

C.M.P.No.323 of 2011
in
S.A.No.1374 of 2005

N.SESHASAYEE,J.,

This application is preferred by the plaintiff/respondent. The suit is laid for declaration of plaintiff's title over the suit property and for recovery of possession. According to the plaintiff, the defendants have tress-passed into his property and put up some huts there. The suit came to be decreed successively before the Courts below. Even though all the five defendants appear to have filed a common written statement, only the first defendant had participated and contested the suit. This contesting defendant has come before this Court in this appeal.

2.During the pendency of the appeal, both the contesting defendant/appellant and the plaintiff have compromised the matter and this compromise came to be ordered by the Judgment of this Court dated 19.12.2008. Subsequently, the plaintiff appeared to have preferred an Execution Petition for evicting defendants 2 to 5 from the suit property. It appears the Executing Court appeared to have observed the compromise recorded to the ennui all the defendants.

3.The learned counsel for the plaintiff/respondent and the petitioner in the present Civil Miscellaneous Petition submitted that the cause of action is

separate and divisible as between all the five defendants, that since it involved a common question of law and title, there was a jointer of causes of action and accordingly, the suit was laid. Each one of the defendants have put up separate construction, of which, compromise has been entered only with the first defendant. Now, he requires a clarification from this Court to the effect that the benefit of the compromise does not extend to defendants 2 to 5.

4. On perusing the records, this Court finds that submissions made by the learned counsel for the petitioner reconciles well with the facts disclosed by the records. Each of the five defendants appear to be different individuals as their parents are different. Further, the written statement, to the extent it is extracted in the Judgments of the Courts below, also indicate that they have put up separate huts and none of the defendants except the first defendant have entered the box to depose to their case.

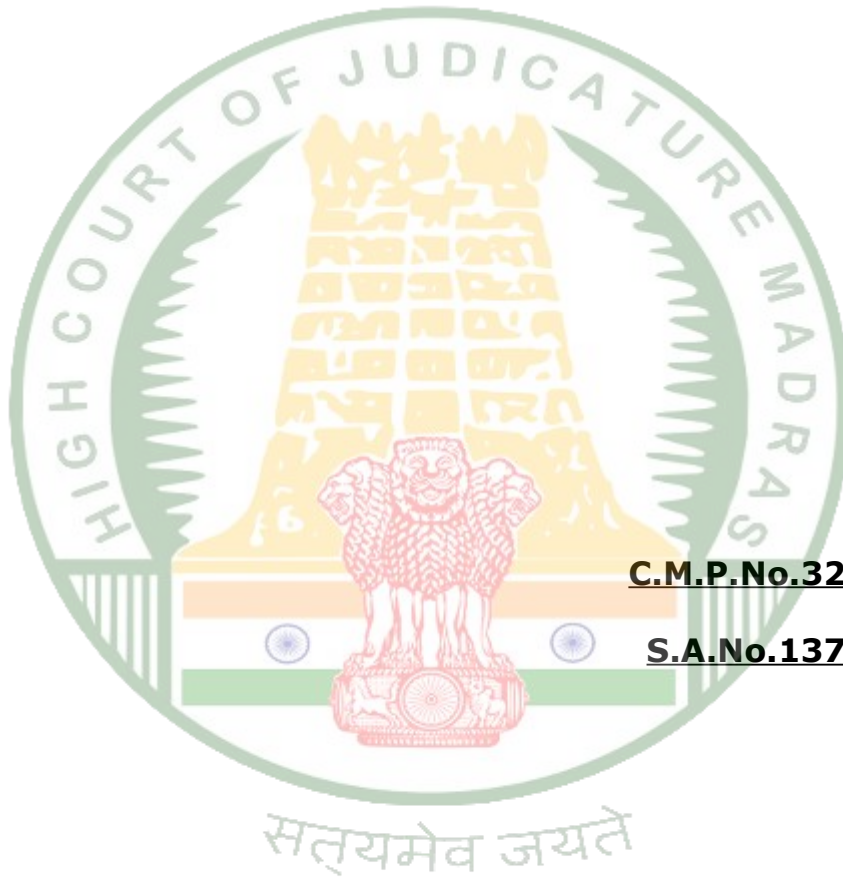
5. Therefore, obviously the compromise would effect only the decree passed against the first defendant and it cannot be extended to the other defendants. The Judgement is clarified in the manner above and accordingly disposed of.

08.08.2019

tsg

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