

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.12.2018**

C O R A M

THE HON'BLE MR.JUSTICE M.S.RAMESH

C.R.P.[NPD] Nos.787, 797 & 970 of 2018

A.Sethu

.. Petitioner
(in all CRPs)

Vs

S.Murugan

.. Respondent
(in CRP.No.787 of 2018)

1.R.Subramanian Naicker
(Deceased)

2.S.Sahadevan

3.S.Murugan

.. Respondents
(in CRP.Nos.797 & 970 of 2018)

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India praying to set aside the Decree dated 01.07.2017 in compromise memo in O.S.No.829 of 2007, O.S.No.21 of 2008 and O.S.No.843 of 2007 respectively.

For Petitioner : Mr.V.Lakshminarayanan
for M/s.K.Seetha Ram
(in all CRPs)

For Respondents : No Appearance

COMMON ORDER

Today, the matter is listed under the caption "for clarification" and the earlier order of this Court dated 15.11.2018 shall stand substituted with the present order which reads as follows:

The learned counsel for the petitioner has filed additional typed set of papers enclosing the review petition No.1 of 2017 filed in O.S.No.829 of 2007, which review petition is under challenge in the Civil Revision Petition No.787 of 2018.

2. The order under challenge in the present revision is rejection of the petitioner's review application filed under Order 47 Rule 1 and 2 of CPC r/w. 114 of CPC, refusing to review the earlier order passed in O.S.No.843 of 2007. When the application was filed seeking for review of the order, the respondents have endorsed that they had no objection on the review petition being allowed and on that basis the review petition came to be heard. In view of the endorsement, notice may not be required to be sent to the respondent.

3. It is seen that the suit came to be disposed on the basis of joint memo of compromise dated 08.06.2017. Among other clauses, Clause A of the joint memo of compromise states that the defendants 2 and 3 have no objection to pass a decree and judgment as prayed for in the suit in O.S.No.843 of 2007. The first defendant had died pending suit and the defendants 2 and 3 are the legal representatives of the first defendant. It is on the basis of this Clause the suit came to be disposed of. It is the grievance of the

petitioner that the trial Court while recording the terms of the joint compromise memo, had dismissed the suit through a judgment and decree dated 01.07.2017.

4. According to the learned counsel for the petitioner, in view of the dismissal, the intention of the compromise itself is defeated and as such he has filed an application to review the order in the Review Petition No.2 of 2017. The learned Judge while dismissing the review petition had held that the memorandum of the joint compromise is beyond the scope of relief sought for in the Review petition, since a review petition can be filed only for rectifying a mistake or error which is found on the face of the record. The present review sought for by the petitioner cannot be maintained since there is no error or mistake on the face of the record.

5. I am not in agreement with such a finding that there is no error on the face of the record. Admittedly, the suit has been mutually agreed to be decreed on the basis of Joint Compromise Memo. Clause (a) of the joint compromise memo dated 08.06.2017 is that the parties have agreed to have the suit to be decreed and not dismissed. When the Court had recorded the terms of compromise, it is bound to decree the suit, in view of the specific agreement between the parties, to that effect. As such, it can only

be termed as an mistake on the face of the record and consequently Court below is required to decreed the suit.

6. In view of the aforesaid findings, the order passed in the Review Petition No. 1 of 2017 in O.S.No.829 of 2007, Review Petition No.3 of 2017 in O.S.No.21 of 2008 and Review Petition No.2 of 2017 in O.S.No.843 of 2007, all dated 01.07.2017, are set aside, insofar as the findings that the suit is dismissed. Consequently, the portion of the judgment and decree passed in O.S.No.829 of 2007, O.S.No.21 of 2008 and O.S.No.843 of 2007 dismissing the suit shall be substituted as follows:

"1.that in view of joint compromise memo filed by the plaintiff on 24.06.2017, an amicable settlement have been effected between parties with terms and conditions and in view of joint compromise memo, the suit is decreed."

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7. All other findings in the judgment and decree in O.S.No.829 of 2007, O.S.No.21 of 2008 and O.S.No.843 of 2007 dated 01.07.2017 shall remain intact.

8. Accordingly, the Civil Revision Petitions are partly allowed.

No costs.

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gsi/dh/hvk

Index : Yes/No

Internet : Yes/No



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M.S.RAMESH, J.

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