

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2018

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

C.R.P. (NPD) No. 2901 of 2017

&

C.M.P. No.13720 of 2017

1. Dr.V. Vasudevan
2. V. Rajasekaran
3. V. Chandramouli

All are duly rep. by their Power of Attorney

A. Mohan

(Cause title accepted vide order of Court dated
21.07.2017 by MGRJ made in CMP No.6797/17
in CRP No. 31003/2017.)

..Petitioners

Vs.

1. N.C. Selvakumar
2. N. Kasinathan
3. The Tahsildar,
Tambaram Taluk,
Kancheepuram District,
Kancheepuram.

4. The Sub Registrar,
Selaiyur, East Tambaram,
Chennai - 600 073.

5. The District Collector,
Kancheepuram District,
Kancheepuram.

..Respondents

Prayer: Civil Revision Petition under Article 227 of the Constitution of India as against the award dated 15.02.2017 passed in Memo in O.S. No. 335 of 2015 by the District Munsif Court at Tambaram.

For Petitioners :: Mr.M.S. Krishnan,
Senior Counsel for
Mr.K. Elangoo

For Respondents :: Mr.S. Jaganathan for R1
Mr.G. Santhosh Kumar for R2
No appearance for R3 to R5

ORDER

The present revision is filed under Article 227 of the Constitution of India to set aside the award dated 15.02.2017 passed by the Lok Adalath (District Munsif Court at Tambaram) in Memo in O.S. No. 355/2015 on the ground of fraud.

2. Learned Senior Counsel appearing for the petitioners submitted that the suit was filed for the relief of bare injunction in which the plaintiff/1st respondent herein has admitted that the 1st defendant, namely, V. Balakrishnan Nair is the owner of the suit property and he claimed to be in permissive occupation of the property. With the plea of adverse possession and a cause of action that the 2nd defendant/2nd respondent herein was attempting to trespass into the property, the suit came to be filed.

3. The 1st defendant, namely, V. Balakrishnan Nair, was set ex parte in the suit. The plaintiff and the 2nd defendant had entered into a Joint Memo of Compromise dated 15.02.2017 based on which the award was passed by the Lok Adalath decreeing the suit. According to the learned Senior Counsel for the petitioners, the award itself is liable to be set aside on the ground of fraud since the award reflects as if the 1st defendant was also a party to the compromise. He would further submit that the 1st defendant had died wayback in the year 1997 and that the suit itself was a collusive suit filed only for the purpose of obtaining the award without the 1st defendant's presence. It is also submitted that the address given for the 1st defendant was not the proper address and that the suit was filed with the ulterior motive of obtaining a decree.

4. Learned counsel for respondents 1 & 2, on the other hand, submitted that the petitioners herein are not the legal heirs of the 1st defendant. He would also submit that the death certificate produced by the petitioners herein is a false document and therefore, the petitioners herein have no locus to question the award passed by the Lok Adalath.

5. I have given my careful consideration to the submissions made by the respective counsel.

6. The 1st defendant in the suit had been set ex parte and a Joint Compromise Memo had been entered into between the plaintiff and the 2nd defendant on 15.02.2017, the terms of which read as follows:

"It is most humbly submitted that the 1st and 3rd defendant have been set ex parte in the above suit and that the 4th defendant has filed a written statement agreeing to abide by the decree passed by this Hon'ble Court and hence the plaintiff and 2nd defendant being the contesting parties have agreed to enter into this memo of compromise and jointly pray that this Hon'ble Court to decree the above suit in terms of this memo of compromise.

1. That the 2nd defendant has this day received a sum of Rs.5,00,000/- (Rupees Five Lakhs only) by cheque dated 15.02.2017 drawn on Tamil Nadu Mercantile Bank Ltd., Madambakkam Branch, Cheque bearing No. 001437.

2. That the 2nd defendant shall have no objection for decreeing the suit as prayed for in the following manner

a. That a decree of permanent injunction be passed restraining the 1st and 2nd defendant or his men and agents or legal heirs from in any manner interfering with the Plaintiff's peaceful possession and enjoyment of the schedule mentioned property.

b. That a decree of permanent injunction be passed restraining the 1st and 2nd defendant or his men and agents and legal heirs

from alienating or encumbering the schedule mentioned property.

c. that a decree of permanent injunction be passed restraining the 3rd defendant from effecting patta transfer in the name of defendants 1 & 2 or his men and agents or legal heirs.

d. that a decree of permanent injunction be passed restraining the 4th defendant from registering any document pertaining to the schedule mentioned property unless presented by the plaintiff.

Hence, this Hon'ble Court may be pleased to record the memo in terms of the above memo of compromise and pass decree thus render justice.

Dated at Tambaram this 15th day of February, 2017.

Plaintiff

2nd Defendant

Counsel for Plaintiff

Counsel for 2nd Defendant

7. On a perusal of the aforesaid terms, it is seen that the plaintiff and the 2nd defendant had agreed to have a decree of permanent injunction passed restraining the 1st defendant also from interfering with the plaintiff's possession, for which purpose, the 2nd defendant is alleged to have received a sum of Rs.5lakhs. It is not clear from the terms of compromise as to who is the drawer of the cheque for the aforesaid payment of Rs.5 lakhs, which is alleged to have been received by the 2nd defendant herein.

8. The 2nd defendant and the plaintiff have signed the Joint Memo of Compromise whereby they have agreed that the 1st defendant will not interfere with the suit property and that the suit can also be decreed as prayed for. It is on this basis that the Lok Adalath had passed an award dated 15.02.2017. The award also indicates as if the settlement was arrived at between the plaintiff and V. Balakrishnan Nair, who is the 1st defendant. The Joint Compromise Memo came to be recorded through the award and a decree was also passed in favour of the plaintiff.

9. It is needless to mention that even though the 1st defendant was set ex parte before the Trial Court, the plaintiff and the 2nd defendant may not be entitled to enter into a Joint Memo of Compromise whereby they can restrain the 1st defendant from interfering with the property. The Lok Adalath also ought to have taken note of this fact that only the 2nd defendant and the plaintiff had appeared before the Lok Adalath and had entered into a Joint Compromise Memo wherein certain clauses, adverse to the interest of the 1st defendant, as well as defendants 3 and 4, were also referred to in the award. When such is the case, the Lok Adalath ought to have taken serious note of this fact, at least, by seeking certain clarifications, before such an award could be passed.

10. It is the submission of the learned counsel for respondents 1 & 2 that the petitioners before the Court are neither the legal heirs of the 1st defendant nor have they inherited the property and as such, they are not entitled to claim the relief of setting aside the award.

11. The issue as to whether the petitioners herein are the legal heirs of the 1st defendant or whether they have inherited the property could be issues, which can be tried independently through separate proceedings. Nevertheless, when this Court has found that the award itself cannot be sustained, in view of the fact that the Joint Compromise Memo between the plaintiff and the 2nd defendant cannot be binding on the 1st defendant as well as defendants 3 & 4, it would only be appropriate to set aside the award on that ground and leave the issue with regard to the petitioners' rights over the suit property open.

12. It is also brought to the notice of this Court that the suit property has been subsequently sold by the petitioners herein to certain third parties and the said sale is in question in an independent proceedings.

13. In the light of the above discussion, I am of the view that the award is not sustainable, there being a possibility of fraud having been

committed in the light of the terms of the memo of compromise whereby the plaintiff and the 2nd defendant had specifically agreed to take the suit property against the interest of the 1st defendant, who is admittedly, the owner of the property.

14. In view of the ground of fraud having been raised, this Court would be justified in invoking its powers under Article 227 of the Constitution of India for the purpose of setting aside the award. Hence, the award passed by the Lok Adalath dated 15.02.2017 in Memo in O.S. NO. 355 of 2015 is hereby set aside. The learned District Munsif, Tambaram is called upon to take up the suit in O.S. No. 355 of 2015 on file and dispose of the same in accordance with law, as expeditiously as possible.

15. The petitioners herein are granted leave to take out an application seeking to implead themselves in the suit and the issues as to whether they are the legal heirs of the 1st defendant and whether they have inherited the property from the 1st defendant are left open for the purpose of deliberation before the Trial Court. The petitioners herein are permitted to take out such an application before the Trial Court or file an independent suit to establish their rights over the suit property.

16. The Civil Revision Petition is disposed of with the above directions. No costs. Connected C.M.P. is closed.

14.11.2018

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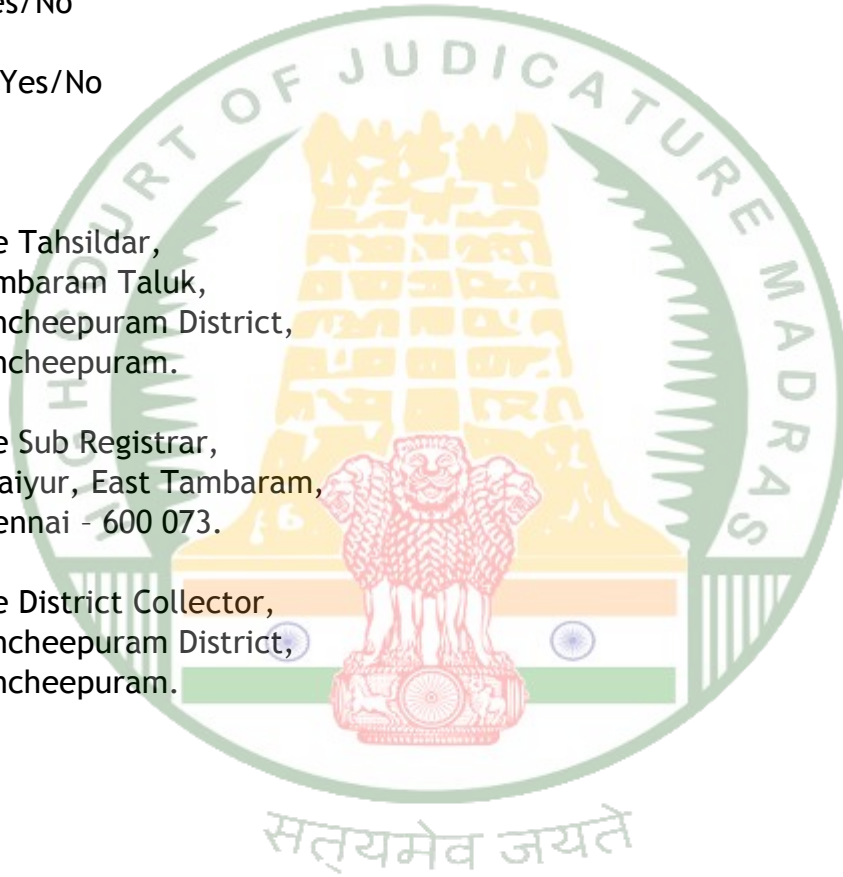
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Index : Yes/No

Internet: Yes/No

To

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Tambaram Taluk,
Kancheepuram District,
Kancheepuram.
2. The Sub Registrar,
Selaiyur, East Tambaram,
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3. The District Collector,
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M.S. RAMESH,J.

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