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**A.No.1043 of 2018 & A.No.4290 of 2017**  
**in**  
**C.S.No.814 of 2006**

**R.SUBRAMANIAN,. J.**

This application has been filed seeking to set aside the order dated 17.12.2012, which is based on the compromise entered into between the parties in the suit.

2.The suit in C.S.No.814 of 2006 was filed for recovery of a sum of Rs.83,10,029/-. It is also stated that the property belonging to the defendants in the suit were attached by this Court on 08.12.2006. The suit was filed under Order XXXVII, Rule 1 of CPC, and there were some proceedings initiated by the defendants seeking leave to contest the suit. The defendants moved an application in A.No.4653/2012 seeking to raise the order of attachment. It appears that in the said application, a compromise was entered into between the parties and they entered into a memo of understanding on 01.10.2012. The said compromise was recorded by this Court on 17.12.2012, and an order was passed by the Hon'ble Justice K.Chandru, recording the said compromise. The terms of the compromise were also set out in the said order.



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3.Pursuant to the said compromise, the plaintiff had released the portion of the 'A' schedule property on 28.11.2012, by way of a registered release deed. It is also not in dispute that the defendants have sold a portion of the said 'A' schedule property which was released from the mortgage on 28.11.2012 and they have paid a sum of Rs.48,40,000/-as on 14.10.2014. When the plaintiff pressed for payment of the remaining amount as per the compromise the present application has been filed by the applicants/defendants seeking to set aside the said compromise.

4.The primary ground on which the compromise is sought to be set aside is that the respondent forced the applicants to enter into the memorandum of understanding by showing certain signatures in blank stamp papers and cheques signed in the year 2006. It is also claimed that the applicants did not to know the contents of the memo of understanding. These contentions are stated only to be rejected. The memorandum of understanding has been signed by the parties, the same has been produced before this Court and this Court had



accepted the said memorandum of understanding. The compromise has been recorded as per the said memorandum of understanding.

5.The order recording the compromise was passed on 17.10.2012. Thereafter, the parties have acted as per the said compromise, and the plaintiff had, in fact, executed a release deed releasing the 'A' schedule property from the mortgage. It is also not in dispute that a portion of the property has been sold by the defendants, and they had made part payment. Therefore, no case has been made out for setting aside the compromise entered into between the parties on 17.10.2012. A party who seeks to set aside the compromise entered into and recorded by Court has to prove beyond of doubt, that the compromise was brought about by fraud and undue influence. In fact, no such claim is made. In the affidavit it is stated that the plaintiff compelled the defendants to sign the memorandum of understanding. This plea taken nearly after 5 years from the date of the order based on the memorandum of understanding cannot be countenanced. Hence, this application is dismissed. However, there will be no order as to costs.



**R.SUBRAMANIAN,. J.**

KP

**A.No.4290 of 2017:-**

In view of the fact that I have dismissed the application for setting aside the compromise recorded by order dated 17.10.2012, I do not think the defendants are entitled to file a written statement in the suit. Hence, the A.No.4290 of 2017 is dismissed.

**20.02.2018**

KP

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