

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 16.04.2017

Judgment Pronounced on : 01.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE **S.BASKARAN**

REV.APPLN.Nos.141 and 142 of 2017
in
SECOND APPEAL NO.714 OF 2012

REV.APPLN.No.141 of 2017

Lakshmi (Died)

- 1.Neelamegam
- 2.Shankarabushanam
- 3.Sivaraj
- 4.Mususamy
- 5.Uma
- 6.Prema

... Review Petitioners/Appellants

Vs.

Ethiraj (Deceased)

- 1.E.Dhavamani
- 2.E.Gunamani
- 3.E.Jagadeesan
- 4.E.Lakshmi Sekar
- 5.E.Saroja
- 6.E.Jayaseelan
- 7.E.Rani Ethiraj @ E.Rani
- 8.E.Amutha
- 9.E.Bhaskar
- 11.E.Arul
- 12.E.Devatha
- 13.E.Karnal
- 14.E.Ebi
- 15.E.Chandra
- 16.E.Rajan
- 17.E.Ponmudi

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(Respondents 1 to 17 are LR's of the Deceased Ethiraj
1 to 12, 14 to 17 are represented
by 13th appellant as General Power
of Attorney Agent. ... Respondents 1 to 17/Appellants

18.G.Venkatesan ... 18th respondent/1st respondent
19.S.Vijayakumari ... 19th respondent/9th respondent
20.R.Krishnaswamy
21.R.Rajalakshmi ... Respondents 20 & 21/Respondents
10 and 11

REV.APPLN.No.142 of 2017

S.Vijayakumari ... Review Petitioner/Appellant

.Vs.

Ethiraj (Deceased)

1.E.Dhavamani
2.E.Gunamani
3.E.Jagadeesan
4.E.Lakshmi Sekar
5.E.Saroja
6.E.Jayaseelan
7.E.Rani Ethiraj @ E.Rani
8.E.Amutha
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19.Neelamegam
20.Shankarabushanam

21.Sivaraj
 22.Munuswamy
 23.Uma
 24.Prema
 25.R.Krishnaswamy
 26.R.Rajalakshmi

... Respondents/Respondents

These Review Petitions have been filed Under Order 47 Rule 1 r/w Section 114 CPC against the Judgment and decree dated 13.11.2014 passed by this Court in S.A.No.714 of 2012.

For Petitioner : Mr.R.Subramanian for
 M/s.S.Ambigapathi
 (Rev.Appln.No.141 of 2017)

Mr.C.Jagadish for
 Mr.N.C.Ashok Kumar
 (Rev.Appln.No.142 of 2017)

For Respondents : Mr.V.Lakshminarayanan for R1
 for K.Balakrishnan
 Mr.G.Ethirajulu for R4
 Mr.S.Ambigapathi for R-9

Mr.M.V.Venkateshan for R-26
 (Rev.Appln.No.142 of 2017)

COMMON ORDER

These Review Petitions have been filed Under Order 47 Rule 1 r/w Section 114 CPC against the Judgment and decree dated 13.11.2014 passed by this Court in S.A.No.714 of 2012.

2. One Ethiraj was the plaintiff in the suit. He filed the suit for partition and preliminary decree and for rendition of accounts and also for appointment of receiver for collecting the rent in respect of the suit property and for costs. Since the plaintiff, namely Ethiraj died, his legal heirs were impleaded as plaintiffs 2 to 18. The defendants 7 to 9 were impleaded as LRs of the 3rd defendant, namely, Bhuvaneswari, and defendants 10 and 11 are the subsequent purchasers. After contest, the trial Court decreed the suit for partition by allotting "B" & "D" portion to the plaintiffs and "A" & "C" portion allotted to defendants 2 to 9. Aggrieved upon that, the 10th defendant preferred the first appeal before the lower appellate Court. After contest, the lower appellate Court allowed the appeal and modified the decree and judgment of the trial Court. Aggrieved upon that the plaintiffs preferred the appeal before this Court by way of Second Appeal. After hearing both sides, this Court modified the decree and judgment of the lower appellate Court. Hence, the review petitioner, who is the 11th defendant preferred the Review Petition No.142 of 2017. The defendants 3 to 9 preferred the Review Petition No.141 of 2017.

3. The learned counsel appearing for the review petitioners

would submit that in Para No.17 of the Judgment, it is stated that the plaintiffs themselves have admitted that they are willing and agreeable to have the portion and Schedule A and C instead of B & D as allotted and they are also agreeable to pay a compensation of Rs.10,00,000/- offered by the first respondent/10th defendant who is the subsequent purchaser towards owelty for extra 300 sq.ft., purely allotted to the defendants. This observation is factually incorrect, because the plaintiffs were allotted C and D schedule before the first appellate Court. The petitioners have not at all consented and agreed upon to the impugned judgment passed by the High Court modifying the final decree passed by the first appellate Court. The petitioners never agreed to the arrangement as recorded in the impugned judgment. Further, the judgment of the second appeal was based on the compromise and in pursuance of the compromise, the final decree passed by the first appellate Court has been modified. There can be a compromise with the 10th defendant in respect of 'B' schedule, but there cannot be a compromise in respect of the other schedules. The petitioners have been allotted the "A" portion in the final decree passed by the Trial Court and the same was confirmed by the first appellate Court. While passing the impugned judgment modifying the final decree and allotting "A" schedule to the plaintiffs, the learned

Judge recorded that the petitioners have given consent for this course. At the foremost, the petitioners or their counsel never gave any consent to give up their right and apart from that the alleged consent is wholly without any consideration. The portion marked as "A" by the Advocate Commissioner was allotted to the petitioner by the Trial Court while passing final decree. As against the same, neither the plaintiffs nor the defendants have preferred any appeal and as such the order of the trial Court allotting 'A' portion to the petitioner have become final. Only the 10th defendant, namely, Venkatesan has preferred the second appeal and he was claiming equity in respect of the property purchased by him. The allotment in respect of 'A' schedule is confirmed and there was no modification in respect of the same. The modification is only in respect of "B" and "D" portion alone. Thus, the final decree passed by the trial Court has become final. If there is any compromise, then all the parties to the proceedings should have been consented. This Court modified the decree and judgment of the first appellate Court based on the consent given in S.A.No.714 of 2012 wherein the petitioners were not consenting the party. There cannot be any consent order between the other parties without the petitioner's consent. Hence, he sought for review the Judgment.

4.The 11th defendant preferred separate review petition and put forth separate grounds and stated that in the second appeal, it was held that the plaintiffs are entitled to owelty apart from the allotment of "C" and "D" schedule. However, in the later portion of the judgment, it is stated that the plaintiffs were allotted "A" and "C" schedule instead of saying "C" and "D" schedule. It is apparent mistake on the face of the it. The second appeal judgment is stated to be based on the compromise and the judgment and decree of the first appellate Court was modified accordingly. There can be compromise between the first respondent/10th defendant in respect of the "B" schedule, but there cannot be any compromise in respect of the "A" Schedule which has been purchased by the review petitioner. The petitioner has purchased the portion of the suit property which has been demarcated as "A" by Advocate Commissioner, from the defendants, namely, Lakshmi, Neelamegam and Shankarabushanam and they have been allotted the said "A" schedule in the final decree passed by the trial Court and the same was confirmed by the first appellate Court. The petitioner would not have given consent to give up his right to work out the equity in his favour in respect of "A" schedule property without any consideration. The plaintiffs have not questioned the allotment of

"A" schedule in favour of the petitioner's vendor and the same has become final and accepted by the plaintiffs. In view of the admission, they cannot seek allotment of "A" schedule in their favour under the guise of arriving at compromise with the 10th defendant, who can give consent only in respect of "B" schedule property. Therefore, it is clear cut apparent error on the face of it. Hence, the review petition is sought to be entertained.

5. Per contra, the learned counsel for the respondent would submit that the second appeal judgment was passed only on the basis of compromise entered between the parties. Both the review petitioners were party to the proceedings in the second appeal and they have appeared through counsel. Further all the parties and their counsel agreed for modification of final decree on the basis of the compromise and orders were passed. Hence, there is no infirmity in the findings of the learned Judge. Since the judgment passed in the second appeal is not a merit judgment and it is based upon compromise, the same cannot be questioned by way of review. Thus there is no merits in the review petitions. Hence, the respondent seeks dismissal of the review petition.

6.I have heard the rival contention and perused the materials available on record.

7.On perusal of records, it is clear that the learned judge has passed Judgment in the Second Appeal No.714 of 2012 and modified the decree of the first appellate Court only on the basis of the consent of parties who entered into compromise. Now, the petitioners has come forward with the review petitions stating that they have not given any consent for the modification. However, in Para No.14 and 17 of the Judgment of this Court in S.A.No.714 of 2012 dated 13.11.2014 the learned Judge has held as follows:-

"14. Today, when the matter is taken up for passing orders, both sides agreed, i.e. the appellants/plaintiff and the first respondent/10th defendant. Learned counsel appearing for R9 also agrees for such a course. The parties are also present before this Court. Therefore, there will a modification only to that extent in the trial court decree.

17. It is also brought to the notice of this Court that there are purchasers pending the lis and they have also sought for a direction form

this Court. But at the same time, now the appellants/plaintiffs themselves have admitted that they are willing and agreeable to have the portion under Schedule A and C instead of B and D as allotted and they are also agreeable to take the compensation of Rs.10,00,000/- [Rupees ten lakhs only] offered by the first respondent/10th defendant, who is a subsequent purchaser, towards owelty for the 300 sq.ft. more allotted to the defendants, the allotment will be as follows and the decree passed by the trial Court in the final decree proceedings is modified to the following extent:

(i) that the appellants/plaintiffs are entitled to the portion marked as "A" measuring an extent of 1200 sq.ft. on the K.H.Road side portion and "C" schedule property (middle portion) measuring an extent of 3836 sq.ft. towards their half share as mentioned in Ex.C2 sketch.

(ii) The respondents/defendants is entitled to the portion marked as portion "B" measuring an extent of 1800 sq.ft., K.H.Road side portion and "D" scheduled property measuring an extent of (rear side portion) measuring an extent of 3226 sq.ft. towards their half share as mentioned in Ex.C2 sketch.

(iii) The first respondent/tenth

defendant, who is a subsequent purchaser/pendente lite is entitled to "B" measuring 1800 sq.ft., subject to the condition that as agreed by him, he shall pay a sum of Rs.10,00,000/- [Rupees ten lakhs only] to the appellants/plaintiffs towards owelty for the 300 sq.ft., extra allotted to them as above. Out of the said sum of Rs.10,00,000/-, the first respondent/tenth defendant has paid a sum of Rs.3,00,000/- [Rupees three lakhs only] drawn on Bank of India, Anna Nagar Branch in the name of E.Karnal, the 13th appellant herein vide Cheque No.000098 dated 13.11.2014 in the open Court and the remaining sum of Rs.7,00,000/- [Rupees seven lakhs only] shall be payable as follows:

(a) The first respondent/10th defendant shall pay another sum of Rs.3,00,000/- [Rupees three lakhs only] in favour of the appellants/plaintiffs on or before 31.12.2014.

(b) The first respondent/10th defendant shall pay the remaining sum of Rs.4,00,000/- [Rupees four lakhs only] in favour of the appellants/plaintiffs on or before 28.02.2015.

(iv) It is also made clear that in the event of the first respondent/tenth defendant failing to comply with any one of the condition within the stipulated time or in the event of not

honouring the cheque payment made, the property will not be allotted to his share and liable for action, including the contempt proceedings.

(v) In all other aspects, the judgment and decree dated 11.08.2011 passed in A.S.No.519 of 2008 shall hold good.

8. On the basis of the above said agreement alone, this Court has modified the lower appellate Court judgment and decree and disposed the Second Appeal No.714 of 2012. If, really, the parties are having grievance over the findings, they have to prefer appeal before the appropriate Forum and no remedy before this Court. This Court passed judgment not on merits but on the basis of compromise entered into between the contesting parties in the second appeal. In such circumstances, there is no question of any error apparent on the face of the records. Hence, the review petitions are not maintainable questioning the finding given by this Court on the basis of the agreement entered into between the parties in the open Court. Therefore, this Court is of the view that this review petitions do not have any merit. As stated earlier, the petitioners are unable to point out and establish any manifest error in the findings of this Court. Hence, the review petitions are unsustainable. The Point is answered

Accordingly.

9. In the result, these Review Petitions are dismissed. No costs. Consequently, connected miscellaneous petitioner are closed.

01.11.2018

rrg

To

- 1.The I Additional Judge,
City Civil Court,
Chennai.
- 2.The VI Assistant Judge,
City Civil Court, Chennai.



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S.BASKARAN,J.,

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