



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving Order
08.11.2016Date of pronouncing Order
27.06.2017

WEB COPY

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P. (MD) No.2192 of 2016 (NPD)andCMP (MD) No.10169 of 2016

K.S.Thangapandian

.. Petitioner/Petitioner/Plaintiff

Versus

1.R.N.Jagadeesan

2.N.R.Manivannan

3.L.Kamalakannan

4.C.Sivarengaraj

5.V.Vijayarenga Muthulashmi

6.V.Sivaramkrishnavijayan

7.V.Jayachandran

8.Minor S.Thuruva

through his mother and next friend

S.Ramakrishnaveni @ Baby

9.R.Senthilkumari

10.C.Mahalakshimi Thai

11.C.Siva Nagaraja

12.C.Sivanthani Raja

13.C.Sivakrishnaraja

14.S.Geetharaja

<https://hcservices.ecourts.gov.in/hcservices/>

15.P.Siva Ponnurani

.. Respondents



This Civil Revision Petition is filed under Article 227 of the Constitution of India seeking direction to the District Munsif, Theni, to number the unnumbered I.A.SR.No.992 of 2016 in O.S.No.80 of 2007 filed by the petitioner and dispose the same before proceeding with the enquiry in notice dated 17.03.2016 and allow the above Civil Revision Petition.

For Petitioner	:	M/s.N.Krishnaveni
For Respondents 1 to 3	:	Mr.R.A.Mohanram
		for
		Mr.M.K.Rajagopal
For Respondents 4 to 15	:	Mr.K.Govindarajan

ORDER

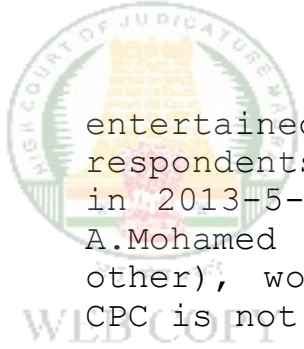
This Civil Revision Petition is filed seeking direction to the District Munsif, Theni, to number the unnumbered I.A.SR.No.992 of 2016 in O.S.No.80 of 2007 filed by the petitioner and dispose the same before proceeding with the enquiry in notice dated 17.03.2016.

2.According to the petitioner, a compromise decree was passed on 15.09.2009 in O.S.No.80 of 2007 on the file of District Munsif Court, Theni. On 25 October 2016, the petitioner/plaintiff filed an application in I.A.SR.No.992 of 2016 in O.S.No.80 of 2007, under Order 23 Rule 3 and Order 47 Rule 2 and Section 151 of Civil Procedure Code, to review and to recall the compromise judgment and decree passed by the Court in the aforesaid suit. The Court below has neither numbered nor returned the said application. Hence, the petitioner is before this Court with the aforesaid prayer.

3.Heard the learned counsel for the petitioner as well as the learned counsel for the respondents.

4.The learned counsel for the petitioner would submit that the application filed by the petitioner, to review and recall the judgment and decree passed in the aforesaid suit, is maintainable before the District Munsif Court, Theni, by which Court the compromise judgment and decree was passed. In support of his contention, the learned counsel would rely upon the decision of the Hon'ble Supreme Court in the case of "Pushpa Devi Bhagat (D) through LR. Smt.Sadhna Rai ..vs.. Rajinder Singh and others" reported in 2007-1-LW 684, and pray that the Civil Revision Petition may be allowed.

5.The learned counsel for the respondents would submit that the application filed to review and recall the judgment and decree is pending before the District Munsif Court, Theni, and hence, at this stage, this Civil Revision Petition cannot be



entertained by this Court. Further the learned counsel for the respondents, by relying upon the decision of this Court reported in 2013-5-LW 239 (Chinnapaiyan @ Chinnathambi and another ..vs.. A.Mohamed Yusuf represented by his Power Agent C.Jalaludin and other), would submit that the application under Order 23 Rule 3 CPC is not maintainable before the learned District Munsif, Theni.

6.I have considered the submissions made by the learned counsel appearing on either side and perused the materials available on record.

7.The petitioner herein filed an application in unnumbered I.A.SR.No.992 of 2016 in O.S.No.80 of 2007 on the file of the District Munsif, Theni, under Order 23 Rule 3 and Order 47 Rule 2 and Section 151 of Civil Procedure Code. The ground raised in the aforesaid application filed by the petitioner is that the defendants 1 to 3 by committing fraud on the Court obtained the compromise judgment and decree and hence, the present application has been filed before the said Court to review and recall the said compromise judgment and decree.

8.In the judgment relied on by the learned counsel for the petitioner reported in "Pushpa Devi Bhagat (D) through LR. Smt.Sadhna Rai ..vs.. Rajinder Singh and others" reported in 2007-1-LW 684, the Hon'ble Supreme Court has held that against the compromise decree passed by a Court, an application under Order 23 Rule 3 CPC is maintainable before the same Court. The relevant paragraph is extracted below:-

"12. The position that emerges from the amended provisions of Order 23, can be summed up thus :

(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in section 96(3) CPC.

(ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) Rule 1 Order 43.

(iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3A.

(iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 of Order 23.

Therefore, the only remedy available to a party against 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. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. The second defendant, who challenged the consent compromise decree was fully aware of this position as she filed an application for setting aside the consent decree on 21.8.2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants challenged the consent decree. For reasons best known to herself, the second defendant within a few days thereafter (that is on 27.8.2001), filed an appeal and chose not to pursue the application filed before the court which passed the consent decree. Such an appeal by second defendant was not maintainable, having regard to the express bar contained in section 96 (3) of the Code."

9. Per contra, in the judgment relied on by the learned counsel for the respondents reported 2013-5-LW 239 (Chinnapaiyan @ Chinnathambi and another ..vs.. A.Mohamed Yusuf represented by his Power Agent C.Jalaludin and others), this Court has held that only an Appeal under Order 43 Rule 1-A (2) of CPC is maintainable against the decree passed in pursuant to recording of a compromise memo and not an application under Order 23 Rule 3 CPC. The relevant portions are extracted hereunder:

14. Thus, I am of the view that the petitioners have to only file an appeal under Order 43 Rule 1-A (2) of CPC and not by filing an application under Order 23 Rule 3 CPC. As I have already pointed out that such exercise is contemplated under the proviso to Order 23 Rule 3 only on the day when the compromise was recorded by the Court without any adjournment or on the adjourned day, if the Court is satisfied that such adjournment is necessary.

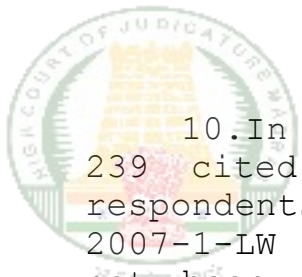
15. No doubt the learned counsel appearing for the petitioners also relied on the decision of the Supreme Court reported in 1993 (1) SCC 581 (Banwari Lal Vs.Chando Devi and Another) to contend that the Court below ought not to have recorded the compromise memo and passed the decree thereon, even if it had no knowledge of the fraud alleged to have been practised since



the petition for compromise has not been signed by the petitioners. In this case as pointed out by me earlier that the compromise memo was filed on 9.2.2004 and on the same day, the Court has passed the decree based on such compromise memo. However, the petitioners have filed the present application only on 28.3.2005 i.e. nearly after one year. Therefore, as on the date of recording compromise memo and passing the decree thereon, the Court below was not placed with any facts or materials that the compromise memo was obtained by fraud or collusion as alleged by the petitioners. Therefore, the petitioners cannot contend that the Court below ought not to have passed the decree based on such compromise memo, especially under the circumstances, that the Court below has found that the compromise memo contained the signature and thumb impression of the parties as well as their counsels. Hence the reliance placed by the petitioners counsel in the above said decision of the Apex Court on this context is not correct.

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17. Equally the other decision relied on by the learned counsel for the respondent reported in 2002 (5) CTC 646 (Gemini Pictures Circuit P.Ltd., Vs. M.Ramaswamy and Another) is in respect of the merits of the matter to establish that the petitioners did not engage the counsel who signed the compromise. Therefore, I am not expressing any view on this aspect as well. No doubt, the finding rendered by the Court below as if the petitioners have not disputed their signatures in the compromise memo is factually incorrect. On the other hand a perusal of the pleadings as well as the evidence would show that they have very much disputed their signature. Thus such finding of the Court below is not factually correct. However, as I am convinced that the application filed by the petitioners under Order 23 Rule 3 CPC is not maintainable and when such application was rejected by the Court below, I am confirming the said order of rejection only on the ground of maintainability as stated supra. Accordingly it is open to the petitioners to file an appeal under Order 43 Rule 1A(2) of CPC and contest the matter by raising all the grounds available to them. By giving such <https://hcservices.ecourts.gov.in/hcservices/>, the Civil Revision Petition is dismissed. Consequently the connected M.P. is closed. No costs.



10. In the aforesaid decision of this Court reported 2013-5-LW 239 cited supra, relied on by the learned counsel for the respondents, the decision of the Hon'ble Apex Court reported in 2007-1-LW 684 cited by the learned counsel for the petitioner has not been considered. However, it is an admitted fact that the application filed by the petitioner has been neither numbered nor returned by the Court below. Therefore, it is clear that the Court below has not considered the said application, including its maintainability, under Order 23 Rule 3 of Code of Civil Procedure. Hence, at this stage, by considering the relief as prayed in the Revision Petition, this Court is inclined to direct the Court below to number the application in I.A.SR.No.992 of 2016 in O.S.No.80 of 2007, if it is otherwise in order, and to decide the said application including the issue of maintainability, after affording opportunities to the parties, on merits and in accordance with law, as expeditiously as possible, preferably within a period of twelve weeks from the date of receipt of a copy of this order.

11. The Civil Revision Petition is disposed of, with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

The District Munsif,
Theni.

+1cc to M/S.P.Thiagarajan, Advocate SR.No. 62327
+1cc to M/S.R.A.Mohanram, Advocate SR.No. 61918

Copy to:

The Registrar(Judicial)
Madurai Bench of Madras High Court,
Madurai.

order in
C.R.P.No.2192 of 2016
27.06.2017

mra

JM/SV MMS/SAR 2/23.08.2017/6P/5C