

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(NPD) NO.2860 OF 2017ANDCMP NO.13481 OF 2017

1.Jagatha
2.Sekar
3.Shankar
4.Mallika
5.Lalitha

... Petitioners

Vs.

1.U.Lakshmi
2.U.Devaprakash

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 03.10.2016 made in O.S.No.776 of 2007 on the file of Additional District Munsif, Alandur.

For Petitioners : Mr.V.Balasubramanian

ORDER

This Civil Revision Petition is directed against the order dated 03.10.2016, passed in O.S.No.776 of 2007, by the learned Additional District Munsif, Alandur.

2. The contention of the petitioners is that the parties have entered into a settlement and filed a memorandum of compromise before the Trial Court. However, the Trial Court, without recording the memorandum of compromise, has gone into the merits of the case and dismissed the suit.

3. The learned counsel for the petitioners would submit that all the parties have consented for recording the memorandum of compromise and therefore, the Trial Court should have recorded the memorandum of compromise and decreed the suit rather than dismissing it on merits. Further, the Trial Court ought not to have decided the matter on merits, when a memorandum of compromise has been filed and all the parties have signed.

4. Order 23 Rule 3 of the Code of Civil Procedure reads as under:

"3. Compromise of suit. - *Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise*

[in writing and signed by the parties], or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject - matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject - matter of the suit]:

[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.] "

5. In view of the above provision, it has to be decided as to whether the memorandum of compromise is a lawful compromise or not. If it is not lawful agreement, then only the Court can interfere, otherwise the duty is cast upon the Court to record the memorandum of compromise and decreed the suit. Whereas, the Trial Court has held that both sides

have not produced any documents or evidence in support of their claim and therefore, dismissed the suit on merits.

6. In the considered opinion of this Court, the course taken by the Trial Court is not correct and the matter is remanded back to the Trial Court to consider the memorandum of compromise as to whether it is lawful or not, and if it is found that all the parties have agreed for the compromise, pass appropriate orders, within a period of one month from the date of receipt of a copy of this order.

7. The Civil Revision Petition is disposed of with the above observation and direction. No costs. Consequently, connected civil miscellaneous petition is closed.

08.08.2017

Index : Yes/No

Internet : Yes/No

Note : **Issue order copy on 16.08.2017**

TK

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To

The Additional District Munsif
Alandur.



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M.GOVINDARAJ, J.

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