



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) Nos.584 to 586 of 2016 (PD)

and

C.M.P (MD) Nos.9467 & 2575 of 2016

- 1.Manikanthan
- 2.Amsamani
- 3.S.V.Chinnadurai
- 4.Ravichandran
- 5.Naveen
- 6.Athithan
- 7.Gandhimathi
- 8.R.Majula
- 9.Muthukumaresan
- 10.Kannan
- 11.Mohammed Mydeen
- 12.S.Palraj
- 13.M.Pandiammal
- 14.Pethanasamy
- 15.Gopal Naicker
- 16.E.Santhi
- 17.Manimala
- 18.Jansirani
- 19.S.Mariammal
- 20.S.Karuppasamy
- 21.Malarmani

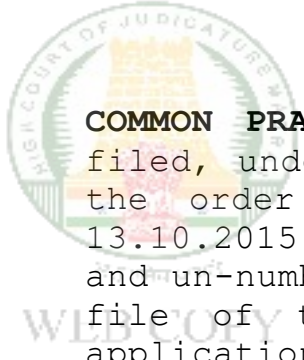
..Revision Petitioner/Respondents
1,2,3,4, 5 to 18, 22,24 & 27
in all the C.R.Ps.

Vs.

- 1.Kanthamani Devi
- 2.R.Nagalakshmi
- 3.A.Ganesan
- 4.A.Radha
- 5.Balasubramani Naidu
- 6.A.K.Venkatachalam
- 7.A.K.Alagarsami

..Respondent/Petitioner/Plaintiff
in all the C.R.Ps.

..Respondent/Petitioners &
Respondents 4,19 to 21, 23, 25 & 26
in all the C.R.Ps.



COMMON PRAYER in all the C.R.Ps.: Civil Revision Petitions are filed, under Article 227 of the Constitution of India, to reverse the order of the lower Court made on the application dated 13.10.2015 in I.A.No.108 of 2014, un-numbered I.A.No. Of 2014 and un-numbered I.A.No. Of 2014 in O.S.No.123 of 2010, on the file of the Sub Court, Theni to allow/to dismiss the said applications and allow the Civil Revision Petitions.

For Petitioners : Mr.M.S.balasubramania Iyer
in all C.R.Ps.
For R1 : Mr.C.M.Mari Chelliah Prabhu
in all C.R.Ps.
For R2 to R7 : Mr.S.Antonyammal
in all C.R.Ps.

COMMON ORDER

The issue involved in all the CRPs are interlinked and hence, all the CRPs are disposed of by common order.

2.The petitioners are the defendants 1 to 18, 22,24 & 27 and the first respondent is the plaintiff. The respondents 2 to 7 are the defendants 19 to 21,23,25 & 26 in the suit. The first respondent filed suit in O.S.No.123 of 2010, before the Sub Court, Theni for partition against the petitioners and others claiming 1/7th share in the suit property. The petitioners and the respondents 2 to 7 are contesting the suit. Trial Commenced. The first respondent gave evidence on 13.12.2010. Subsequently, there was a compromise talk between the first respondent and her brother, who are defendants in the suit. The first respondent agreed to receive 1/35th share in the suit property. A memo of compromise was prepared and first respondent and other defendants except defendants 4 & 13 signed and presented before the Court and filed memo of compromise. The said memo of compromise was returned as defendants 4 & 13 were not present and signed the memo of compromise. The first respondent gave evidence on 09.02.2011 accepting the compromise memo and to receive 1/35th share in the suit property. Subsequently, the petitioners and other respondents did not honour the compromise and therefore, she gave evidence on 22.06.2011 stating that compromise failed and gave evidence as per the averments mentioned in the plaint and claimed partition and separate possession of 1/7th share. The petitioner again filed memo of compromise. The same was returned on the ground that no permission was taken for entering into compromise on behalf of respondents 4 & 5, who were minors. Subsequently, on 30.10.2012 the petitioners 4 & 13 and respondents filed a memo stating that they accept memo of compromise signed by their Advocate. The fifth petitioner/5th defendant also filed memo stating that he accepts compromise entered into by his father as his guardian on his behalf. The first respondent filed memo, dated 03.09.2013 withdrawing her consent for compromise. The said memo was recorded



and suit was adjourned to 17.09.2013 for cross-examination. In the meanwhile, the petitioners filed memo of compromise on 26.08.2013.

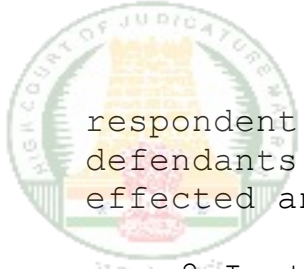
3.The first respondent filed I.A.No.108 of 2014 to scrap the evidence given by her on 09.02.2011 and to direct the petitioners and respondents 2 to 7 to cross-examine her based on evidence given by her on 22.06.2011. The petitioners and respondents 2 to 7 filed counter and denying the various averments made in the application and opposed the said application on the ground that the suit was compromised between the first respondent and petitioners and other defendants and all the parties have signed in the memo of compromise. Due to procedural defect, memo of compromise was not recorded in the year 2011, even though all the parties were present. Memo of compromise which was filed on 26.08.2013 was accepted by the Court and the same was recorded. Therefore, the first respondent cannot now wriggle out of compromise.

4.The learned Judge considering the averments made in the affidavit and counter affidavit and materials available on record allowed the application in I.A.No.108 of 2014 and memo filed by the first respondent and rejected the un-numbered two applications filed by the defendants 4,13 & 15.

5.Against all the three separate orders passed by the learned Sub Judge, Theni, dated 13.10.2015, the petitioners have come out with the present these Civil Revision Petitions.

6.I have heard the learned counsel appearing for the petitioners and the learned counsel appearing for the first respondent and the learned counsel appearing for the respondents 2 to 7.

7.From the materials on record it is seen that the first respondent filed suit for partition claiming 1/7th share in the suit property. Other sharers are her brothers and legal heirs of her brother. In view of the said relationship, according to the first respondent, she agreed to compromise and to receive 1/35th share in the suit property instead of 1/7th as claimed by her in the suit. In view of the said compromise, she gave evidence on 09.02.2011 accepting the compromise. Subsequently, the defendants did not honour the compromise and did not allot 1/35th share in the suit property. Therefore, on 22.06.2011 she gave evidence, subsequently, she also filed a memo stating that she is not accepting the compromise. The said memo was recorded and suit was posted for cross-examination. The petitioners 1 to 18 and respondents 2 to 7 filed memo of compromise, after lapse of two years on 26.08.2013. By that time, the first respondent has not consented for compromise as terms of compromise were not honoured. In the circumstances, the learned Judge has rightly allowed I.A.No.108 of 2014 and accepted the memo filed by first



respondent and rejected the other two applications, filed by the defendants 4, 13 & 15 on the ground that compromise are not effected and fructified.

8. In the result, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To
The Subordinate Judge,
Theni.

+1 cc to MR.M.S.Balasubramania Iyer ADVOCATE, SR No.12549
+2 cc to MR.C.M.Mari Chelliah Prabhu ADVOCATE, SR No.13035

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Am
AM-CM-MSA/21.3.2017/4P-5C