

A. SELVAM,J.

and

P.KALAIYARASAN,J.

This petition has been filed to record compromise as set out therein amongst the parties signed therein.

2. It is averred in the petition that the petitioner, as plaintiff has filed O.P.No.145 of 2000 and the same has been subsequently converted into T.O.S.No.22 of 2001. The learned Single Judge of this Court after considering the available evidence on record has dismissed the same. Against the judgment and decree passed in T.O.S.No.22 of 2001, the present Original Side Appeal has been preferred. Further, it is averred in the petition that during pendency of the same, a compromise has been effected between the appellant/petitioner and third respondent. Under the said circumstances, the present petition has been filed for getting the relief sought therein.

3. The learned Senior Counsel appearing for the petitioner has relief upon the following decisions:

(i) AIR 2002 Madras 191 (*P. Jothi Bai Vs. B. Dorairaj and others*)

(ii) Manu/RH/0398/2013 (*Mst. Kamla Vs. Mst. Mangi Bai & Others*)

In both the decisions it has been specifically held that in a petition filed under Section 278 of the Succession Act, 39 of 1925, a petition under Order 23 Rule 3 of the Code of Civil Procedure is maintainable for the purpose of effecting

compromise between the parties, who filed the same.

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4. In the instant case, as mentioned supra, the appellant as well as third respondent have entered into a compromise. The respondent 1 and 2 have not put their signatures in the present petition. Further, they remained ex parte in O.S.A.No.139 of 2008. Under the said circumstances, as per decision reported in AIR 2002 Madras 191(cited supra), the compromise to be recorded is binding only upon the appellant/petitioner and third respondent. Further, it is made clear that the compromise to be recorded is not binding upon the respondents 1 and 2.

5. It has already been pointed out that in a petition filed under Section 278 of Succession Act (30 of 1925), a petition under Order 23 Rule 3, of the Code of Civil Procedure is legally maintainable. On the basis of the decision mentioned supra, the petitioner can file the present petition. Considering the aforesaid factual as well legal aspects this Court is of the view that the relief sought in the petition can be granted.

In fine, this petition is allowed and the compromise effected between the petitioner and third respondent is recorded. Further it is made clear that the compromise recorded in the present petition is not binding upon the respondents 1 and 2.

(A.S.,J.) (P.K.,J.)
02-12-2016

glp

C.M.P.No.17506 of 2016 in O.S.A.No.139 of 2008

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