Mannargudi is hereby set aside and the fair and decreetal order passed in I.A.No.16 of 2012 in O.S.No.78 of 2003 dated 06.03.2012 on the file of the District Munsif Court, Thiruthuraipoondi is restored. Connected miscellaneous petition is closed. No costs.

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Pre-Delivery order made in
C.R.P.(NPD).No.4963 of 2014

Dated : 19.12.2016

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